

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1028 of 2015

Arising Out of PS.Case No. -222 Year- 2003 Thana -GANDHIMAIDAN

District- PATNA

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Santosh Yadav, S/o Late Sheo Nath Yadav, Resident of Village -
Pahalwan Gali, Bakarganj, P.S. - Kadamkuan, District - Patna.

.... Appellant/s

Versus

1. The State of Bihar.
2. Sanjay Yadav @ Chuhba, S/o Dasarath Yadav, R/o Dal-Dali Road, P.S. - Kadamkuan, District - Patna.
3. Ranjit Rajak, S/o Suresh Rajak, R/o Dal-Dali Road, P.S. - Kadamkuan, District - Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharendra Kumar Sinha, Advocate

For the State : Mr. D.K. Sinha, A.P.P.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 16-02-2016

This appeal, under the proviso to Section 372 of the Code of Criminal Procedure, 1973, has been filed against the judgment and order, dated 08.05.2014, passed by learned Adhoc Additional Sessions Judge-III, Patna, in

Sessions Trial No.321 of 2007, whereby respondent Nos.2 and 3 have been acquitted of the charges levelled against them, under Sections 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, by giving them benefit of doubt.

2. The informant of Gandhi Maidan P.S. Case No.222 of 2003, which gave rise to aforesaid Sessions Trial No.321 of 2007, is the appellant in the present case.

3. According to the case of the prosecution, based on the *fardbeyan* of the informant/appellant, on the alleged date of occurrence, i.e., 29.07.2003, at about 11.15 P.M., when the appellant was on his way back to home in his vehicle (Maruti Van, bearing Registration No.-M.H. 03-B-5827) from a Motor Garage, where he had gone to get repaired his said vehicle, 5 - 6 persons intercepted him at Bari Path, near Udyog Bhawan, Patna. The informant identified respondent Nos.2 and 3 out of the said persons. They were allegedly armed with pistols in their hands. The respondent Nos.2 and 3 yelled to shoot at the informant, whereafter the informant, leaving his Maruti Van, started fleeing away towards Regent Cinema Hall. Thereafter, respondent Nos.2 and 3 had allegedly opened fire, which hit the informant's stomach and head. Others are also said to have opened fire on him causing injuries on his legs and head. The informant, thereafter, fell down and the



miscreants fled away presuming the informant to have died. A sub-Inspector of police, who was on night patrolling duty, thereafter, reached the place of occurrence and took the informant, in a police vehicle, to P.M.C.H., Patna, where the informant was admitted. Non-fulfillment of demand of ransom by the informant demanded by respondent No.2 was alleged to be the motive behind the occurrence. With these allegations, the said Gandhi Maidan P.S. Case No.222 of 2003 was registered for the offences punishable under Sections 341, 384, 326 and 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959. The police, upon investigation, submitted *charge-sheet*, on 13.01.2003, against respondent Nos.2 and 3, whereafter cognizance of the offences, punishable under Sections 341, 384, 326 and 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, was taken by the learned Chief Judicial Magistrate on 06.10.2003. The case was committed to the Court of *Sessions* for trial giving rise to Sessions Trial No.321 of 2007. On 14.05.2008, the charges were framed against respondent Nos.2 and 3 for the offences punishable under Sections 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959. Since the concerned respondents pleaded not guilty, they were put on trial. After examination of prosecution witnesses, the statements of respondent Nos.2

and 3 were recorded, under Section 313 of the Code of Criminal Procedure, wherein they denied the allegations levelled against them.

4. At the trial, altogether 11 witnesses were examined and certain documents were exhibited on behalf of the prosecution. Upon analyzing the evidence of witnesses, adduced at the trial, learned trial Court arrived at the conclusion that the prosecution had failed to prove the charge against respondent Nos.2 and 3 beyond all reasonable doubts and, accordingly, recorded their acquittal by the impugned judgment and order, dated 08.05.2014.

5. We have heard Mr. Dharendra Kumar Sinha, learned counsel, appearing on behalf of the appellant, and Mr. D.K. Sinha, learned Additional Public Prosecutor, appearing on behalf of the respondent-State of Bihar.

6. It has been submitted by Mr. Dharendra Kumar Sinha, learned counsel, appearing on behalf of the appellant, that material witnesses consistently supported the case of the prosecution in their depositions at the trial and learned trial Court got unnecessarily swayed away by a fact, not relevant for evaluation of evidence, that the prosecution witness Nos.5, 6 and 9 had criminal antecedents and, therefore, their depositions should not be given much credence.

7. We have noticed that out of 11 witnesses,

examined by prosecution, P.W.1, namely, Deepak Kumar, P.W.2, namely, Mukesh Kumar and P.W.3, namely, Ajay Prasad, were declared hostile to the prosecution. P.W.4, namely, Ashok Kumar, who was examined as a seizure list witness, was also declared hostile since he deposed that no seizure was made in his presence and the police had taken his signature on a blank paper.

8. P.W.5, namely, Chandradeep Kumar, and P.W.6, namely, Ravi Yadav, are own brothers of the informant, whereas the informant (Santosh Yadav) was examined as P.W.9. P.W.-7, namely, Sushila Devi, is the mother of the informant. From the records, it is evident that these 4 persons are the only witnesses, who have supported the prosecution version as narrated in the *fardebayan*.

