

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.534 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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Ashok Kumar Gautam, Son of Kameshwar Ram, Resident of village – Baduee,
P.S.-Darigaon (Sasaram), District-Rohtas.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance:

For the Appellant/s : Mr. Bhagya Narayan Jha, Amicus Curiae.

For the Respondent/s : Mr. Sujit Kumar Singh, APP.

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

ORAL JUDGMENT

Date: 30-11-2017

Heard learned Amicus Curiae for the appellant as well
as learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the
Judgment and Order of conviction and sentence dated 13.08.2002
passed by Additional Court No.1 (Fast Track Court), Sasaram in
Sessions Trial No. 469 of 2001 / 8 of 2002 arising out of Sasaram
(Darigaon) P.S. Case No. 82 of 2001, whereby the learned trial court
convicted the accused Ashok Kumar Gautam for the offence
punishable under Section 304 (A) of the Indian Penal Code and
Section 27 of the Arms Act and sentenced him to undergo R.I. for two
years for the offence under Section 304(A) of the Indian Penal Code
and further sentenced him to undergo R.I. for three years for the
offence under Section 27 of the Arms Act. Both the sentences were



directed to run concurrently.

3. Factual matrix of the case is that Sasaram (Darigaon) P.S. Case No. 82 of 2001 was instituted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act against unknown miscreants on the basis of the fardbeyan of one Narayan Ram, Son of Late Motilal Ram, resident of Village-Barui, P.S. Darigaon, District-Rohtas recorded by S.I. N.C. Das, I/c Darigaon P.S. on 09.02.2001 at 08:45 PM at the house of Hari Ram at Sasaram Jagdeonagar Baulia Road with the allegation in succinct that on 08.02.2001, son of the cousin of his son-in-law, namely, Pintu @ Kumar Gautam along with his son Hari Shankar had gone to see the dance organized on the occasion of Ravi Das Jayanti in the village. He also went there. In the course of event of dance, he listened a firing sound. There was stampede near the stage. After a short while, he listened that Pintu @ Kumar Gautam had sustained bullet injury. He and others rushed near the stage and found him lying there sustaining fire arm injury. They rushed him to Sasaram to accord him medical aid, but he succumbed to his injury on the way to hospital.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused Ashok Kumar Gautam under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.



5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and on transfer finally the case came in the *seisin* of Additional Court No.1 (Fast Track Court), Sasaram for trial.

6. Charge against the said accused was framed under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. Charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether thirteen prosecution witnesses namely, Mahendra Ram as PW-1, Santosh Kumar as PW-2, Bahadur Ram as PW-3, Fekan Ram as PW-4, Hari Ram as PW-5, Pintu Kumar, Son of Mahavir Ram as PW-6, informant Narayan Ram as PW-7, Nathuni Ram as PW-8, Awadh Bihari Chaudhary as PW-9, Dr. Shree Bhagwan Singh as PW-10, Ramayan Ram as PW-11, Ganga Ram as PW-12 and I.O. Navin Chandra Das as PW-13. Out of the aforesaid witnesses, PWs-1, 2, 6, 8, 9 and 11 turned hostile. The prosecution has also filed and proved several documents by way of documentary evidence.

8. Statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is



complete denial of the occurrence claiming himself to be innocent and falsely implicated in the case. In buttress of his case, he has filed and proved two documents which are confessional statement of the accused marked as Exhibit-A and certified copy of the order sheet of B.P. 224A of 2001 marked as Exhibit-B.

9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid 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 convict has preferred this Criminal Appeal.

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 appellant beyond all reasonable doubts or not.

