

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.393 of 2014

Against the judgment of conviction 13.05.2014 and order of sentence dated 15.05. 2014 passed by Shri Shrinibash Singh, learned Ad-hoc Additional Sessions Judge, 3, Bhagalpur, arising out of Sanhaulla P.S. Case No. 35 of 2010

Hitlar Jha, Son of late Parmanand Jha resident of village- Tarar, P.S.- Sanhaulla, District- Bhagalpur

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Mr. Shivesh Chandra Mishra, Advocate.

For the State : Mr. Bipin Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 23-11-2015

Heard learned counsel for the appellant and learned counsel for the State.

2. This appeal arises out of the judgment of conviction 13.05.2014 and order of sentence dated 15.05. 2014 passed by Shri Shrinibash Singh, learned Ad-hoc Additional Sessions Judge, 3, Bhagalpur, arising out of Sanhaulla P.S. Case No. 35 of 2010 by which the sole appellant had been convicted for offence under Section 307 of Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs. 10,000/- and on non-payment of fine further sentenced to simple imprisonment for three months. The appellant had further been convicted for offence

under Section 27 of the Arms Act and sentenced to rigorous imprisonment for three years and payment of fine of Rs. 1000/- and on non-payment of fine further simple imprisonment for one month and fifteen days. Further the appellant had been convicted for offence under Section 324 of Indian Penal Code and sentenced to rigorous imprisonment for three years. All the sentences are directed to run concurrently.

3. The prosecution case as alleged in the First Information Report by the informant Mahesh Chandra Jha that the appellant along with Amar Nath Jha the younger brother of the informant had abused the wife of the informant on 09.05.2010. When the informant returned to his house on 10.05.2010 then his wife disclosed regarding the occurrence of abuses by the appellant Hitlar Jha and brother of the informant Amar Nath Jha. The informant went to the house of Hitlar Jha to enquire as to why he abused his wife on which Hitlar Jha said that he will go and abuse and whatever he want to do he can do. Further case is that on 11.05.2010 at about 6.30 A.M. when the informant was talking with his co-villager Shyam Sunder Thakur in front of the house of co-villager Kaushal Jha, in the meantime Hitlar Jha came out from the house of Kaushal Jha and abused the informant and retorted that he will kill the informant by gun shot. On uttering this he fired from his pistol on the informant but the informant



anyhow manage to escape. It is further alleged that the appellant fired second round then the informant wanted to save himself from his left hand then the shot hit on his palm and also got injured on his left chest on which the informant fell down. It is further alleged that the appellant shot fire third round which hit the left elbow of Shyam Sunder Thakur and he got injured seriously. Further case is that on hullah, family members of the informant and other co-villagers collected and showing the informant and Shyam Sunder Thakur in injured state, they took both of them to Jawahar Lal Nehru Medical College Hospital where treatment was made.

4. The case was lodged on the basis of Fardbeyan of Mahesh Chandra Jha recorded in Emergency Ward Bed No. 12. The Fardbeyan was recorded by Officer-in-Charge, Anil Paswan, S.H.O., Sanhaulla P.S. and investigation proceeded. After recording Fardbeyan, the police started investigation, recorded statement of the informant Mahesh Chandra Jha and other injured Shyam Sunder Thakur as well as other witnesses including the wife of the informant Premlata Jha and inspected the P.O., procured injury report and after recording the statement of other witnesses submitted charge sheet on which cognizance taken and case was committed to the Court of Sessions. After framing of the charge, trial proceeded.

5. During trial, eight witnesses were examined. P.W.1

Mahesh Chandra Jha, the informant who had supported the prosecution case regarding the occurrence and signed the Fardbeyan. P.W. 2 Hari Jha stated in his evidence that he heard the sound of firing in the Gali then he rushed and saw Mahesh Chandra Jha in injured state lying in road and blood oozing out from his chest. P.W. 3 Durga Jha, in his evidence stated he did not know anything about the occurrence but subsequently stated before the police that he went to see the informant in injured state by firing. P.W.4 had also stated after hearing the sound of firing, he rushed to the place of occurrence and saw Mahesh Chandra Jha in injured state by firing and Hitler Jha had fled away. P.W. 5 is Pinki Jha, the wife of younger brother of the informant and she had stated that she also heard sound of firing and went to the place of occurrence and saw the informant in injured state. P.W. 6 Prem Lata Jha, wife of the informant and she stated she heard the sound of firing, though, in her examination-in-chief she claimed to be eye witness to the occurrence, but from perusal of her evidence, it is apparent that she was not eye witness to the occurrence and she only saw her husband in injured state. P.W. 7 Anil Paswan is I.O. who recorded the Fardbeyan and has proved the Fardbeyan and conducted the investigation and submitted charge sheet. P.W. 8 is Bhola Mandal, Advocate Clerk and he has proved the injury report formally, regarding injury on the person of the informant as well as

injury of Shyam Sunder Thakur. Further stated that he has no opportunity to work with the doctor.

