

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.150 of 2015

Arising Out of PS.Case No. -439 Year- 2012 Thana -KHAZANIHAT District- PURNIA

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Manjit Singh S/o Krishnanand Singh, resident of village-Sarsi, P.S.-Sarsi, District-Purnia.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Radha Mohan Singh, Advocate

For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 31-01-2017

The sole appellant Manjit Singh has been found guilty for an offence punishable under section 307 of the Indian Penal Code as well as 27 (1) of the Arms Act vide judgment of conviction dated 19.02.2015 and sentenced to undergo rigorous imprisonment for ten years as well as slapped with fine appertaining to Rs.10,000/-, in default thereof to undergo simple imprisonment for six months, simple imprisonment for three years as well as fine of Rs. 3,000/-, in default thereof, to undergo simple imprisonment for three months, respectively with a further direction to run the sentences concurrently vide order of sentence dated 24.02.2015 passed by Adhoc Additional Sessions Judge-VIII, Purnia in Sessions Trial No. 595 of 2013.



Rakesh Singh @ Bouwa Singh (P.W.-7) gave his fardbeyan (Exhibit-3) on 20.07.2012 at about 4:45 P.M. while he was admitted at Sadar Hospital, Purnia (Emergency Ward) alleging *interalia* that on the same day at about 10:00 A.M. he had come to Gulabbag market to sell maize from his village. Then thereafter, he had gone to Madhubani Bazar and reached there at about 2:30 P.M. where he purchased clothes and during course thereof, one Bolero Jeep of green colour came there, Manjit Singh along with 5-6 unknown persons got down therefrom, came inside the shop and they scolded him that even after his evidence in a murder case, he got acquitted after paying bribe to a Magistrate. Then thereafter, all of them took out pistol and in course thereof, Manjit Singh fired, causing injury over his right side of the stomach. Thereafter, all the accused fled away through the same vehicle. He was sent to Police Station through Rickshaw by the local people and therefrom, by a Police Jeep he was taken to Hospital.

K.Hat (Madhubani) P.S. Case No. 439 of 2012 was registered thereupon followed in an investigation and after completing the same, charge sheet was submitted under sections 307, 326, 324, 34 of the Indian Penal Code, 27 of the Arms Act and accordingly, after taking cognizance, the case was committed to the court of Sessions whereupon, trial commenced, concluded adverse to



the appellant whereupon, being aggrieved challenged under the present appeal.

The defence case as is evident from the mode of cross-examination as well as statement recorded under section 313 of the Criminal Procedure Code is that of complete denial of the occurrence as alleged and further, false implication in the back ground of perceiving animosity amongst the parties. Furthermore to substantiate the same, though no D.W. has been examined but two judgments of Sessions Trial No. 266 of 2008, 223 of 2012 respectively having exhibited as an Exhibit-A and A/1.

In order to substantiate its case, the prosecution had examined altogether 09 PWs., out of whom, P.W.-1 is Pawan Kumar, P.W.-2 is Bikram Kumar Singh, P.W.-3 is Raman Kumar, P.W.-4 is Abhishek Singh, P.W.-5 is Dr. Santosh Kumar Verma, P.W.-6 is Santosh Singh, P.W.-7 is Rakesh Singh @ Bouwa Singh, P.W.-8 is Mukesh Kumar Mandal and P.W.-9 is Dr. Bijay Kumar. Side by side, the prosecution also exhibited Exhibit-1 Injury Report, Exhibit-2 series of signature of informant including other witnesses, Exhibit-3 fardbeyan, Exhibit-4 formal F.I.R., Exhibit-5 series of signature of Doctor over respective documents. The defence side exhibited two documents, judgment of Sessions Trial No. 266 of 2008 as Exhibit-A, judgment of Sessions Trial No. 223 of 2012 as Exhibit-A/1.



While assailing the judgment of conviction and sentence, it has been submitted on behalf of the appellant that the learned lower court has passed the impugned judgment in mechanical manner without scrutinising the evidences available on the record judiciously and on account thereof, the same is fit to be set aside.

Furthermore, it has also been submitted that save and except PW-7, informant none is eye-witness to the occurrence. Apart from this, it has also been submitted that PW-2, PW-3, PW-4 and PW-6 are family members and so, in the back ground of perceiving admitted case of animosity amongst the parties, their status as hearsay witnesses should not be accepted. Furthermore, it has also been submitted that PW-1 who happens to be shop keeper though substantiated the place of occurrence but did not identify the appellant as an assailant. So submitted that excluding those evidences, remains the sole testimony of the informant which also should not be taken into consideration as, on account of acquittal of appellant, he has a grievance whereunder he got the appellant involved putting a false and frivolous allegation him. Apart from this, it has also been submitted that when evidence of P.W. 7 is taken together with the evidence of PW-5, Doctor, it is apparent that manner of occurrence so suggested by the PW-7 is not at all found probable one and so, the evidence in its entirety did not suggest the



manner of occurrence as has been flashed by PW-7 pinpointing the appellant as an author of the injury.

