

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.281 of 2012**

Arising Out of PS.Case No. -136 Year- 2000 Thana -Jamalpur District- MUNGER

- =====
1. Ram Naresh Tanti S/o Late Lochan Tanti, Resident of Village- Chhak Keshopun, P.S.- Jamalpur, District- Munger.
  2. Nand Kishore Tanti S/o Ram Naresh Tanti Resident of Village- Chhak Keshopun, P.S.- Jamalpur, District- Munger.
  3. Amit Kumar Tanti S/o Nand Kishore Tanti Resident of Village- Chhak Keshopun, P.S.- Jamalpur, District- Munger.

.... .... Appellants

Versus

The State of Bihar

.... .... Respondent

With

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**Criminal Appeal (SJ) No. 328 of 2012**

Arising Out of PS.Case No. -136 Year- 2000 Thana -Jamalpur District- MUNGER

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Anil Tanti S/o Ram Naresh Tanti Resident Of Village- Chhoti Keshopur, P.S- Jamalpur, District- Munger.

.... .... Appellant/s

Versus

The State Of Bihar

.... .... Respondent/s

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**Appearance:**

For the Appellant/s : Mr. Suraj Narayan Prasad Sinha, Advocate.

For the Respondent/s : Mr. Pramod Kumar, Advocate.

Mr. Mukesh Kumar Singh, Advocate.

For the Respondent/s : Mr. Bipin Kumar, APP.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA**

**JAISWAL**

**ORAL JUDGMENT**

**Date: 13-09-2017**

As the aforesaid two appeals have cropped up from the common judgment, hence these two appeals are being disposed of by the common order.



**2.** Heard learned counsel for the appellants as well as learned APP for the State.

**3.** Aforesaid two appeals have been preferred against the Judgment and Order of conviction dated 09.04.2012 and order of sentence dated 10.04.2012 passed by the Additional Sessions Judge, F.T.C.-IV, Munger in Sessions Trial No. 50 of 2004 arising out of Jamalpur P.S. Case No. 136 of 2000, whereby the learned trial court convicted the accused Ram Naresh Tanti, Nand Kishore Tanti, Anil Kumar Tanti and Amit Kumar Tanti for the offence punishable under Sections 307/34 and 341 of the Indian Penal Code and Section 27 of the Arms Act and further convicted accused Anil Kumar Tanti under Section 307 of the Indian Penal Code and sentenced Anil Kumar Tanti to undergo R.I. for 7 years and also slapped him with fine of Rs. 3,000/- for the offence punishable under Section 307 of the Indian Penal Code and sentenced Ram Naresh Tanti, Nand Kishore Tanti, Anil Kumar Tanti and Amit Kumar Tanti to undergo R.I. for 5 years and slapped them with fine of Rs. 3,000/- each under Section 307/34 of the Indian Penal Code and S.I. for one month under Section 341 of the Indian Penal Code and R.I. for 3 years and fine of Rs. 1000/- each for the offence under Section 27 of the Arms Act. All the sentences were directed to run concurrently. In default of payment of fine, further sentenced to undergo S.I. for 6 months.



4. The factual matrix of the case is that Jamalpur P.S. Case no. 136 of 2000 was instituted under Sections 341, 323 and 307/34 of the Indian Penal Code and Section 27 of the Arms Act against the accused persons, namely, Ram Naresh Tanti, Nand Kishore Tanti, Anil Kumar Tanti and Amit Kumar Tanti on the basis of the fardbeyan of Sheshnag Lal, Son of Ayodhya Lal, Resident of village Chhoti Keshopur, P.S.-Jamalpur, District-Munger recorded by S.I. S. K. Prasad of Jamalpur Police Station on 17.09.2000 at 12:45 hours at bed no.1 Surgical Male Ward, Railway Hospital, Jamalpur with the allegation in succinct that on 16.09.2000 at around 7 P.M., he had gone to drop the letter in R.M.S. located at Jamalpur Railway Station and while he was regressing to his house after dropping the letter, in the meantime, Ramnaresh Tanti, Nand Kishore Tanti, Anil Kumar Tanti and Amit Kuamr Tanti started stalking him and when he arrived near loco shed at around 07:15 PM, all the aforesaid accused persons cordoned him off and Nand Kishore Tanti ordered him to halt. When he tried to escape, Anil Kumar Tanti resorted firing upon him by means of revolver inflicting injury on his thigh. Sustaining injury, he started escaping making alarm, then Anil Kumar Tanti, Nand Kishore Tanti and Amit Kumar Tanti gave him chase and resorted firing upon him but he escaped the fire. Responding halla, several people from Durga Sthan located in



Mohalla Dalhatta rushed there and saved his life. The bone of contention is that there was occurrence of assault by all the accused persons in the year 1991 over row of passage on the land located adjacent to his house. The accused persons were convicted and sentenced in the said case.

5. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted final form and after rejecting the final form, the case proceeded on the protest petition filed by the informant treating it as a complaint. After making enquiry under Section 202 of the Code of Criminal Procedure, learned Magistrate took cognizance of the offence against the accused persons and committed the case to the court of sessions and on transfer finally the case came in the *seisin* of the Additional Sessions Judge, F.T.C.-IV, Munger for trial.

6. Charge against accused Anil Kumar Tanti was framed under Section 307 of the Indian Penal Code and Charge against the accused Ram Naresh Tanti, Nand Kishore Tanti, Anil Kumar Tanti and Amit Kumar Tanti was framed under Sections 307/34 and 341 of the Indian Penal Code and Section 27 of the Arms Act. Charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the



prosecution has examined altogether eight prosecution witnesses namely, Niraj Kumar as PW-1, Suraj Kumar as PW-2, Rajiv Kumar as PW-3, the complainant Sheshnag Lal as PW-4, Dr. Ashok Kumar Chaurasia as PW-5, Dr. Ranjan Kumar as PW-6, Dr. Sidheshwar Prasad Sinha as PW-7 and Radiographer Navin Patric as PW-8. Out of the aforesaid witnesses, PW-8 happens to be the formal witness who has proved the x-ray plate. In documentary evidence, the prosecution has also filed and proved several documents.

**8.** The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent and falsely implicated in this case. In buttress of its case, in ocular evidence, the defence has examined two witnesses, namely, I.O. Shri Krishna Prasad as DW-1 and Laddu Lal Tanti as DW-2. In documentary evidence, the defence has filed several documents.

**9.** After hearing the parties and perusing the record, the learned trial court passed the impugned Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

**10.** Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convicts Ram Naresh Tanti, Nand Kishore Tanti and Amit Kumar Tanti have



preferred Criminal Appeal No. 281 of 2012 and the convict Anil Kumar Tanti has preferred Criminal Appeal No. 328 of 2012.

**11.** The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

**12.** It is submitted by learned counsel for the appellants that PW-1 Niraj Kumar and PW-3 Rajiv Kumar do not happen to be the FIR named witnesses rather chance witnesses. They also do not happen to be eye witnesses of the occurrence. As per the statement of the informant itself, the informant happens to be on inimical terms with the appellants as several Civil and Criminal cases have been fought between the parties. It is further submitted that there was no occurrence of assault as alleged rather the revolver kept by the informant in his pocket went off inflicting injury on his thigh, but in order to save his neck from the said incident, the informant has falsely implicated the appellants due to aforesaid animosity. The ocular evidence of the prosecution also does not stand corroborated by the medical evidence. It is further submitted that the occurrence is said to have taken place near loco shed and the said place is crowded place where number of persons remains present and police personnel are deployed but none of them has been examined by the prosecution. Moreover, FIR named witnesses namely Ayodhya Lal



and Pappu Kumar have also not been examined by the prosecution as the said witnesses have not supported the prosecution case in their statements given before the I.O. under Section 161 of the Code of Criminal Procedure. I.O. has also not been examined by the prosecution rather by the appellants. I.O. has also not found any such occurrence as alleged. It is also submitted that no blood stain was found at the place of occurrence and the attire of the informant which is said to be stained with blood and burnt in the fire was also not produced before the I.O. which creates serious doubt about the prosecution case. Thus, the prosecution has utterly and miserably failed to substantiate its case by adducing trustworthy and reliable ocular and documentary evidence. Hence, the appellants are entitled to be acquitted.

**13.** On the other hand, it is submitted by learned APP that all the prosecution witnesses have supported the prosecution case *in toto*. Ocular evidence also stands corroborated by the medical evidence adduced by the prosecution. Learned lower court has passed the impugned judgment and order of conviction and sentence correctly appreciating the facts and evidence on record and there is no illegality and impropriety in the impugned judgment and order of conviction and sentence and the same is liable to be sustained and the appeals are devoid of merit and are liable to be dismissed



