

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.393 of 2012

Against the judgment of conviction, dated 27.04.2012, and order of sentenced dated 28.04.2012, passed by Mr. Gyan Chandra Gupta, Additional District Judge, Fast Track Court, IV, Munger, in Sessions Trial Case No. 649 of 2010 arising out of Kotwali P.S. Case No. 251 of 2005

1. Sujeet Sharma @ Ajay Sharma S/O Sri Kuldeep Sharma Resident Of Village-Shyampur, Po- Basudeopur, P.S- Kotwali, District- Munger Appellant

Versus

1. The State Of Bihar

.... Respondent

Appearance :

For the Appellant : M/S Satyendra Pandey & Om Prakash Pandey, Advs.

For the Respondent : Mr. S.N. Prasad, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 24-09-2015

Heard the learned counsel for the petitioner and the State.

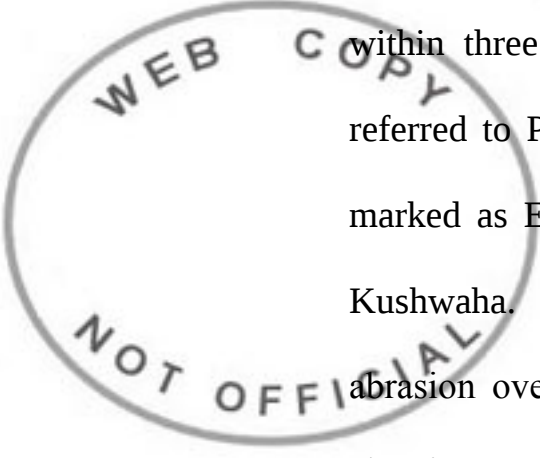
2. The appellant has been convicted under Section 307/34 of the Penal Code and has been sentenced to undergo rigorous imprisonment for ten years and a fine of rupees five thousand. He has, further, been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and a fine of rupees three thousand. However, for non-payment of fine the appellant has been ordered to undergo simple imprisonment for one year. It has been ordered that both the sentences shall run concurrently.

3. The prosecution case as alleged in the first information report by the informant, Indrabhushan Kushwaha, P.W. 5, as per fardbeyan, recorded on 22.05.2005 at ten hours in Sadar Hospital, Munger, by S.P. Singh, Sub Inspector of Police of Kotwali Police Station, alleging therein that on 22.05.2005 at 08.30 A.M. he was taking

tea at the tea stall of one Santam Modi near Durgasthan. It has, further, been alleged that at once one Sujeet Sharma and Sanjay Sharma came and fired at him with intention to kill with unauthorized fire arm. It is, further, alleged that the shot fired by Sujeet Sharma hit on his chest on left side. The second shot was fired by Sanjay Sharma, but, it did not hit him. He has, further, stated that after receiving the injury he rushed to his house and disclosed his brother and family members and then immediately his father and family members were taking him for treatment to Hospital, but, in way when they reached at the house of Sujeet Sharma, then, Sujeet Sharma @ Ajay Sharma and Sanjay Sharma hurled bomb by which the father of the informant got injury on his left leg, thigh, knee etc. The motive of the occurrence alleged that on 21.08.2005 in the evening there was family dispute between Mantu Choudhary and Shashi Choudhary and in the said dispute between Mantu Choudhary and Shashi Choudhary, this informant had protested regarding assault on family members and it is alleged that for the said reason the occurrence has been committed. On the fardbeyan the first information report lodged on 22.10.2005 at 10.30 A.M. and the investigation proceeded, charge sheet submitted, case committed to the Court of sessions.