In order to support such submission, it has further been submitted that informant had not disclosed during course of his evidence regarding name of shop where occurrence took place and in likewise manner, I.O. (PW-8) happens to be deficient one.

Furthermore, no blood stain was found at the place of occurrence and so, the place of occurrence is not at all found duly substantiated which found sufficient to discredit prosecution case. So, having cumulative effect, it is apparent that prosecution has failed to substantiate its case. Consequent thereupon, appeal is fit to be allowed.

On the other hand, the learned Additional Public Prosecutor while refuting the submission made on behalf of the appellant, has submitted that for the purpose of adjudicating an issue, the number of witnesses are not at all relevant, rather it happens to be quality of the evidence, which matters. It has also been submitted that PW-7 being an injured has got primacy and further, from perusal of his evidence, it is evident that the defence could not be able to discredit which is found further corroborated with the findings of the Doctor on account of presence of fire arms injury that too having been spotted from close range. So far place of occurrence is



concerned, it is also apparent from PW-7 injured PW-1, the shop keeper had also substantiated the same. That being so, the finding of the learned lower court recording guilt of the appellant is duly substantiated from the materials available on the record and is accordingly, fit to be confirmed.

In the present case as is evident, two Doctors have been examined, PW- 5 is the Doctor, who had examined the injured at an initial stage. Then thereafter, he was admitted and was treated. Although the Doctor, who treated the injured, was not examined. On the other hand, PW-9, Chief Medical Officer (Civil Surgeon) had come up to exhibit those documents, such as, Bed Head Ticket, Requisition, Medicines having been prescribed etc. As such, the evidence of PW-5 is to be taken note of who had examined the injured on 20.07.2012 at about 3:05 P.M. and found following injuries over his person:-

“Round oval wound on right Flank of abdomen, charring present (wound of entry) size 3/4” with inverted margin, X-ray A.P. and latteral view advised. In the opinion of doctor, the age of injury was within six hours, opinion regarding nature of injury was reserved.”

He has accordingly, exhibited the injury report.



From the cross-examination, it is evident that defence could not be able to sack his testimony with regard to nature of injury having sustained by him caused by fire Arms.

PW-9 is the another Doctor, who after exhibiting the Bed Head Ticket and further speaking about the injury having over the informant, had also stated that X-ray was conducted and same was examined by Dr. Jogendra Prasad. Sonography was also conducted and after exercising such event, the bullet was located being lodged at Vertebra L. Level. Then thereafter, he had stated that he also examined the patient and further referred him for specialize treatment.

During cross-examination at paragraph 5 the defence had himself made vulnerable by asking that Exit wound was not found on account of bullet having inside Vertebra L. Level. He has further stated that patient was not known to him before.

From the consistent evidence of those two Doctors, it is apparent with regard to presence of fire Arm injury over the informant that too having been caused from a close range on account of presence of charring, apart from this, absence of exit wound is also found explained being lodged at Vertebra L. Level.

Now coming to second leg of submission, it is admitted position coming out from the deposition of the respective



witnesses right from PW-2, PW-3, PW-4 and PW-6 that they were not at all eye witnesses of the occurrence rather they, being family members, were informed by PW-7, the injured himself with regard to mishappening having faced by him at the hands of the appellant Manjit Singh whereupon they rushed to the hospital and found the injured admitted, where they have talk with the informant on that very score.

Now the evidence of remaining P.W.1 and P.W.-7 are to be seen.

PW-1 is the shop keeper. Though he had not claimed identification against appellant to be assailant but, he had stated that the customer, after purchasing clothes, while was returning and came out from his shop, met with 2-3 persons indulged in gossiping and during course thereof, heard sound of firing, as a result of which, that customer was seen in injured condition, who was sent to Police Station and from there, was sent to Hospital.