**14.** From perusal of the testimonies of the PW-1 Niraj Kumar, PW-2 Suraj Kumar, PW-3 Rajiv Kumar, it appears that the aforesaid witnesses have made an abortive bid to support the prosecution case claiming themselves to be eye witnesses of the occurrence. Rajiv Kumar and Suraj Kumar are said to have rushed the victim to the hospital to accord him medical treatment. But from perusal of the FIR, it appears that the aforesaid witnesses are not named in the FIR. The informant has also not named the aforesaid witnesses as the witnesses present at the place of occurrence or witnessing the occurrence by them rather the informant has candidly stated that responding halla made by him sustaining injury, people from Durga Sthan located in Mohalla Dulhatta rushed to him and saved his life, but PW-1, PW-2 and PW-3 do not happen to be the inhabitants of the aforesaid place. Moreover, FIR further indicates that instead of aforesaid three witnesses, two other persons Ayodhya Lal and Pappu Kumar have been named as witnesses in the F.I.R. The aforesaid aspect of the case rules out witnessing the occurrence by PW-1, PW-2 and PW-3 as had the aforesaid witnesses were available at the place of occurrence and witnessed the occurrence, they would have been named in the FIR by the informant. PW-2 Suraj Kumar and PW-3 Rajiv Kumar in their statements have stated that they have rushed the informant to hospital to accord him medical



treatment, but the doctor Ashok Kumar Chaurasia examined in this case as PW-5 has stated in his examination-in-chief that the above patient was brought in the surgical ward of the Railway Hospital, Jamalpur by Sikandar Kumar, son of Deo Nandan Prasad of Village Keshopur, Jamalpur. The aforesaid statement of the doctor also rules out the admitting of the informant in the hospital by PW-2 and PW-3 and witnessing the occurrence by them. The said aspect of the case indicates that PW-2 and PW-3 have told lies before the court and they are dam lier and hence the aforesaid witnesses are unreliable and their testimonies are not worth credence and trustworthy. FIR named witnesses Ayodhya Lal and Pappu Kumar have not been examined by the prosecution and the prosecution has not assigned any plausible reason for non-examining them. Moreover, there is no case of the prosecution that the aforesaid witnesses namely Ayodhya Lal and Pappu Kuamr have been gained over by the accused persons. Moreso, from perusal of the statement of the I.O. examined in this case by defence as DW-1, it appears that in Para-1 and Para-2 of his examination-in-chief he has stated that witnesses Ayodhya lal and Pappu Kuamr have not taken the name of the accused persons as assailants before him. The aforesaid aspect of the case also goes to rule out the prosecution case. PW-1 Niraj Kumar has stated in Para-15 of his cross-examination that he had witnessed the injured of this



case for the first time in the hospital. The aforesaid statement rules out the witnessing of the occurrence by PW-1 Niraj Kumar. The informant examined in this case as PW-4 has stated in Para-2, 3 and 4 of his examination-in-chief himself that after sustaining injury in his right thigh by resorting firing by means of revolver by Anil Kumar Tanti, when he started escaping then other accused persons also resorted firing upon him, but he fortunately escaped the fire. Thereafter Rajiv Kumar, Suraj Kumar, Niraj Kumar, Dhiraj Kumar and others arrived there and witnessing them the aforesaid accused persons left the scene. The aforesaid statement of PW-4 candidly indicates that PW-1, 2 and 3 had arrived at the place of occurrence after culmination of the occurrence and no such occurrence took place before them and they do not happen to be the eye witnesses of the occurrence.

**15.** On perusal of the record, it appears that that occurrence is of 16.09.2000 at 07:15 PM and the fardbyan of the informant has been recorded in the emergency ward of the Railway Hospital, Jamalpur on 17.09.2000 at 12:45 hours. To explain the aforesaid delay in giving the fardbyan, the informant in Para-5 of his examination-in-chief has stated that he was senseless on 16<sup>th</sup> that is why his fardbyan was recorded on 17<sup>th</sup> in the hospital by the police. But from perusal of the record, it appears that the informant was



examined by Dr. Ashok Kumar Chaurasia (PW-5) on 16.09.2000 at around 07:45 PM and operated by Dr. Sidheshwar Prasad Sinha (PW-7) on 16.09.2000 at 10:30 PM and again examined by Dr. Ranjan Kumar on 17.09.2000. But from perusal of the testimonies of the aforesaid doctors and the injury report filed by the prosecution, it appears that the doctors have not found the injured senseless during the aforesaid period and they have also not stated that the injured was writhing in pain and was not in a position to speak. PW-3 Rajiv Kumar in Para-6 of his cross-examination has stated that the informant Sheshnag Lal was in sense at the time of arrival at the hospital and the informant in Para-16 of his cross-examination himself has stated that after sustaining bullet injury he was in sense and was rushed to the hospital while he was in sense. From perusal of the testimony of PW-5, it appears that in Para-7 of his cross-examination he has stated that he informed the police thereafter i.e. on 16.09.2000 at around 07:45 PM after examining the informant, which means that the alleged occurrence was well within the knowledge of the police on 16.09.2000, but the million dollar question arises as to why the statement/fardbyan of the informant was not recorded on 16.09.2000 rather on 17.09.2000 at 12:45 hrs. The aforesaid aspect of the case creates serious doubt about the prosecution case as there was sufficient hiatus and time for



manipulation and concoctation of the case by the prosecution.

