

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.614 of 2016

Arising Out of PS.Case No. -172 Year- 2000 Thana -BUDDHACOLONY District- PATNA

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Ram Bahadur Singh, Son of Shri Jagat Singh, Resident of 205, Patliputra, P.S. - Patliputra, District - Patna.

.... Appellant

Versus

1. The State of Bihar
2. Ganesh Prasad Singh, Son of Jai Mangal Singh, Resident of Road No. 8, Sri Krishna Nagar, P.S. - Buddha Colony, Town & District - Patna.
3. Gagan Kumar, Son of Shri Ganesh Pd. Sinha, Resident of Road No. 8, Sri Krishna Nagar, P.S. Buddha Colony, Town & District - Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. P. K. Sinha, Advocate

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

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DR. RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DR. RAVI RANJAN)

Date: 20-10-2016

Heard learned counsel for the appellant and the State.

2. The appellant is the complainant/informant in Budha Colony P.S. Case No. 172/2000. He has filed this appeal assailing the judgment and order of acquittal, dated 16.04.2016, passed by learned 1st Additional Sessions Judge, Patna, in Sessions Trial Nos. 449 of 2002, by which the prosecution's case, as set out in the aforesaid Budha Colony P.S. Case No. 172/2000, has been disbelieved and the private respondent Nos. 2 and 3 have been acquitted of the charges framed under Sections 323/34, 307/34, 506/34, 420, 406, 467, 468 of the Indian Penal Code and Section 27 of the Arms Act.

3. The prosecution's case, based on the complaint petition of the complainant/informant, is that the respondent, Ganesh Prasad Singh, executed a Deed of Relinquishment in favour of Smt. Gita Singh, daughter of the informant and wife of Anand Prasad Singh, at Patna, with respect to the half of the portion of Plot No.2, *Khata* No.85, *Tauzi* No.171, *Thana* No.43 measuring 2 *Katha* 16 *Dhurs* situated at Nand Lal Chapra, P.S. Agamkuan, District- Patna. After execution of the said deed, Smt. Geeta Singh came in peaceful possession over the said land. The respondent, Ganesh Prasad Singh, asked the daughter of the complainant/informant, in August, 1994, for purchase of the remaining land of the said plot and requested her to pay Rs.20,000/- as entire consideration money, which was paid to Ganesh Prasad Singh, and a date, i.e. 4.09.1994, was fixed for going to Calcutta for registration. Thereafter, accused Ganesh Prasad Singh, along with the complainant and other witnesses, went to Calcutta for the execution of Deed and, stamps were purchased accordingly, the Sale Deed was prepared, and accused Ganesh Prasad Singh signed the Sale Deed on some pages, but finally, he disappeared and failed to execute the Sale Deed. Thereafter, the complainant/informant went to the residence of the accused, but he misbehaved. On 6.10.2000, when the complainant went there, he was abused and the accused asked his son to assault, upon which, his son fired at him, but did not hit the complainant. The complainant went to the police station, but the case

was not registered. Thereafter, he filed a complaint case, on 6.11.2000, before the learned court below, which was sent to the police for investigation.

4. On the basis of the aforesaid complaint of the complainant/informant, the present case was lodged as Budha Colony P.S. Case No. 172/2000 under Sections 420, 307, 323, 506, 467, 468, 471 of the Indian Penal Code and Section 27 of the Arms Act.

5. After investigation, the police submitted *charge sheet* against the private respondents under the aforesaid provisions of law. Thereafter, *cognizance* was taken under the aforesaid penal provisions and the case was committed to the Court of Session, where charges were framed, to which, the accused person pleaded not guilty.

6. During trial, the prosecution has examined altogether eight witnesses in support of its case. P.W.1 is Manoj Kumar, P.W.2 is Bholu Sharma, P.W.3 is Akshaybat Ram, P.W.4 is Shambhu Nath Singh, P.W.5 is Upendra Singh, P.W.6 is Ram Bahadur Singh, P.W.7 is Mithila Nand Upadhyaya and P.W.8 is Md. Samse Alam.

7. Defence has also examined altogether two witnesses. D.W.1 is Ganesh Prasad Singh and D.W.2 is Gagan Kumar. They have stated that such type of occurrence, as alleged by the prosecution, never took place and they have been falsely implicated in this case due to land dispute.

8. The learned trial Court, in paragraphs 17 to 23 of its



judgment, has discussed the evidence of prosecution witnesses. P.W.1 has stated that accused Ganesh Prasad Singh had taken Rs.20,000/- for registering the land in favour of the daughter of the informant. However, he has stated, in his examination-in-chief, that he cannot state the details of the land and he had also not gone to Calcutta and, as such, his evidence shows that he had no knowledge of the disputed land and he had not gone to Calcutta, where, according to the informant, the accused did not turn up for registration of the land. Though he has stated that said money was paid in his presence, there is no paper showing such payment. Though he has stated that respondent, Gagan Kumar, fired upon the informant, but no empty cartridge was found by the Investigating Officer. This apart, this witness was not even present at Kolkata at the time when the occurrence took place. As such, the learned trial Court has formed the opinion that his statement cannot be relied upon. P.W.2 has also failed to state the plot number and *khata* number of the disputed land. He is a witness to the occurrence of firing by the accused persons, but no empty cartridge was produced by the informant before the police. In his cross-examination, he has clearly stated that he did not see anyone resorting to firing. No transaction of money was done before him. The evidence so given completely demolishes the prosecution case that any firing took place, as alleged by the complainant/informant. Therefore, his evidence also does not inspire confidence. P.W.3 has



stated, in his examination-in-chief, that, when the informant reached the house of the accused Ganesh Prasad Singh, he refused to return money and his son resorted to firing. However, as stated above, no empty cartridge was recovered and this witness was well known to the informant and, therefore, there would be every possibility that he may be interested witness. His evidence is not corroborated by the evidence of other witnesses regarding firing and, therefore, that also cannot be relied upon. P.W. 4 has failed to prove any documentary evidence of the delivery of Rs.20,000/- to the accused Ganesh Prasad Singh. He has, nowhere, stated that who had resorted to firing. Therefore, his evidence has also not inspired confidence. P.W.5, in his cross-examination, has clearly stated that money was not given in his presence. He had not seen the person, who had resorted to firing. Therefore, his evidence does not disclose any offence against the accused persons. P.W.6, who is the informant of the case, has clearly stated, in his cross-examination, that at the time of occurrence, he had only heard sound of firing, but he did not see who had fired. He has also stated that no cheating was done and now, he has no grievance of seeing the accused persons. P.W. 7 is the Investigating Officer. In his cross-examination, he has stated that no seizure list, regarding any gun or cartridge, was prepared. P.W.8, who is also the Investigating Officer of the case, has stated that he has only submitted charge sheet in this case.

9. On account of the conflicting versions set up by the prosecution, the learned trial Court has come to the conclusion that the prosecution has failed to prove charges framed against the private respondents.

10. In view of the aforesaid facts, duly discussed by the learned trial Court, coupled with the fact that it is highly improbable that a person fires from a point blank range, no injury of anybody would be caused, we are of the considered opinion that the view, taken by the learned trial Court, is a plausible one and does not require any interference by us in appeal.

11. This appeal is, therefore, not admitted and shall accordingly stand dismissed.

(I. A. Ansari, CJ)

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	