During cross-examination at paragraph 5, he was cross-examined on the score that he had not seen the assailant but, with regard to place of occurrence, nothing has been suggested to him nor he was cross-examined on that very score. Therefore, his evidence remained intact over place of occurrence being his shop. Then solitary evidence of PW-7 remains. He has stated that on the



alleged date and time of occurrence, he had gone to readymade shop lying at Srideo Shopping Complex at Madhubani Bazar while he was purchasing clothes, one Bolero Jeep of green colour halted in front of shop, Manjit Singh along with 5-6 unknown persons got down therefrom, who came inside shop. Then thereafter, Manjit Singh scolded him that even after his evidence, nothing has happened to him. He got acquitted. Further, he said that he was forbidden to depose before the Court. Thereafter, he took out pistol and shot over his stomach from close range. Firing was made near shutter of the shop. Then thereafter, all the accused fled there from over the aforesaid vehicle.

The shop keeper lifted him over Rickshaw to Police Station and from there he was shifted to Hospital. During course of treatment, he informed whereupon PW-2, PW-3, PW-4 and PW-6 came along with others whom, he had divulged regarding commission of occurrence at the end of the appellant Manjit Singh. He has further stated that Police came and took his fardbeyan (Exhibit-8). He has identified the accused in dock. During cross-examination, it is evident that this witness was not at all cross-examined on the score of factum of occurrence, save and except, under paragraphs 7 and 8 whereunder he has stated that he purchased clothes from one shop. He sustained injury while he was coming out



from the shop. He sustained injury over his stomach. Blood had oozen out, cloth soaked with blood, blood had not fallen over ground, he sealed the injury with his cloth.

In paragraph 9, he has stated that just after five minutes of the occurrence, he was shifted to Police Station. None of the public had accompanied him. He is unaware whether blood had fallen over the rikshaw as he was suffering from severe pain.

In paragraph 14 he has stated that he had deposed against the accused relating to murder of Abhay Singh, his Mause. During the course of evidence in that case, he had not stated that accused was threatening.

In paragraph 15, he has further stated that Manjit Singh happens to be co-villager, for the first time, he met with him at the place of occurrence.

In paragraph 20, he has stated that the cartridge is lodged in his back bone. Then thereafter, happens to be cross-examination over X-ray plate.

After having minute scrutiny of the evidence available on the record, it is evident that PW-7's injury has not been challenged at the end of the appellant which could, at least, put suspicion over his deposition. Furthermore, injury having been sustained by him, caused by fire Arm, a deadly weapon is found duly



proved. Apart from this, PW 1 had substantiated the place of occurrence properly duly substantiated by PW-8 (I.O.) who in his examination in chief in paragraph 3 and paragraph 4, has properly identified and further, no cross-examination is found at the end of the appellant, on that score save and except, at paragraph 20 whereunder he has stated that he had not found any objectionable item at the place of occurrence.

In *Sudip vs. State of West Bengal* reported in 2016 Cri. L.J. 1121, it has been held that there is no impediment for recording conviction based on the testimony of a single witness provided it is reliable in *Prithipal Singh & Ors. v. State of Punjab & Anr.*, (2012) 1 SCC 10 : (2012 AIR SCW 594, para 26), it was observed as under:-

“49. This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the Court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is



material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.” [See *Vadivelu Thevar v. State of Madras*, AIR 1957 SC 614, *Sunil Kumar v. State (Govt. of NCT of Delhi)*, (2003) 11 SCC 367 : (AIR 2004 SC 552), *Namdeo v. State of Maharashtra*, (2007) 14 SCC 150 : (AIR 2007 SC (Supp.) 100) and *Bipin Kumar Mondal v. State of W.B.*, (2010) 12 SCC 91] : (AIR 2010 SC 3638).

In *Hari Singh vs. Sukhbir Singh & others* reported in (1988) SCC (Cri) 984, it has been held under section 307 IPC what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances



mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of “attempt to murder”. Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.”

After having minute observation of the material available on record, so adduced on behalf of prosecution as well as appellant, it is crystal clear that parties are coming on inimical term since before. Enmity is a double edged sword. It may be a cause of false implication simultaneously, it may be motive for commission of an occurrence. In the aforesaid backdrop when the evidence of PW-7, injured has been gone through, it is apparent that on all material point he stood firm and properly identified the appellant to be author of the injury which found duly corroborated by the medical evidence. In the aforesaid eventuality, possession of fire Arm, firing at abdomen, add Rab part of body would entail sufficiently an intention of the assailant and its cumulative effect, justify the finding recoded



by the learned court below. Consequent thereupon instant appeal sans merit and is dismissed. So far sentence is concerned, the same is found proper in light of criminal action having taken at the end of appellant.

The appellant, who happens to be under custody, will remain till saturation of the sentence having been inflicted by the learned trial court.

(Aditya Kumar Trivedi, J)

Mahesh/-

AFR/NAFR	AFR
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