4. During the trial eight witnesses have been examined who are P.W. 1 Dr. Mohan Kumar, the brother of the informant who has came to support the prosecution case that he saw Sujeet Sharma and

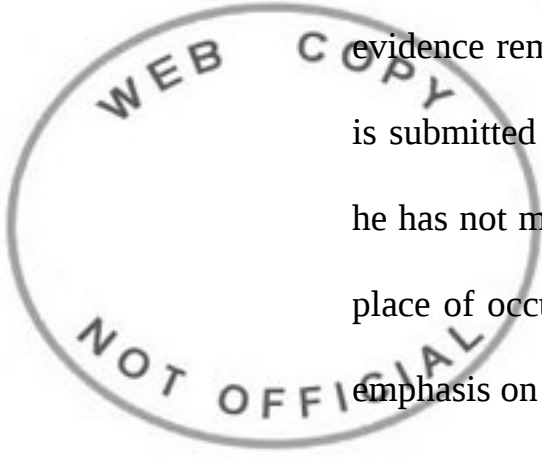
Sanjay Sharma armed with pistol in hand fleeing away just after the occurrence and his brother got injury on his chest and disclosed that Sujeet Sharma has shot. He took the victim to Hospital and while taking his brother to Hospital, bomb exploded injuring his father. P.W. 2 is Satya Narain Modi @ Sattu Modi, the tea stall owner has turned hostile. P.W. 3 is Pago Yadav. He has also been declared hostile as not supported the prosecution case. P.W. 4 is Pramod Kumar. This witness has been tendered and stated that he does not know anything about the occurrence. P.W. 5 is the informant and he has supported the prosecution case alleged in the first information report. P.W. 6 is Shashi Bindu Choudhary. This witness has also been declared hostile as not supported the prosecution. P.W. 7 is Kirhns Kumar Gupta, the investigating officer. He stated that he recorded the statements of the witnesses, inspected the place of occurrence, tea stall, giving the description and all the boundary of the place of occurrence. However, this witness has been transferred during investigation on 17.07.2005 handing over the investigation to the Officer-in-Charge of Kotwali Police Station though he has proved the formal first information report, marked as Exhibit 2, fardbeyan as Exhibit 3 and has stated that there is no mention about the finding of blood. P.W. 8 is the Doctor who found the injury on the person of the informant and has found three injuries (i) circular ½” diameter inverted lacerated wound over front of chest with tattooing and bleeding, (ii) averted lacerated wound over back of right



side ½” x ½” and (iii) presence of surgical emphysema. He examined the informant at 09.15 A.M. on 22.05.2005 and found that the injury is within three hours and grievous caused by fire arm and the patient referred to Patna Medical College Hospital and has proved his injury, marked as Exhibit 4. He also found injury on the person of Sitaram Kushwaha. However, the injury found on Sitaram Kushwaha (i) abrasion over the left knee joint area 1” x ½” x 2½ “ x ¼” and (ii) abrasion over left ankle joint area ½” x ¼”. However, he found injury simple caused by hard and blunt substance. Taking into consideration the oral and documental evidences and submissions made by the parties, the trial Court taking into consideration the fact that the informant supported the prosecution case and his evidence found to be consistent through out and his evidence is corroborated by the medical evidence as the evidence of informant, Indrabhushan Kushwaha, convicted the appellant and, further, taking into consideration the criminal history Exhibits 5 to 5/2 and 6 sentenced the appellant as mentioned above.

5. The learned counsel for the appellant challenged the order of conviction and sentence that almost all the witnesses, P.Ws. 2, 3 and 6 have turned hostile and P.W. 4 has been tendered, hence, have not supported the prosecution case. It has, further, been submitted that from the evidence of P.W. 1, itself, it is apparent that he is not an eye witness and, further, his evidence that he has taken the victim to Hospital is also in contradiction to his own evidence in cross examination in paragraph 2

