

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.278 of 2013

Arising Out of PS.Case No. -152 Year- 2000 Thana -RAJNAGAR District- MADHUBANI

- =====
1. Lalan Paswan son of late Prabhu Paswan
 2. Mangan Paswan @ Dhedhba @ Dhedhae Paswan, son of late Bhageshwar Paswan Both resident of village Kaithahi, P.S. Raj Nagar, District Madhubani.
- Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 410 of 2013

Arising Out of PS.Case No. -152 Year- 2000 Thana -RAJNAGAR District- MADHUBANI

=====

Raj Kumar Paswan S/O Shobhit Paswan Resident Of Village Kaithahi, P.S. Raj Nagar, District Madhubani.

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

=====

Appearance :

(In CR. APP (DB) No.278 of 2013)

For the Appellant/s : Mr. R.C. Sinha & Mr. Hriday Narayan
Harshit, Advocates

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

(In CR. APP (DB) No.410 of 2013)

For the Appellant/s : Mr. Bimal Kumar, Mr. Birendra
Kumar & Ms. Maruti Kumari

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

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 02-05-2017

Appellants Lalan Paswan and Mangan Paswan @
Dhedhba @ Dhedhae Paswan of Cr. Appeal (DB) No. 278 of 2013 and
appellant Raj Kumar Paswan of Cr. Appeal (DB) No. 410 of 2013 were
convicted by learned 3rd Additional Sessions Judge, Madhubani in
Sessions Trial No. 38 of 2002 under Sections 457 and 380 of the IPC
and sentenced to undergo R.I. for five years with fine having default



clause under each head. Appellant Raj Kumar Paswan was additionally held guilty under Section 307 of the IPC and Section 27 of the Arms Act and was sentenced to suffer R.I. for life with fine having default clause and R.I. for 04 years with fine having default clause respectively. The sentences so imposed on them were directed to run concurrently. These appeals assail the said judgment of conviction and order of sentence.

2. The prosecution case as unfolded in the '*fardbeyan*' (Ext.1) lodged by PW-6 on 25.11.2000 at 5.30 AM at his house and recorded by the S.I. of Rajnagar Police Station, in brief, is that on the intervening night of 24/25 November, 2000 while the informant along with his son PW-7 were sleeping in a room they awoke on hearing sound of 'khat-khat' and came outside to find that the appellants had committed theft in the house by breaking open the window and were escaping. In the light of torch the informant identified the appellants. He along with his son (PW-7) offered a chase. Appellant Raj Kumar Paswan was captivated by his son in the nearby maize field of Gauri Jha. In spite of his efforts the appellant could not release himself when another accused also made attempt to get him released from the clutches of PW-7. Having failed to do so, the appellant pulled out his country made pistol from the waist and fired at the right thigh of the son of the informant which provided his escape along with other co-accuseds. On the recording of the FIR, the investigation ensued wherein the injury report of the injured was obtained and after



recording the statement of the witnesses, inspecting the place of occurrence, the police submitted charge-sheet whereon cognizance was taken and ultimately, the case, after the committal proceeding, came on the file of the learned Trial Court where charges were framed and read over to them to which they pleaded not guilty.

3. The prosecution in order to bring home the charge examined as many as 14 PWs. The defence, however, did not adduce any oral evidence. Some documents (Exts. A, B and C) were produced in order to show their false implication in the case. On a critical analysis of the evidence adduced by the prosecution, the learned Trial Court placing reliance on the evidence of PWs-1, 2, 3, 5, 6 and 7 held that the prosecution was able to prove the charges against the appellants beyond the periphery of reasonable doubts and convicted and sentenced them in the manner noted above.

4. The resume of the witnesses produced on behalf of the prosecution are as under:-

5. PW-1 Vinay Chandra Jha is the '*gotiya*' of the informant and also a neighbour. He has supported the case with respect to the two places of occurrence. PW-2 is yet another witness who, on hearing sound of fire, reached the house of the informant where the injured was present. He carried the injured to the Madhubani Sadar Hospital for treatment. PW-3 Rajeshwar Jha is an agnate of the informant. He has narrated the ocular account of the occurrence both at the house of the informant as well as the nearby field. PW-5 Ashok



Jha has taken the dock to narrate about the occurrence which had taken place in the nearby field of Gauri Jha in course whereof the appellant Raj Kumar Paswan assaulted the son of the informant by fire arm. PWs-6 and 7 are the informant and his injured son respectively, PW-8 is a formal witness who has proved his signature on the 'fardbeyan' as attesting witness. PWs-4, 9,10,11 and 12 have been declared hostile by the prosecution. PW-13 is the Doctor who was then posted as Senior Resident, Darbhanga Medical College Hospital and examined PW-7 on 25.11.2000 of his injuries and provided the injury report (Ext.3). PW-14 Ramchandra Singh is again a formal witness who has proved the signature of SHO on the formal FIR.