12. It is submitted by learned Amicus Curiae for the appellant that out of the eleven material witnesses examined by the prosecution, six witnesses turned hostile and out of the rest witnesses, only PW-3 and PW-4 claims themselves to be the eye witnesses of the occurrence while rest are the hearsay witnesses. But the presence of PW-3 at the place of occurrence at the time of occurrence has been ruled out by the informant and PW-4 has given contradictory statement regarding time of firing and has also stated



that when he spotted Pintu Kumar, he was lying down on the ground. Thus, the said statement of PW-4 candidly rules out witnessing of the occurrence by him. It is further submitted that the confessional statement of the accused recorded before the police is not admissible in the eye of law and moreover, said confessional statement has also not led to recovery of any incriminating article from his possession and it also does not stand corroborated by any other evidence. Hence, aforesaid confessional statement of the accused cannot be considered as substantive piece of evidence against him. It is further submitted that more so as per the aforesaid confessional statement, he had not assaulted the deceased by the fire arm rather Bahadur Ram was possessing the fire arm and there was scuffling between Bahadur Ram and him for the said fire arm and during that course, the fire arm went off and hit the deceased and there was no intention of the appellant to eliminate the deceased and moreover, the said fire arm was not used by him in assaulting the deceased. Hence, no offence under Section 27 of the Arms Act is made out against him. It is further submitted that the appellant has already remained in custody for one year and eight months and faced rigours of trial for a long span of time of 16 years. So, lenient view may be taken against him.

13. On the other hand, learned APP advocating the correctness and validity of the impugned Judgment and Order of



conviction and sentence submitted that Bahadur Ram (PW-3) and Fekan Ram (PW-4) happen to be the eye witnesses of the occurrence and they have fully supported the prosecution case. There is confessional statement of the appellant in which he has himself confessed sustaining of injury by the deceased by the fire arm which went off during the course of scuffling for the same between Bahadur Ram and the appellant. It is further submitted that as the said confessional statement has been brought on record and got exhibited as a defence document by the appellant himself, so it amounts to his admission and he cannot escape from the same. Learned lower court correctly appreciating the facts and evidence available on record has rightly passed the impugned Judgment and Order of conviction and sentence which is liable to be upheld and this criminal appeal has no substance in it and is liable to be dismissed.

14. From perusal of the record, it appears that there are eleven material witnesses. Out of them, six witnesses, namely, PWs-1, 2, 6, 8, 9 and 11 have turned hostile. Out of the rest witnesses, PWs-5, 7 and 12 happen to be the hearsay witnesses of the case as PW-5 was not present at the place of occurrence at the time of occurrence as in his examination-in-chief he has stated that on the date of occurrence, he was posted in Baslatia police station of District Araria and he got the information of the occurrence from the



accused Ashok on telephone on 09.02.2001. Informant Narayan Ram PW-7 has stated in his fardbeyan itself that he had not seen the occurrence of assaulting the deceased by anyone at the time of occurrence rather had rushed to the deceased listening firing sound as he was present in the event of dance organized on the occasion of Ravi Das Jayanti. In para-2 of his examination-in-chief, he has stated that several persons were present at the place of occurrence. He spotted Pintu lying on the ground senseless. He cannot disclose as to by which weapon he had sustained injury. In Para-6 of his cross-examination, he has further stated that when he arrived at the place of event, none had divulged him as to how the deceased had sustained injury. PW-12 has stated in his examination-in-chief itself that he had not gone to the place of occurrence at the time of occurrence. He learnt about sustaining fire arm injury by Pintu on the following day. Moreover in Para-5 of his cross-examination, he has further stated that he had divulged to the I.O. that some unknown miscreant gunned down his nephew Pintu @ Kumar Gautam. Though PW-5 Hari Ram has stated in his examination-in-chief that he learnt about the occurrence of inflicting fire arm injury to his son by the accused Ashok on arrival at Sasaram from the people, but he has not disclosed the identification of the source of knowledge. In para-9 of his cross-examination, he has also stated that his family members



divulged him that Ashok has resorted firing upon his son, but none of his family members has come forward to corroborate the factum of divulgence of the aforesaid fact to him. Thus, the aforesaid statement of the said hearsay witnesses is not admissible in evidence.