9. P.W.8, namely, Dr. Ajay Kumar, is a private doctor, who deposed that he had treated the informant, on 11.08.2003, whereas P.W.11, namely, Dr. Md. Eakbal Ahmad, is the doctor, who had examined the informant at P.M.C.H., Patna. From the deposition of P.W.8, Dr. Ajay Kumar, it appears that he had found following injuries on the person of the informant:

- (i) *Lacerated wound on right thigh at its anterior aspect 1" x 1".*
- (ii) *Lacerated wound on back thigh 4" x 3".*

(iii) *Lacerated injury on right elbow and skull.*

(iv) *Blackis on the tip on the left index finger.*

(v) *Commurated fractere after x-ray, of thigh.*

He deposed, at the trial, that the injuries could have been caused by gun shot or by hard and blunt weapon. He, thus, did not give a definite opinion that the injuries must have been caused by gun shot. It further transpires that said Dr. Md. Eakbal Ahmad (P.W.11) had deposed, at the trial, that the informant had fled away from the hospital alongwith his bed-head ticket and *X-Ray* plates. This is to be noted that *X-Ray* plates were not exhibited, at the trial, by the prosecution. We find from the deposition of the informant (P.W.9) himself that he did not deny the suggestion that he had escaped from P.M.C.H., Patna, and had not left the P.M.C.H., Patna, on discharge.

10. Now, coming to the evidence of prosecution witness Nos.5, 6, 7 and 9, we have noticed that P.W.5 has deposed, in his *examination-in-chief*, that at the time of occurrence, at about 11.30 P.M., he was having post-dinner stroll on the road, when he heard the sound of firing and, immediately, thereafter, he saw the accused persons including respondent Nos.2 and 3 fleeing away. He is said to have gone back to his home thereafter and learnt

about the fact, as informed by the police on phone, that his brother, i.e., the informant, had been shot at.

11. P.W.6, other brother of the informant, deposed that, at 11.15 P.M. in the night, he was going to Gandhi Maidan *via* Udyog Bhawan for having tea and when he was returning back, he saw respondent Nos.2 and 3 along with 5 - 6 unknown persons, causing obstruction to the movement of a Maruti Van, whereafter the driver of said vehicle came out and fled away towards Regent Cinema Hall. The accused persons, thereafter, chased the driver of the said vehicle. It is claimed that P.W.6 heard the sound of several rounds of firing. When he proceeded towards the place, where the occurrence had taken place, he found the informant lying in the middle of the road and was badly injured. Sometime thereafter, the police came and took the informant to the hospital. He has deposed that the informant told him that respondent Nos.2 and 3 had opened fire on him. In the deposition of this witness, it has come out that there are criminal cases pending against the informant and his brother, namely, Chandradeep Kumar (P.W.5). In the *cross-examination*, P.W.6 has deposed that when the informant was being taken away to the hospital, he (the informant) did not disclose the name of any person, who had assaulted him. From the deposition of P.W.-7, the mother of the informant, it appears that the informant

(P.W.9), his brother, namely, Ravi Yadav (P.W.6), and another brother, namely, Chandradeep Kumar (P.W.5), had gone to jail on several occasions in connection with criminal cases against them.

12. From the evidence of P.W.9, the informant, it appears that it was raining heavily at the time of occurrence and there was no movement on the road. He was using the wiper of his vehicle. He has also deposed that the accused persons had chased him, when he attempted to flee away and they shot at him from behind, whereafter he fell down. He admitted, in his *cross-examination*, that he had left the hospital without being discharged.

13. The Investigating Officer, who was examined as P.W.10, has said, in his deposition, that when he reached the place of occurrence, there was none except the informant, who was lying injured on the road. This statement is in apparent contradiction with the evidence of P.W.6, who deposed that immediately after the occurrence, he went to the place of occurrence, where he saw the informant lying on the road and, thereafter, the police came there and took him to hospital.

14. It is evident from what we have discussed above that there are only four witnesses, namely, Santosh Yadav, the informant himself (P.W.9), his brothers, namely,



Chandradeep Kumar and Ravi Yadav (P.Ws.5 and 6) and the mother of the informant, namely, Sushila Devi (P.W.7), who are highly interested witnesses and who supported the case of the prosecution. The informant has specifically deposed that at the time of occurrence, it was raining heavily. In such circumstances, the deposition of P.W.5 that he was having a post-dinner stroll in the late night and that of P.W.6 that he was going for taking tea at Gandhi Maidan, at about 11.30 P.M., appear to be doubtful.

15. Considering the circumstances pointed out above, in the background of the fact that there is no definite opinion of the doctors that the injuries were caused by fire-arm, the charge of commission of offence, punishable under Sections 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, cannot be said to have been proved beyond all reasonable doubt. The conduct of the informant of escaping from the hospital raises further doubt over his credential. The prosecution has failed to prove seizure of used cartridges from the place of occurrence.

16. Situated thus, it cannot be said that the view, taken by the learned trial Court, in its impugned judgment and order, dated 08.05.2014, suffers from perversity or such infirmity, which requires this Court to interfere in exercise of its appellate jurisdiction, under the

proviso to Section 372 of the Code of Criminal Procedure, 1973.

17. It is settled legal position that in an appeal, preferred against order of acquittal, the interference of the appellate Court is warranted only when it can be shown that the findings, arrived at by the trial Court, are perverse or are such that it could not have been a reasonably possible view.

18. We, therefore, do not find that this appeal merits admission and is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

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