of his evidence that he has not been to Hospital along with his brother, hence, it is submitted that his evidence is not trustworthy and only evidence remains is the evidence of P.W. 5, the informant. However, it is submitted that the investigating officer in his evidence has stated that he has not mentioned in the case diary about finding of any blood at the place of occurrence, i.e., the tea stall, and, further, he has given a great emphasis on the evidence of the Doctor with regard to injury no. (iii) that there is presence of surgical emphysema, hence, he has developed the prosecution case that there was surgical interference that there is surgical emphysema and, further, though he referred the patient to Patna Medical College Hospital, but, there is no evidence, thereafter, whether the victim examined at Patna Medical College Hospital and what is the ultimate injury and great emphasis has been given that it is stated that the appellant has shot the victim-informant, but, no blood has been found by the investigating officer nor it has been mentioned in the evidence and this coupled with the fact that the Doctor, in his evidence, in cross examination, has stated that injuries (i) and (ii) are possible by falling on hard substance like stone, hence, it has been submitted that if this fact is taken into the consideration that injuries no. (i) and (ii) by hard and blunt substance, then, the prosecution case regarding the injuries by fire arm falls to ground , hence, the recording of conviction is not sustainable as the prosecution has not been able to establish the fact beyond reasonable doubt and is really requires to only create a doubt regarding the

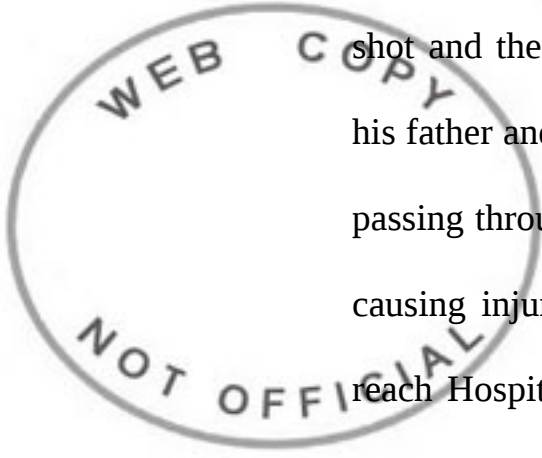


conviction.

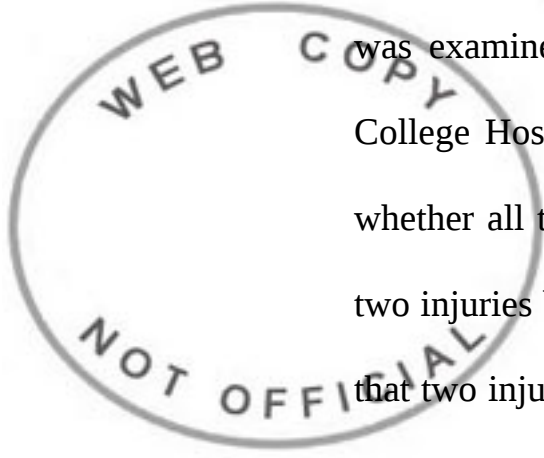
6. The learned counsel for the State, however, contends that it is a well proved case as there is specific allegation of fire arm and this followed with the evidence of Doctor, who has found the fire arm injury and his evidence, in Court as well, is that the injury report prepared by him at the time of occurrence or at the time of examination and specifically stated that injuries no. (i) and (ii) are wounds of entry and the other is wounds of exit and injuries are by fire arm and this apart of the evidence of the Doctor in examination-in-chief by mere saying in the cross-examination that injuries is possible by falling on hard and blunt substance.

7. Having regard to the respective submissions, I proceed to consider the evidence in the light of the submissions made by the parties. However, it is apparent that prosecution case in the first information report is that there is direct allegation that while the victim was taking tea he was shot by Sujeet Sharma causing injury on his chest and thereby he proceeded for his house and went to his house and informed his father and his father and other members took him to Hospital on rickshaw and in way there was allegation of hurling bomb causing injury to his father and when they reached Hospital, his statement recorded. It is true that four witnesses either have been turned hostile or has been tendered and only three witnesses, i.e., P.Ws. 1, 5 and 8 as well as one more witness is the investigating officer, P.W. 7 are witnesses who supported the