6. We have heard Mr. R.C.Sinha in support of Cr. Appeal no. 278 of 2013 and Mr. Bimal Kumar in support of Cr. Appeal No. 410 of 2013 as well as Mr. Satya Narayan Prasad APP for the State.

7. It has been submitted on behalf of the appellants that owing to previous animosity the appellants have been falsely implicated in the case. There are several contradiction in the evidence of PWs 1,2,3,5, 6 and 7 which render their evidence untrustworthy. It is a case where the I.O. has not been examined. Non examination of the I.O. has caused serious prejudice to the defence. In particular, our attention has been drawn to the evidence of PW-7 where he has admitted that on a complaint lodged by the female inmate of appellant Mangan Paswan he had been sent to jail custody. Our attention has



also been drawn in this regard to the Exhibits produced by the defence. Lastly, it has been submitted on behalf of the appellant of Cr. Appeal No. 410 of 2013 that if the evidence adduced by the prosecution is scanned closely it shall appear there is absolute lack of intention on the part of the appellant Raj Kumar Paswan to commit murder of the injured (PW-7). His conviction under Section 307 of the IPC is unsustainable in law. He also submits even on acceptance of the evidence of the prosecution in its entirety award of extreme punishment on appellant Raj Kumar Paswan under Section 307 of the IPC is too excessive and disproportionate. Mr. Sinha also highlighted that because of the previous animosity between the parties they have been framed in this case. He also drew our attention to some of the inconsistencies in the evidence with respect to the means of the identification and the manner of occurrence.

8. Mr. Prasad learned APP, on the other hand, fully supported the impugned judgment. He submits that if the evidence of PWs 3, 5, 6 and 7 are considered conjointly bereft of the minor omissions, it would appear that the means of identification, the place of occurrence, the manner of occurrence as well as the complicity of the appellant(s) in the crime are proved beyond shadow of reasonable doubt.

9. We have considered the rival submissions made at Bar and have carefully perused the evidence on record. We would at the outset advert to the submissions of counsel for the appellants that



non -examination of the I.O. has caused prejudice to them. We have carefully perused the entire evidence of PWs 6 and 7. They have consistently spoken about the place of occurrence time of occurrence and the manner of occurrence. We also find from their evidence that the appellants were identified in the light of torch held by the informant. Their evidence further establish that the appellants are residents of the same village. Surprisingly, the defence has not cross-examined these two witnesses on the allegations constituting offence under Sections 380 and 457 of the IPC. The other evidence available on record, including the testimony of PWs-3 and 5 lend full support to the prosecution case as projected at the trial. The ocular evidence on these aspects of prosecution case being consistent, in our considered view, non-examination of the I.O. has not caused any prejudice to the appellant. The counsel(s) for the appellant(s) have not shown to us how and in what manner the non-examination of the I.O. has caused prejudice. We, accordingly, overrule their contention on this point.

10. It has next been contended that there is strong motive on the part of the prosecution to frame the accused(s)/appellants as a complaint was lodged against P.W.7 and his uncle by the daughter-in-law of the appellant Mangan Paswan @ Dhedhba Paswan in connection therewith he was sent to the jail custody. The prosecution evidence is tainted. The counsel for the State, in contra, submits that the said complaint was lodged one day after the present case lodged by the informant on 25.11.2000. We do not find much substance in the



contention of the appellants that in order to take revenge, the present case has falsely been lodged against the appellants. The learned trial Court while rejecting the said contention has noted that when the appellant Mangan Paswan was sent to judicial custody the complaint case was got lodged by him through his daughter-in-law. On the basis of the aforesaid facts reflecting from the record, it is difficult for us to accept the contention of the appellants that the evidence of P.W. 7 and P.W.3 whose son was made accused in the said complaint case should be rejected outright.