15. Though PW-3 and PW-4 claim themselves to be the eye witnesses of the occurrence by stating in their respective examination-in-chief about witnessing of assaulting the deceased by the accused by means of pistol during the course of event of dance at the time of occurrence, but from perusal of the testimony of the aforesaid witnesses, it appears that the aforesaid witnesses also do not happen to be eye witnesses of the occurrence. As PW-7 (informant) has stated in Para-6 of his cross-examination that when he arrived at the place of occurrence, he did not see Bahadur Ram (PW-3) there rather he had seen him at the house of Hari Ram. Thus, the aforesaid statement of the informant candidly rules out the presence of the said witness at the place of occurrence at the time of occurrence and witnessing the occurrence by him. PW-4 appears to have given contradictory statement regarding time of assaulting the deceased by the accused. As as per the prosecution case, the deceased sustained injury during the course of dance event, but PW-4 has stated in para-1 of his examination-in-chief that the bullet was fired after the conclusion of the dance. Moreover in Para-5 of his cross-



examination, he has stated that when he listened the firing sound, he spotted Pintu falling on the ground. The aforesaid statement of PW-4 eloquently indicates that he had not seen the occurrence of assaulting the deceased by the appellant by means of fire arm rather he had seen the deceased falling on the ground sustaining fire arm injury. Moreover the said witness in Para-6 of his cross-examination has stated that number of persons had congregated at the place of occurrence at that time, but he had not divulged the factum of sustaining bullet injury by the deceased to any one and had left the place of occurrence. In the said Para, he has further stated that he had divulged the occurrence only to his wife Lakhminia on the same date and to Shiv Narayan Ram, Chhajju Ram and Kashi Paswan on the following morning, but aforesaid persons have not come forward to corroborate the factum of divulgence of the occurrence to them by PW-4. Thus the aforesaid uncorroborated statement of PW-4 is not admissible in evidence and said statement of PW-4 itself rules him out to be the eye witness of the occurrence.

16. Thus the only material left for consideration is the confessional statement of the appellant marked as Exhibit-A. Though the said confessional statement did not lead to any recovery of incriminating article from the possession of the appellant and it does not stand corroborated by any evidence and circumstances of giving



said confessional statement before the I.O. has also not been explained to him while recording his statement under Section 313 of the Code of Criminal Procedure, but as the said confessional statement has been brought on record by the appellant himself it happens to be the document of the appellant and contents of the said document are deemed to be admitted to the appellant and it is settled principle of law that admission of party does not require its corroboration by any evidence. But from perusal of the confessional statement of the appellant, it appears that during the course of event of dance, Bahadur Ram (PW-3) was possessing country made pistol. The appellant claimed to see the same and there was scuffling between them for the said pistol. In the meantime, the pistol went off and the bullet hit Pintu Kumar who was standing nearby. Thus from perusal of the aforesaid confessional statement, it appears that there was no intention of the appellant to resort firing upon the deceased to do away with his life rather pistol went off negligently during the scuffling for the same between the aforesaid persons. Hence, offence under Section 304A of the Indian Penal Code is made out against the appellant. So far as offence under Section 27 of the Arms Act is concerned, as the said fire arm was not used by the appellant in assaulting the deceased rather it went off during the course of scuffling, so in my considered opinion, offence under Section 27 of



the Arms Act is not made out against the appellant.

17. In the facts and circumstances of the case, the appellant is acquitted from the charge levelled against him under Section 27 of the Arms Act while the Judgment and order of conviction is upheld regarding conviction of the appellant under Section 304A of the Indian Penal Code. So far as the quantum of sentence is concerned, from perusal of the record, it appears that the appellant already remained in custody for around one year and seven months and has faced rigours of trial for a long span of time of 16 years. Hence, in the facts and circumstances of the case, the sentence awarded by the learned trial court is reduced to the period of custody already undergone by the appellant. Accordingly, this criminal appeal is disposed of.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
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