

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.640 of 2013

Arising Out of PS.Case No. -1 Year- 2011 Thana -BARUN District- AURANGABAD

Nanhku Ram S/O Shayambali Ram Resident Of Village Chandar Bigha, P.S.
Barun, District Aurangabad.

.... Appellant/s
Versus

The State Of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Shailesh Kumar Singh

For the Respondent/s : Mrs. Abha Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 02-12-2015

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

2. Appellant- Nanhku Ram has been convicted under
Section 307 of the Indian Penal Code and sentenced to undergo
rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-
and in payment of default to undergo simple imprisonment of three
months. He has further been convicted under Section 27 of Arms Act
and has been sentenced to undergo rigorous imprisonment for three
years and to pay a fine of Rs. 3000/- and in default of payment to
undergo simple imprisonment for two months. He has further been



convicted for offences under Sections 354, 324, 323, and 504 of the Indian Penal Code and has been sentenced to undergo simple imprisonment of one year each and has further been convicted and sentenced under Sections 341 and 447 of the Indian Penal Code and has been sentenced to undergo simple imprisonment of one month each. However, it has been ordered that the sentences shall run concurrently.

3. The prosecution case, as alleged, in the First Information Report by the informant- Umesh Ram is that on 01.01.2011 at 7 P.M. while he was in his grocery shop, Nanhku Ram came to his shop in drunken condition and tried to outrage the modesty of women who had come to his grocery on which the informant protested and Nanhku Ram started abusing. In the meantime, the elder brother of the informant- Janakdeo Ram came out of his house and tried to drive away Nanhku Ram on which Nanhku Ram threatened to teach the lesson and went away. After 15 minutes Nanhku Ram along with his brother Birendra Ram as well as one

more co- villager Jamuna Ram came to the Darwaza of the informant.

The informant and his brother protested and asked them to go away from the shop. In the meantime Nanhku Ram took out a pistol from his waist and fired at the brother of the informant with an intention to kill him. The firing hit in the abdomen of Janakdeo Ram, the elder brother of the informant as a result of which he fell down. On seeing this occurrence, the informant tried to catch hold of Nanhku Ram then Nanhku Ram gave a blow by butt of the pistol on the head of the informant. The informant got injured on his head but even then the informant snatched the pistol from Nanhku Ram. Subsequently Birendra Ram and Jamuna Ram, who had come along with the accused Nanhku Ram, pushed the informant and the informant fell down and thereafter Jamuna Ram snatched the pistol from the hand of the informant. On hulla, neighbours came and tried to catch hold of the three but all the three managed to escape by jostling with the villagers. Further case is that injured Janakdeo Ram became unconscious and was taken to Primary Health Centre, Baroon and on

seeing serious nature of injury referred the injured to hospital.

The First Information Report was lodged on the fardbeyan of the informant at Primary Health Centre, Baroon by Sub Inspector of Police, Bhagwan Pandey. After investigation the police submitted charge sheet on which cognizance was taken and the case was committed to the Court of Sessions and charges were framed for offences under Sections 307/324/341/323/447/504/354/34 of the Indian Penal Code and 27 of Arms Act.

During trial as many as nine witnesses have been examined on behalf of the prosecution. P.W.1 Umesh Ram is the informant and has supported the prosecution case, P.W.2- Dinesh Ram is the brother of the informant and has supported the prosecution case, P.W.3- Bishundeo Ram. P.W.4-Deepak Kumar did not support the prosecution case and has been declared hostile. P.W.5 and P.W.6- Shankar Ram and Somari Devi have also declared hostile as they have not supported the prosecution case. P.W.7 is the doctor, who examined Janakdeo Ram on 01.01.2011 at 8.45 P.M. and found (i)

lacerated wound 1"x1" deep on the right side of abdomen (wound of entry) and (ii) lacerated wound 1 ½" x 1" x deep on back of right side of abdomen (wound of exit). Both injuries no.1 and 2 were communicating to each other. He has also deposed on the same day. He also examined Umesh Ram and found two injuries (i) Abrasion ½" x ½" on mid parietal region and (ii) complain of body ache. Both the injuries have been marked as Exts. 1 and 2. P.W.8 is Bhagwan Pandey, Sub Inspector of Police, who is the person to have recorded the fardbeyan of the informant in the hospital and has proved the fardbeyan, marked as Ext. 3 and also proved the formal FIR, marked as Ext. 4. He inspected the place of occurrence and gave the description of the place of occurrence as shop. He recorded the statement of the witnesses and after completing the investigation submitted charge sheet. P.W.9 is Janakdeo Ram and he has deposed that at the time of occurrence he was at Kirana Shop and at that time he had seen a lady to take some articles from the shop. In the meantime Nanhku Ram misbehaved with the said lady and when he

protested, Nanhku Ram started abusing and went away to his house.

