

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.319 of 2014

Arising Out of PS.Case No. -40 Year- 2003 Thana -PARSAUNI District- SITAMARHI

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Jai Kishore Singh Son of Rameshwar Singh Resident of Village- Mushari, Police station- Parsauni, District- Sitamarhi.

.... Appellant/s

Versus

1. The State of Bihar
2. Baikunth Singh S/o Ramashray Singh
3. Ghanshyam Singh S/o Baikunth Singh
4. Shivshankar Singh
5. Gauri Shankar Singh Both Sons of Ram Lachhan Singh null
6. Sri Krishna Singh Sons of Ram Lachhan Singh All Resident of Village- Mushari, Police Station- Parsauni, District- Sitamarhi.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Dinesh Jha, Adv.

For the Respondent/s : Mr. A.K.Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 18-12-2015

This is an appeal under Proviso to Section 372 of the Code of Criminal Procedure putting to challenge the judgment and order, dated 31.3.2011, passed by the learned Addl. Sessions Judge, Fast Track Court-VI, Sitamarhi, in S.Tr.No. 365 of 2004/ 39 of 2008, whereby he has recorded acquittal of respondents no. 2 to 6, who stood charged, at the said trial, for the commission of the offences punishable under Sections 307, 380 and 427 read with section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

2. A written report, dated 25.9.20013, of the informant, who is the appellant herein, to the Officer-in-Charge of Parsauni Police

Station, in the district of Sitamarhi, gave rise to registration of an First Information Report for the offences punishable under sections 452, 341, 336, 307, 380, 427 and 504 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

3. Briefly narrated, the case of the prosecution, as contained in the First Information Report, is that on the date of occurrence i.e. 24.9.2003 nearly at 7 P.M., when the informant was passing through a road in front of the house of respondent No.2, respondent No.2 started abusing him and tried to intercept him. The informant, thereafter, rushed towards his house, whereafter respondent No.2 asked respondent No.3 to shoot the informant, whereupon respondent No.3 opened fire from a fire-arm, but the informant narrowly escaped. It is also alleged that in the meanwhile, respondents No. 4, 5 and 6 pelted brick stones on the house of the informant damaging tiles (*Khapra*) on the roof of the informant's house. It is also alleged that the informant, thereafter, fled away towards south, whereupon respondent No.4 entered into the house of the informant and took away a box, whereas respondent No.2 took away a mettle pot. A dispute over passage was claimed to be the genesis of the occurrence.

4. Upon completion of investigation, the police submitted *charge sheet* against respondents No. 2 to 6 for the offences punishable under various penal provisions of the Indian Penal Code,

as noticed above, and Section 27 of the Arms Act, 1959. Cognizance was, thereafter, taken and the case was subsequently committed to the Court of Sessions for trial and disposal.

5. It appears from the records that all the accused persons were charged with the offences punishable under Section 307 read with Section 34 of the Indian Penal Code. In addition thereto, respondent No.2 and respondent No.4 were charged with the offence punishable under Section 380 of the Indian Penal Code and respondents No. 2 to 4 and 6 were also charged with the offence punishable under Section 427 of the Indian Penal Code and respondent No.3 was further charged with the offence punishable under Section 27 of the Arms Act, 1959. The charges were framed on 21.12.2005. The concerned respondents denied the charges framed against them and, therefore, the trial against them commenced.

6. It transpires from the material on record that altogether seven witnesses were examined at the trial. The informant/ appellant, Jai Kishore Singh, was examined as P.W.6 at the trial. P.Ws. 1, 3 and 4 are the nephews of the appellant/ informant. P.W.2 is full brother of the informant. P.W.5 is the wife of the informant, whereas P.W.6 is the informant himself. P.W.7 is a formal witness.

7. Evidently, thus, all the prosecution witnesses examined at the trial are closely related to the informant.



8. It further transpires that the witnesses, in their depositions, at the trial, accepted that the families of the informant/appellant and the respondents were on inimical terms from before and were litigating also. Learned trial Court, upon analysis of evidence, acquitted respondents No. 2 to 6 of the charges framed against them, giving them benefit of doubt, as, according to learned trial Court, prosecution had failed to prove the case beyond all reasonable doubt.