**16.** It is the case of the prosecution that earlier in the year 1991 accused persons had assaulted them over row of passage on the land located adjacent to his house and they were convicted and sentenced in the said case. In Para-6 of his examination-in-chief, the informant has also stated that the case of assaulting them by the accused persons was lodged in which they were convicted. In Para-11 of his cross-examination, he has further stated that Ram Naresh Tanti had filed a case against him and he was released on bond in the said case. In Para-20 of his cross-examination, he has stated that the accused persons have filed Sessions Trial No. 541 of 1992 against him and others in which some accused persons were released on bond and the said case is pending against him as yet. In Para-23 of his cross-examination, he has further stated that his father has filed Title Suit No. 5 of 1986 against the accused persons. From perusal of the Exhibit-B, which is certified copy of the judgment of Sessions Trial No. 541 of 1993, it appears that aforesaid Session Trial was conducted against Ayodhya Lal, father of the informant and others on the basis of the case lodged by the accused Ram Naresh Tanti and Anil Kumar Tanti. In the said case, the accused persons were convicted but they were released on bond. Exhibit-E is the certified copy of the judgment of Criminal Appeal No. 50 of 2004 indicates



that against the said judgment, said accused persons had filed aforesaid appeal and the said appeal was dismissed. Exhibit-C indicates that the Title Suit No. 5 of 1986 was filed by the father of the informant Ayodhya Lal against the accused Ram Naresh Tanti which was dismissed. Exhibit C/1 indicates that against the said judgment, Ayodhya Lal had filed an appeal against Ram Naresh Tanti and another which was also dismissed. The aforesaid documents indicate that several Civil and Criminal Cases were fought between the parties. Hence, the aforesaid aspect of the case indicates that the informant happens to be on inimical term with the appellants.

**17.** As per the prosecution case, the occurrence took place near Loco Shed, Jamalpur and several persons of the Durga Sthan located in the Mohalla Dalhatta rushed in his rescue and saved his life. In Para-27 of his cross-examination, the informant has also stated that some people passes through the loco shed, but none of the persons of the aforesaid loco shed or the persons who rushed in his rescue responding halla made by him and saved his life have been examined by the prosecution. No plausible explanation has been assigned by the prosecution for their non-examination. The occurrence is said to have taken place near Loco Shed in which the informant was shot by revolver inflicting injury on his right thigh.



PW-2 Suraj Kumar in Para-20 of his cross-examination has stated that no blood was fallen on the place of occurrence though there was bleeding and the informant Sheshnag Lal was donning pant and shirt. In Para-24 of his cross-examination, he has stated that the attire of the Sheshnag Lal was stained with the blood, but the attire of Sheshnag Lal was not handed over to the police and from perusal of the testimony of the I.O. (DW-1), it appears that I.O. has also not found any blood stain on the place of occurrence. The aforesaid aspect of the case also creates serious doubt about the prosecution case.

**18.** It is the case of the prosecution that the accused Anil Kumar Tanti resorted firing upon the informant by means of revolver inflicting injury on his right thigh. But from perusal of the testimony of PW-5 and the injury report, it appears that the doctor has found an oblique wound on the right inguinal region caused by firearm. From perusal of the Exhibit-A which is the injury report given by the Dr. Ashok Kumar Chaurasia (PW-5), it appears that he has opined that the direction of fire was oblique and above the level of injury. Distance of firing was more than 2'' or 12''. The aforesaid opinion of the doctor goes to indicate that the firing was not straight rather oblique and the level of firing was above the level of injury resorted from 2 inch to 12 inch. Thus, the aforesaid aspect of the case



goes to rule out the prosecution case instead goes to support the case of the defence taken by him by giving suggestion to the informant in Para-36 of his cross-examination to the effect that the pistol was in his pocket and it went off inflicting injury to him.

**19.** In view of the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate its case and the charges levelled against the appellants beyond all reasonable doubts by adducing consistent, trustworthy, reliable and cogent ocular as well as documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned lower court is set aside and the appellants are acquitted of all the charges levelled against them. As the appellants are on bail, they are discharged from the liability of their bail bonds. Accordingly, these two criminal appeals are allowed.

**(Prakash Chandra Jaiswal, J)**

Mishra/-

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