prosecution case. P.W. 5 is the informant, however, this witness has supported the prosecution case, i.e., while he was at the tea stall he was shot and then he proceeded to home intimated about the occurrence to his father and while he was being taken to Hospital on rickshaw and was passing through the house of the appellant, there was explosion of bomb causing injury to his father and another and anyhow they managed to reach Hospital where his statement was recorded. The said statement, fardbeyan, has been marked as Exhibit 3 and the endorsement of the police officer on the said fardbeyan marked as Exhibit 2 and the signature of the informant and the witnesses on the fardbeyan marked as Exhibit 1. However, there is nothing in the evidence with regard to this part of the evidence to disbelieve though a criticism has been made that there is no evidence it has come in the evidence that while he was taking tea at that time Jago Yadav was there, but, said Jago Yadav has not been examined and Sato Modi has been declared hostile. However, there is nothing in his evidence to disbelieve the prosecution case. It is true that the other witnesses have not come to support the prosecution case, but, there is no reason to disbelieve the evidence of this witness. The Doctor has also found two injuries by fire arm, one is inverted and another is everted and criticism has been taken that there is no evidence that both the injuries are communicating to each other. However, when there is specific evidence about the wound of exit on the chest and wound of entry on the back and there is specific evidence of the Doctor that one is



inverted and other is everted and the injury report also specifically states about this fact, which is a contemporaneous document when the victim was examined at the very out set and was referred to Patna Medical College Hospital. No cross-examination has been made to the Doctor whether all the injuries are by one and same transaction or whether the two injuries by two different shots there is nothing to reject the evidence that two injuries one inverted and other everted is not communicating to each other. The prosecution case at the time of cross-examination has not taken the finding suggested that the said two injuries are not communicating, but, are on different shots, hence, this criticism at this stage is not proper and the said criticism is without any basis. However, it is true that the Doctor, who examined P.W. 5 and has referred the patient, but, there is nothing on record to suggest that what treatment has been given or whether any cartridge was embedded in injury, however, it is only a hypothetical consideration and the prosecution evidence regarding the shot and injury can not be disbelieved, hence, prima facie going to the evidence of Doctor, it is apparent that the evidence of the Doctor is corroborated to the prosecution case. So far P.W. 1 is concerned, though he is not an eye witness he has stated that he heard the sound of firing and got out of the house and saw the victim catching hold of his chest was running and saw Surjeet Sharma and Sanjay Sharma were fleeing away along with pistol in his hand and on enquiry from his brother, his brother disclosed that Sujeet Sharma has shot, hence, this



evidence is corroborated and the view is supported on the basis of the decision reported in **A.I.R. 1962 S.C., 424 (Ram Ratan & Ors. Vrs. State of Rajasthan)** as just after the occurrence P.W. 1 reached and saw the brother in injured stated and appellant fleeing away and he disclosed the name of Sujeet Sharma as a person who shot, hence, the evidence of P.W. 5 corroborated by the evidence of P.Ws. 8 and 9, hence, this part of the evidence of the case is corroborated by evidence of P.W. 5. However, a criticism has been raised that the investigating officer has not found any blood at the place of occurrence, however, it is pertinent to mention that just after the occurrence the victim received the gun shot, he caught hold of his chest and started fleeing away, hence, probability of finding of blood at the place of occurrence is little and more over it is a place where the tea stall and the probability that it is a public place, the blood may have been erased and cleared after the occurrence and on that count the prosecution story can not be disbelieved. The criticism that the Doctor, in his evidence, says that both the injuries are inverted, further, this argument is not acceptable in view of the fact that the injury report by the Doctor, itself, shows injury no. (i) is inverted and injury no. (ii) is everted, however, the possibility that the same is a communicating or not has not been mentioned, however, as per the nature of the injury and the evidence of the Doctor that one is inverted and the other is everted has not been challenged nor any cross-examination is there on that point.

8. Hence, taking into consideration the entire facts and

circumstances of the case, I find and hold that the prosecution has been able to prove the charges and order of conviction, recorded by the trial Court, is hereby **confirmed**. So far as the sentence is concerned, there is allegation of firing causing injury and the injury is on the vital part of the body as chest and this is an wound of entry and exit on the back and, further, it has brought in evidence that the appellant has criminal antecedent, hence, I do not find any merit to interfere with the conviction and sentence in this appeal.

9. Accordingly, this appeal is **dismissed**.

(Gopal Prasad, J)

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