9. Assailing the impugned judgment and order, Mr. Dinesh Jha, learned counsel appearing on behalf of the appellant, has argued that the learned trial Judge fell in error by unnecessarily taking into account 12 hours delay in lodging the First Information Report overlooking the fact that plausible explanation for such delay was available in the F.I.R. itself. He has further submitted that all the witnesses were consistent in their deposition that respondent No.3 had opened fire on the informant after having been instigated by respondent No.2.

10. We have perused the material on record and have given our anxious consideration to the submissions advanced on behalf of the appellant. It is not the plea of the appellant that the deposition of witnesses have been incorrectly mentioned in the impugned judgment and order.

11. Question, thus, remains to be decided, in the present



appeal against acquittal, is as to whether, on the basis of deposition of the witnesses as recorded in the impugned judgment and order, could it be said that the prosecution was able to establish, beyond all reasonable doubt, the charges framed against the respondents No. 2 and 3 and whether on the basis of evidence on record, can it be said that the conviction of respondents No. 2 to 6 was the only possible view, which could have been taken by the learned trial Court and no other view was at all possible?

12. Coming, first, to the charge framed under Section 307 of the Indian Penal Code, we find that the prosecution witnesses deposed that respondent No.3 had opened fire as instigated by respondent No.2. There is no dispute over the fact that no person received any fire-arm injury. None of the prosecution witnesses deposed that there was any repetition of fire nor any evidence was adduced by the prosecution to the effect that some intervening circumstance prevented the accused persons from repeating the fire. The learned trial Court, in such circumstance, considering the evidence on record, has rightly concluded that the prosecution failed to establish the charge framed under Section 307 of the Indian Penal Code. P.W.5, the wife of the informant, is said to have seen the occurrence; but she did not depose, in her evidence, in examination-in-chief, that she had heard any sound of fire. Neither any empty



cartridge was recovered by the police from the place of occurrence nor any mark of firing was found at or near the place of occurrence. We further notice that no charge for the offence punishable under Section 307 of the I.P.C. can be said to have been made out against respondents No. 4, 5 and 6 on the basis of the evidence on record as it is alleged against them that they started brick batting after respondent No.3 had opened fire.

13. We further find that the learned trial Court found apparent contradictions between the case of the prosecution, as contained in the First Information Report, and, in deposition of witnesses, in relation to the charge of taking away the box and some materials from the house of the informant. In the First Information Report, it is not alleged that the informant himself was a witness to the act of the respondents of taking away the box and other materials from his house; whereas the informant, while deposing at the trial, asserted that he had seen such occurrence taking place. Learned trial Court has not found the appellant/ informant to be a trustworthy witness and, thus, giving respondents No. 2 to 6 benefit of doubt, recorded their acquittal.

14. There is no dispute that the family of the informant and that of the respondents were on inimical terms and were litigating against each other. No independent witness came forward to support

the case of the prosecution. All the witnesses are closely related to each other and appear to be highly interested witnesses. It is true that the evidence of interested witnesses cannot be completely brushed aside; but it is true at the same time that their evidence need to be weighed and evaluated with much care and caution and with utmost circumspection.

15. From the impugned judgment and order of the learned Sessions Judge, we find that he has taken into account contradictions in the deposition of witnesses. The view, taken by the learned trial Court that no offence punishable under Section 307 of the I.P.C. could be established beyond all reasonable doubt on the basis of evidence adduced at the trial, cannot, in our view, be faulted at.

16. Taking into account all facts and circumstances in its totality, we are of the view that the impugned judgment and order, dated 31.3.2011, passed in S.Tr.No. 365 of 3004/ 39 of 2008, do not warrant interference in an appeal against acquittal, when the view taken by the trial Court cannot be said to be perverse nor can it be said that such view is not a reasonably possible view.

17. We, therefore, do not find any merit in this appeal. This appeal, thus, stands dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

Surendra/-

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