6. The trial court taking into consideration the evidence of the witnesses, convicted the appellant and sentenced as mentioned above.

7. Learned counsel for the appellant has challenged the order of conviction and sentence recorded by the trial court. It has been contended that only witness to the occurrence is the informant and other witnesses are not eye witness to the occurrence. It has further been contended that, though, there is allegation of firing causing injury on the hand as well as on the chest on the person of the informant as well as injury on the person of Shyam Sunder Thakur. It has further been contended that injury on the person of Shyam Sunder Thakur shows not by fire arm, but caused by explosive substance and this injury belies the prosecution story regarding firing by fire arm. Further it has been contended that doctor has not been examined in this case and injury report has only formally been proved and hence submits that injury on the person of the victim had not been established by cogent, reliable and unimpeachable evidence and hence, injury as such cannot be said to have caused with intention to kill nor injury was sufficient as such to have caused to attempt to kill Mahesh Chandra Jha.

8. Learned counsel for the State however contends that there

is specific allegation against the appellant and doctor found the injury on the person of the informant as well as Shyam Sunder Thakur and injury report had been proved and it has come in evidence that doctor has died and when the injury has been recorded by the doctor in ordinary course of business and said injury report having been proved and said injury report having been proved by the doctor to record the conviction.

9. Having regard to the fact and circumstances, I proceed in the light of submissions made by the parties.

10. However, the prosecution as alleged in the First Information Report that occurrence took place on 09.05.2010 and it is alleged on that date the appellant and younger brother of the informant Amar Nath Jha came in the house of the informant and abused the wife of the informant. Thereafter, on the next day, when the informant returned to his house then wife of the informant disclosed about the abuse by the appellant as well as Amar Nath Jha then informant went to enquire from Hitlar Jha and Hitlar Jha retorted that he will go and abuse and informant whatever may like to do. Further case is that on 11.05.2010, at about 6.30 A.M. when the informant talking with his co-villager Shyam Sunder Thakur in front of house of Kaushal Jha then the appellant came out from the house of Kaushal Jha and shot fire causing injury on left palm and chest of the

informant and third round fire causing injury on the person of Shyam Sunder Thakur. Though, evidence of P.W. 1 is informant who had supported the prosecution case regarding the occurrence on 09.05.2010 as well as firing on 11.05.2010. Moreover, P.W. 2, 3 and 4 are not eye witnesses to the occurrence, but they have supported the prosecution case that after heard the sound of firing they rushed to the place of occurrence and saw the informant in injured state and Hitler Jha had fled away. P.W. 4, though, had stated that he saw Hitler Jha flee away from the place of occurrence and he found Mahesh Chandra Jha in injured state. P.W. 5 had also stated that on hearing the sound of firing she rushed to the place of occurrence and saw her Bhaisur Mahesh Chandra Jha in injured state. Similarly, P.W.6, wife of the informant had also supported the prosecution case that on hearing the sound of firing she came out and rushed to the place of occurrence. However, the doctor had not been examined but injury report had been proved formally. However, injured Shyam Sunder Thakur had not been examined and injury report had been proved on his person marked as Exhibit-3/1. But injury on the person of Shyam Sunder Thakur has shown to be explosive substance. However, there is no case of any explosive substance having been used and consistent of the prosecution as firing by fire arm. Hence, prosecution case regarding firing by the appellant causing injury on the person of

Shyam Sunder Thakur has neither been supported by the evidence of the witnesses as injured Shyam Sunder Thakur has not been examined nor injury on his person by this appellant had been established by cogent, reliable and unimpeachable evidence. Further prosecution story that Mahesh Chandra Jha, informant had supported the prosecution case regarding firing by Hitler Jha and witnesses have supported the prosecution case that just after hearing the sound of firing they rushed to the place of occurrence. P.W. 3 had also supported the prosecution case that he saw the appellant and the informant, Mahesh Chandra Jha was injured state and injury report on the person of Mahesh Chandra Jha has been proved marked as Exhibit-3. Further injury on the chest of the informant shows a Tatoo mark on left side of his chest. However, going to the injury on the left palm of the informant shows there is exists wound but it is not in vital part of the body and injury on the chest of the informant has not been shown to be grievous as there is only a Tatoo mark found on left side of the chest and abdomen of the informant. Though, there is allegation of firing, but injury on the person of the informant was not found serious in nature and not in vital part of the body as well there is no intention to kill the informant. Further there is no intervening circumstance to leave the victim. Hence the offence under Section 307 of Indian Penal Code is not made out but at best offence under Section

324 of Indian Penal Code is made out.

11. Regard being had to the fact, I find and hold that prosecution has not been able to prove the charge for offence under Section 307 of Indian Penal code. The appellant has already been remained in jail from 26.05.2010. Hence, the end of justice shall meet by convicting and sentencing the appellant for the period already undergone. Accordingly, the appeal is **allowed in part**.

m.p.
NAFR

(Gopal Prasad, J)

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