11. Lastly, it has been argued on behalf of the appellants that considering the evidence of P.W. 6 (informant) and the injured (P.W.7) in the light of the evidence of the Doctor (P.W.13), it shall explicitly appear that the appellant Raj Kumar Paswan had absolutely no intention to commit murder of P.W.7. We have carefully perused the evidence of the prosecution, particularly the statements made by the informant, P.W.6 in his examination-in-chief at para 2 and the evidence of the injured (P.W.7) at para 3, as also the evidence of the PW3. They have stated that while escaping after commission of theft by breaking open the window of the house of the informant, a chase was offered by the informant and his son (P.W.7). P.W.7 succeeded in catching hold of the appellant Raj Kumar Paswan whereafter relentless effort was made by him to free him from the clutches of P.W. 7. In the meantime, the father of P.W.7 also arrived. Their evidence further indicate that one of the appellant who was on a run returned



and made an unsuccessful effort to rescue the appellant Raj Kumar Paswan from the captivity of P.W.7. Having found that they were unable to break open the shackles of PW-7, the appellant Raj Kumar Paswan whipped out his country-made pistol from his waist and fired at the right thigh of P.W. 7 in a bid to get himself released from his hold and ensure his safe escape alongwith other co-accuseds. There is no allegation of firing again at P.W. 7 by the appellant while escaping from the field in a bid to ensure his escape with the booty. We now turn to the evidence of the doctor (PW-13) who medically examined the PW-7 and prepared the injury report (Ext3). The doctor found the following injury on PW-7:

“Injury no. 1 wound of entry size 1/4”x 1/2” x abdomen deep with charred margin over right iliot fossai

2. Abrasion 1”x 1/2” around injury no.1. X ray no. 2882 shows multiple small pea size pillet over right iliot fossa and hipregion.”

12. From these facts evidencing explicitly from the record, it is difficult to hold that the appellant Raj Kumar Paswan had the requisite intention to do away with the life of PW-7. The solitary purpose of the firing on PW-7 was to injure him and get himself freed from the clutches/captivity of P.W. 7 and thereby ensure his escape from the place of occurrence. Again the situs of the injury, in the facts of the case, lends supports to our view. Thus, one of the basic ingredients to constitute the offence under Section 307 of the IPC was lacking.



13. However, there is consistent evidence on record in the shape of testimony of PWs 3,5,6 and 7 that after having committed theft at the dead of night in the house of the informant the appellant Raj Kumar Paswan fired from his country made pistol in the nearby field near the thigh of P.W.7 causing him grievous injury at the right thigh. The evidence of the doctor (P.W.13) also supports the prosecution case insofar as causing injury to PW-7 by firearm on his thigh by the appellant Raj Kumar Paswan. He is held guilty under Section 326 of the IPC. We have already recorded above that the prosecution evidence is consistent and reliable on charge(s) against all the appellants under sections 457 and 380 IPC which are proved.

14. Accordingly, we modify the conviction of the appellant Raj Kumar Paswan of Cr. Appeal (DB) No. 410 of 2013 to section 326 IPC. His conviction under the Arms Act is also upheld. The conviction recorded against all the appellants by the trial Court under sections 457 and 380 IPC is/are upheld.

15. Learned counsel for the appellants has submitted that the occurrence had taken place in the year 2000. The appellants had been undergoing the rigours of the trial for nearly one and half decades. They have undergone several excruciating circumstances/experiences which, by themselves, is a punishment. It is urged that considering the above, the appellants deserve a lenient sentence on them. The appellant Raj Kumar Paswan has remained in custody for more than 04 years whereas the appellants of Cr.



Appeal(DB) No. 278 of 2013 have remained in custody for nearly 04 and a half months. Taking into account the aforesaid facts and circumstances emerging from the records, the appellant Raj Kumar Paswan is ordered to suffer R.I. for 07 years under Section 326 of the IPC. His conviction and sentence recorded under Sections 457 and 380 IPC and Section 27 of the Arms Act as awarded by the trial court remain intact. The appellants of Cr. Appeal (DB) No. 278 of 2013 are sentenced to undergo R.I. for six months under each count i.e. Sections 380 and 457 IPC. Other conditions of sentence which include imposition of fine with default clause on all the appellants by the learned trial court shall remain unaltered. Their bail bond(s) are cancelled. They shall surrender and serve the remainder part of sentence.

16. With the aforesaid modification(s) in the finding(s) and sentence both the appeal(s) are dismissed.

(Kishore Kumar Mandal, J)

(Sanjay Kumar, J)

Shyam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16/5/2017
Transmission Date	16/5/2017

