

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.333 of 2016

Arising Out of PS.Case No. -367 Year- 2000 Thana -BETTIAH TOWN District-
WESTCHAMPARAN (BETTIAH)

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Pradeep Mishra @ Chhotan Mishra, Son of Late Praduman Mishra,
R/o Purani Gudari, P.S.-Bettiah Town, District-West Champaran.

.... **Appellant/s**

Versus

1. The State of Bihar.
2. Ramesh Mishra, Son of Late Surendra Mishra, R/o
Manpurmakari, P.S.-Banwariya Bagaha, District-East Champaran.

.... **Opposite Parties**

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Appearance :

For the Appellant/s : Mr. Pathak Dhananjay Kumar, Adv.

For the Opposite Party/s : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT & ORDER

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date: 19-08-2016

This appeal, under proviso to Section 372 of the
Code of Criminal Procedure, 1973, has been filed against the
judgment and order, dated 05.06.2015, passed by learned 6th
Additional District & Sessions Judge, West Champaran, at
Bettiah, in Sessions Trial No. 305 of 2002, arising out of

Bettiah Town P.S. Case No. 367 of 2000, whereby he has recorded acquittal of opposite party No. 2, who was facing charges, at the said trial, for commission of offences punishable under Sections 307, 324 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

2. The prosecution was set in motion with registration of First Information Report, bearing Bettiah Town P.S. Case No. 367 of 2000, based on the *fardbeyan* of the informant, who is the appellant herein, recorded by Md. Yunus, Sub-Inspector of Police, wherein he alleged that on 04.10.2000, at about 8.00 A.M., when he was sitting with Prabhu Ji @ Prabhu Jaiswal (P.W.-3) and Yadav Lal (P.W.-4), in front of the house of P.W.-3, four persons came there in two motorcycles. Opposite Party No. 2 was the pillion rider in one of the motorcycles, who, suddenly, opened fire with his pistol. The shot hit the informant in his right thigh and hip. Several people, immediately, assembled on hearing the sound of fire and noise. The motive behind the occurrence had been ascribed, in the *fardbeyan*, as land dispute between the appellant and opposite party No. 2, who are immediate cousins. The First Information Report, disclosing offences, under Sections 307, 324 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, was lodged against opposite party No. 2 and three unknown persons.

3. Upon completion of investigation, the police submitted *charge-sheet* for the commission of offences, punishable under Sections 307, 324 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against opposite party No. 2 only and not against three other unknown persons.

4. After taking *cognizance*, the case was committed to the Court of *Sessions*. Charges for the commission of offences punishable under Sections 307, 324 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, were framed against opposite party No. 2. Since opposite party No. 2 denied the charges, trial commenced.

5. At the trial, altogether fifteen prosecution witnesses were examined. After conclusion of the prosecution evidence, the response of opposite party No. 2 was taken, as required under Section 313 of the Code of Criminal Procedure, who pleaded innocence.

6. It appears from the materials available on the record that the informant (the appellant) deposed as P.W.-7, who fully supported the case of the prosecution. P.W.-7, the informant, deposed at the trial that a land dispute between him and opposite party No. 2 was going on in which an injunction order had been passed by a court of competent



jurisdiction and the said witness was given the responsibility of looking after a land belonging to the temple. He also deposed that P.Ws.-3 and 4, who were sitting on the bench with the informant, had also sustained injuries, but the injuries were not such that they were required to be taken to hospital. P.Ws.-3 and 4, in their deposition, did not say that they had sustained any kind of injury. Neither P.W.-3 nor P.W.-4 claimed that they had identified the assailant as Ramesh Mishra (opposite party No. 2). P.W.-3 deposed that the family members of the appellant had told him that it was opposite party No. 2, who had opened fire and that he was an agnate of the informant. P.W.-4 also deposed that 3 – 4 hours after the occurrence, the brother of the appellant had told him that agnate of the appellant had opened fire.

7. On perusal of the materials available on the record, it is noticed that none of the witnesses, except the appellant, claimed to have seen opposite party No. 2, while he was opening fire on him. P.W.-8 is the brother of the appellant, who deposed, on being *cross-examined*, that on hearing the sound of fire, he had reached the place of occurrence.

8. It is noteworthy that the prosecution witnesses, including the appellant, claimed that the appellant received two injuries, one in his right thigh and the other in

his hip. However, the doctor, who was examined as P.W.-9, found the injuries on the right thigh to be wound of entry and over the right hip as wound of exit. Another wound of ½" diameter, in front of right thigh, has been found to have been caused by hard and blunt substance.

9. We have further noticed that there are other inconsistencies, which has been taken note by the learned trial Court, in the depositions of the witnesses, which create reasonable doubt over the case of the prosecution. P.W.-14, who was declared hostile to the prosecution, in his evidence, deposed that the occurrence had taken place, when the informant was sitting at the *Dawar Devi Chowk* and not in front of the house of P.W.-3, whereas P.W.-1, in his evidence, deposed that blood stains were lying at the place of occurrence. The Investigation Officer, who was examined as P.W.-13, in his deposition, has said that there was no sign of blood found at the place of occurrence. P.Ws.-3, 4 and 7 deposed that they were sitting on the bench, but the Investigation Officer (P.W.-13) deposed at the trial that there was no bench found at the place of occurrence.

10. Considering such contradictions in the evidence of the prosecution and inconsistencies, learned trial Court arrived at the conclusion that the prosecution could not prove the charges against opposite party No. 2 beyond all

reasonable doubts.

11. We do not find any perversity in the impugned judgment and order. On the basis of the materials available on the record, it cannot be said that conviction of the appellant could have been the only possible view. We do not, in the facts and circumstances of present case and in view of contradictory evidence, adduced at the trial, find much substance, in the submissions made on behalf of the appellant, that sole evidence of the appellant was of such quality which warranted conviction of opposite party No. 2. An informant is highly interested witness. It is true that even evidence of an interested witness may not be brushed aside, but such evidence certainly needs to be evaluated with much care and circumspection. Considering material contradictions in the evidence of prosecution witnesses, it was not safe for the learned trial Court to have recorded conviction of opposite party No. 2 on the basis of evidence of the appellant alone. We have also noticed that even the appellant cannot be said to be reliable witness inasmuch as he has deposed, on the one hand, that P.Ws.-3 and 4 had also sustained injuries, whereas the said witnesses, in their evidence, did not depose that they had sustained any injury.

12. Considering the facts and circumstances, as discussed above, and the materials available on the record,

the view taken by the learned Sessions Judge, while recording acquittal of opposite party No. 2, cannot, in our considered view, be said to be not a reasonably possible view.

13. We have kept in mind the basic principle that there is presumption of innocence of a person accused of an offence, at a criminal trial. The said presumption stands strengthened with acquittal recorded by learned trial Court, which can require interference by the appellate Court in an appeal against the order of acquittal, only if it is shown that some clinching evidence on record was there on the basis of which, the conviction of the accused would have been the only conclusion, which could be arrived at. Nothing has been pointed to us, on the basis of which it could be said that conviction of opposite party No. 2 could be only possible view.

14. Considering the above, we do not find any merit in this appeal, which does not deserve admission. This appeal is, accordingly, dismissed.

(I. A. Ansari, CJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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