After half an hour Nanhku Ram, Birendra Ram and Jamuna Ram came at his shop and started abusing. Nanhku Ram fired causing injury in the abdomen of Janaakdeo Ram. In the meantime, Umesh snatched the pistol from the hand of Nanhku but in the meantime Birendra and Jamuna Ram and Nanhku Ram managed to snatch the said pistol.

The trial court after taking into consideration both the oral and documentary evidence held that the prosecution has proved the case and hence, convicted and sentenced the appellant, as mentioned above.

Learned counsel for the appellant has challenged the judgment of conviction and order of sentence recorded by the trial court. It has been submitted that the prosecution case, as alleged, in the First Information Report that Nanhku Ram, the appellant, came to the shop and started to outrage the modesty of the women who were coming to the shop and the occurrence took place while a protest was



made by the informant and asked the Nanhku Ram to go to the house and thereafter it is alleged that Nanhku Ram went to his house and came with pistol and committed the offence. He further submits that no lady has come forward to support the case. It has further been pointed out that there is contradiction in the prosecution story. The contradiction pointed out is that some of the witnesses have stated that the appellant was in drunken state whereas some witnesses have stated that the appellant was not in drunken state and further that the pistol was snatched but the said pistol was not recovered. It has further been pointed out that though the allegation that the women who came to the shop were molested but none of the women has come forward to support the case of molestation. The informant has stated that he did not know the name of the women with whom misconduct was done whereas P.W.9 has stated the name of the lady with whom misconduct was conducted. The said lady has deposed as P.W.6 – Somari Devi but she has not supported the prosecution case and has been declared hostile and hence it cannot be held that the

prosecution has been able to prove his case.

Learned counsel for the State submits that there are cogent reasons given by the informant and his brother as well as other witnesses supporting the prosecution case regarding firing by the appellant and further the victim was examined at Primary Health Centro, Baroon and found the injuries on the person of the victim and hence the evidences are corroborative with the oral evidence and merely because the independent witnesses have not appeared, the evidence of other witnesses cannot be rejected, on that ground alone.

Having regard to the facts and circumstances of the case, it is for consideration whether the prosecution has been able to prove the prosecution case in the light of submissions made by the parties.

As per prosecution, the occurrence took place at about 7 P.M. at the Darwaza of the informant and the shop is situated in the same premises and the allegation is that Nanhku Ram came in drunken state at the shop of the informant and tried to misbehave with the females and thereafter on protest by the informant the appellant



had abused and when the brother of the informant came out to drive the appellant the appellant threatened and commanded to teach a lesson and after 15 minutes the appellant came with his brother and co-villager- Jamuna Ram and all the three accused after coming to the Darwaza of the informant started abusing and on protest the pistol was taken out and fired at the brother of the informant, which hit Janakdeo Ram, the brother of the informant and thereafter the informant chased and tried to catch hold of Nanhku Ram but Nanhku Ram gave pistol blow on the head of the informant causing injury on the head but the informant any how managed to snatch the pistol but Birendra and Jamuna Ram, who had come along with Nanhku Ram felled the informant down and snatched the pistol from the hand of the informant and on hulla the neighbours came and three accused persons fled away.

However, P.W.1- Umesh Ram has supported the prosecution case in the fardbeyan. This witness has stated that Nanhku Ram used to take liquor before the occurrence and on the date of



occurrence Nanhku Ram was under the influence of the liquor and hence P.W.1 has supported the case. P.W.2- Dinesh Ram, is the brother of the informant. However, this witness has stated that he was sitting in the shop and in the meantime Nanhku Ram and Jamuna Ram came in the shop and at the same time the lady also came and Nanhku Ram misbehaved with the said lady and on hulla he came to the shop and saw that his brother Janakadeo Ram, had physical altercation and thereafter he managed to liberate both and send Nankhu Ram to his house but after half an hour Nanhku Ram came and fired at Janakdeo Ram causing injury and thereaftrter Jamuna Ram bite in shoulder of Umesh, snatched the pistol and fled away along with pistol. It is further stated that Nanhku Ram had not taken liquor at the time of occurrence though he has stated that he took mild liquor.

However, the criticism by the learned counsel for the appellant is that this witness has stated that the appellant was not in the influence of liquor and the evidence is in contradiction to the

evidence of the informant.

