

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.433 of 2002

Arising Out of PS.Case No. Year- 1985 Thana Bikram District- PATNA

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1. Damodar Singh, 72 years, son of Late Lala Singh
2. Girija Singh, age 80 years, son of Jain Govind Singh
3. Bira Singh, age 85 years, son of Sri Jai Govind Singh
-All residents of Village Datiana, PS Bikram, District Patna

.... Accused -Appellant/s

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr.Arun Kumar Tripathi
Amicus Curiae

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

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 07-10-2017

Appellant no. 1 herein Damodar Singh who has been convicted for offence punishable under Section 307 of the I.P.C. read with Section 27 of the Arms Act and awarded to undergo rigorous imprisonment for seven years and three years respectively, and appellant nos. 2 and 3, namely Girija Singh and Bira Singh, convicted under Section 307/34,IPC and awarded to undergo rigorous imprisonment for seven years, have filed this appeal challenging the orders of their conviction passed by the Additional Court No. I, Patna, Ad hoc Sessions Judge, Fast Track Court I, Patna in Sessions Trial No. 111/141 of 1991/2001.

The case of the prosecution is that a *Fardi* was recorded



on the statement of informant Tapeswar Singh by Sub Inspector Shri Indradeo Singh of Bikram Police Station on 20th Novemer, 1985 at 5 A.M. in State Dispensary, Bikram. It was the case of the informant that on the night of 19th November, 1985 at 9 P.M. when he was sleeping in one of his *khand*, at about 2.30 A.M. Damodar Singh and Ram Kishore Singh armed with pistol, Bira Singh and Girija Singh armed with *garasa* entered into the courtyard of his house through the main door and when he enquired thereupon Sidhi Singh, brother of the informant, came out in the courtyard and saw Girija Singh to point out pistol towards him and by abusing him asked about the whereabouts of the informant Tapeswar Singh. When Sidhi Singh informed the accused that Tapeswar Singh is sleeping the room and when Sidhi Singh raised alarm the informant tried to flee away. But while fleeing on being asked by Bira Singh, Damodar Singh is said to have fired with a pistol causing fire injury on the feet of the informant who fell down and raised alarm. Other's escaped and he was taken to the hospital.

Based on the same, the F.I.R. was lodged and the appellants were prosecuted for the offences in question.

On the evidence and materials that come on record, motive of the offence is said to be some land dispute in the matter of cutting of banana and *sahjan* trees on the previous day. Even though



the witnesses have testified about the incident, they have also confessed that various cases are pending between the parties.. However, from the evidence that has come on record, particularly of PW 7 Dr. A N Jha, it is seen that he found pellet injury on the legs of the deceased and the injury is said to be grievous in nature and the patient was discharged immediately thereafter.

Be that as it may, the records indicate that the appellants have been in custody from the date of the incident for some time. On going through the records it is seen that the incident took place on 20th November, 1985 and Damodar Singh, the main accused, who had caused the injury on the leg of the injured was more than 72 years of age, and appellant no. 3 Bira Singh was 85 years of age. As far as Girija Singh is concerned, no specific overt act is attributed to him and it is only Damodar Singh who is responsible for having caused the fire-arm injury.

Taking note of the totality of the circumstances, it is a fit case where in the peculiar facts and circumstances of the case, looking to the age of Damodar Singh and Bira Singh and the role assigned to Girija Singh, the benefit of release on probation can be granted to the appellants by virtue of the powers conferred upon this Court under Section 360(4) of the Cr.P.C. as no useful purpose would be served by taking back the appellant into custody and asking them to undergo the



remaining period of the sentence. They do not have any previous criminal antecedents and the incident arose out of a land dispute between the parties.

In view of the above, instead of imprisoning them to undergo the remaining period of sentence, it is directed that they be released on entering into a bond with one surety to the satisfaction of the trial court/competent authority as per law. They should maintain peace and good behaviour during the period of bond and as and when they are called upon during this period of probation they shall report to the authority concerned.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

mrl

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