Having regard to the nature of contradiction pointed out is so minor in nature and the evidence that he has not drunken but only has administered at low level, it cannot be said that there is contradiction. However, this is only the assessment of P.W.2 that the liquor was taken by the appellant and it cannot be said that there is contradiction in evidence. However, evidence of P.W.2 that the lady made a hulla but this is not the prosecution case in the fardbeyan. There is no averment that the lady ever made hulla rather the case of the prosecution in the First Information Report is that it was the informant who protested regarding outraging modesty of the woman but no woman came to support the case of prosecution that genesis of the occurrence is outraging the modesty of the women.

However, P.W.3 has also supported the prosecution case that there was exchange of abuse between Nanhku Ram and Janakdeo Ram and when the villagers came, they drove both of them and they went to their houses. Thereafter Nanhku came with revolver and fired



causing injury in the abdomen of Janakdeo Ram. However, the criticism is that this witness has stated that he used spectacles. After taking out the spectacles he is unable to see properly. Hence the criticism is that the occurrence took place at 7 P.M. when it was winter and the occurrence, as alleged, had taken place in dark and this witness is unable to see, so it is not proper to rely on this evidence.

However, P.Ws. 4, 5 and 6 have been declared hostile by the prosecution as their evidence is not worthy of credence. P.W.7 is a doctor, who found (i) lacerated wound 1"x1" x deep on the right side of abdomen (would of entry) and (ii) lacerated wound 1 ½" x 1" x deep on back of right side of abdomen (would of exit) and both the injuries were caused by fire arm. However, the injuries on the person of the informant and the brother of the informant have been found to be in consonance with the allegation made regarding assault on the person of the victim- Janakdeo Ram and the informant and the injury report supports fire arm injury on the abdomen of Janakdeo Ram and the injury found on the person of the informant. The injury found on

the person of Janakdeo Ram is communicating to each other by fire arm and injury on the person of the informant is abrasion on mid parietal region and this supports the prosecution story regarding the assault.

P.W.8. is the Investigating Officer . P.W.9 is Janakdeo Ram and he has deposed that molestation of woman at the shop was done with Somari Devi but Somari Devi ,P.W.6, has been declared hostile as not supported the prosecution case.

After going through the entire evidence I find that the evidence of P.Ws. 1,3 and 9 have supported the prosecution case regarding firing made by the appellant. The injuries on the person of the informant and his brother have been proved by the doctor P.W.7 and found fire arm injury on the person of Janakdeo Ram and abrasion on the head of the person of the informant and hence the evidences of P.Ws. 1,3 and 9 have supported the prosecution case.

So far the evidence of P.W.2 is concerned, his evidence does not, in fact, consistence. His evidence is contrary to the

prosecution case in the FIR and further it has come that he used to leave outside the District or the State.

However, the criticism was that the evidence of P.W.3 was rejected on the ground that he is an interested witness. However, the evidence of interested witnesses are required to be strictly scrutinized. However, the law does not permit to reject the evidence of interest and inimical witnesses but their evidences are required to be looked into with due caution and strictly scrutinized.

However, P.W.7 has deposed that the opinion be reserved regarding Janakdeo Ram till receipt of the report but no report was received to him regarding those injuries. P.W.7 has found (i) lacerated wound 1"x1" x deep on the right side of abdomen(would of entry) and (ii) lacerated wound 1 ½" x 1" x deep on back right side of abdomen (would of exit) and both the injuries are communicating to each other and the injury report has been marked as Ext.1. However, there is no mention in the report regarding the nature of injury though the patient has been referred but the injury report of the doctor has not been made

available and in such circumstances, there is no specific details about the nature of injuries to hold that the injury was as such to have been inflicted with intention to kill.

Learned counsel for the appellant submits that the appellant has already remained in custody since 02.01.2011 and has remained in jail for about five years, more precisely two months less of five years. Hence having regard to the nature of allegation though the doctor who examined the victim reserved his opinion till receipt of the report after reference and not report received after reference about the nature of injury and hence in view of the absence of report by the doctor to whom the matter was referred, offence u/s 307 IPC cannot be said to make out and hence conviction can at best be recorded u/s 324 IPC and altered the sections and conviction and sentence u/s 307 IPC is set aside.

Having regard to the facts and circumstances of the case, I find that the ends of justice will be met if the petitioner is sentenced to the period already undergone as he has remained in jail for 2 months

less than five years. Hence the order of conviction is affirmed but the order of sentence is modified to the period already undergone and hence with this modification in sentence, the appeal is dismissed. Let the appellant, who is in custody, be released forthwith, if not wanted in any other case.

(Gopal Prasad, J)

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