

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.94 of 2002

Arising Out of PS.Case No. -213 Year- 1986 Thana -Sabour District- BHAGALPUR

1. Radhe Tanti, S/o Late Shiv Shankar Tanti.

2. Rameshwar Tanti S/o Chando Tanti.

Both R/o Village-English, P.S. Sabour, District-Bhagalpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Indeshwari Prasad Mandal

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

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 29-11-2017

From perusal of report of S.P. Bhagalpur, it appears that the appellant Radhe Tanti has passed away during pendency of appeal. Hence, this appeal stands abated against the said appellant.

2. Heard learned counsel for the appellant and learned APP for the State on this Criminal Appeal.

3. This appeal has been preferred against the judgment and order of conviction and sentence dated 20.02.2002 passed by the Additional District and Sessions Judge, Fast Track Court, Bhagalpur in Sessions Trial no. 286 of 1989 arising out of Sabour P.S. Case No. 213 of 1986, whereby the learned trial court convicted the accused persons namely, Radhe Tanti and Rameshwar Tanti for the offence punishable under Section 307 of the Indian Penal Code



and further convicted the accused Radhe Tanti for the offence punishable under Section 27 of the Arms Act and sentenced the aforesaid convicts to undergo R.I. for eight years each for the offence under Section 307 of the Indian Penal Code and further sentenced the convict Radhe Tanti to undergo R.I. for three years for the offence under Section 27 of the Arms Act. Both the sentences of convict Radhe Tanti were directed to run concurrently.

4. The factual matrix of the case is that Sabour P.S. Case No. 213 of 1986 was instituted under Sections 307, 324, 323/34 of the Indian Penal Code and 27 of the Arms Act against accused Radhe Tanti and Rameshwar Tanti on the basis of written report of Sitaram Yadav S/o Nasib Yadav R/o Village-English P.S. Sabour District-Bhagalpur with the allegation, in succinct that he happens to be caretaker of land of Sitaram Gop. On 30.11.1986 at around 05:00 PM while he was taking care of kalai crop cultivated on the said land abruptly, Radhe Tanti armed with pistol and Rameshwar Tanti armed with spear descended there and Rameshwar Tanti gave order to eliminate him whereupon Radhe Tanti fired upon him by means of pistol, but he left unhurt, then Rameshwar Tanti assaulted on his stomach by means of spear, but he dodged the said attack and sustained injury in his left elbow. He caught hold sharp portion of the spear resultantly it was separated



from its blunt portion and then Rameshwar Tanti assaulted on his head with blunt portion (lathi) inflicting bleeding injury on his head. He made hulla, responding the same, Gopal Yadav, Gyan Yadav, Bhola Yadav and others rushed there and saved his life. Then the accused persons left the scene.

5. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the aforesaid accused persons under Sections 323, 324, 307/34 of the Indian Penal Code and 27 of the Arms Act.

6. On receiving the charge-sheet 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 *seisin* of the Additional District and Sessions Judge, Fast Track Court, Bhagalpur for trial.

7. Charge against accused Radhe Tanti and Rameshwar Tanti was framed under Section 307 of the Indian Penal Code and charge against accused Rameshwar Tanti was also framed under Section 27 of the Arms Act. Charge was read over and explained to them to which they pleaded not guilty and claimed to be tried.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether five prosecution witnesses



namely, Gopal Yadav as PW-1, Gyan Yadav as PW-2, Bhola Yadav as PW-3, Shakti Yadav as PW-4 and informant Sitaram Yadav as PW-5. Out of the aforesaid witnesses, PW-4 (Shakti Yadav) turned hostile. The prosecution has neither filed nor proved any document by way of documentary evidence. Informant has proved his signature on the written report marked as Ext-1 only.

9. 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. In buttress of their case, in ocular evidence, the accused persons have examined only one witness namely, Md. Yasim as DW-1.

10. 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.

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convicts have preferred the present Criminal Appeal.

12. 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.

13. It is submitted by the learned counsel for the appellant that even written report and formal FIR have not been



proved by the prosecution. Though, as per the prosecution case and witness account, the informant had sustained injury and was admitted in the hospital, but no injury report of the informant has been brought on record and doctor treating the informant has also not been examined by the prosecution. As per the witness account, the informant has sustained bleeding injury and the blood was fallen on the ground at the place of occurrence and also on the attire of the informant and empty cartridge was also produced to the I.O., but I.O. has not been examined by the prosecution in substantiation of the aforesaid case which creates serious doubt about the prosecution case. Due to non-examination of I.O. the place of occurrence also does not stand established by the prosecution. It is further submitted that four material witnesses have been examined by the prosecution. Out of them PW-1 (Gopal Yadav) happens to be own brother of the informant and PW-5 (Sitaram Yadav) happens to be informant and interested witnesses of the case. It is further submitted that barring informant, all the three material witnesses do not happen to be eye witness of the occurrence as they had arrived at the place of occurrence after culmination of the occurrence, responding hulla made by the informant. It is also submitted that there is vital contradiction regarding manner of occurrence, injury, rushing to the informant to the hospital etc. between the testimonies of the



witnesses inter se. Thus, the aforesaid inconsistent and contradictions ocular evidence of the prosecution is not worth credence and reliable and said ocular evidence also does not stand corroborated by the medical evidence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant beyond all reasonable doubt by adducing trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned lower court is liable to be set aside.

14. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that there are four material witnesses of the occurrence and all the material witnesses including informant have consistently supported the prosecution case and learned lower court after correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence and the same is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

15. From perusal of record, it appears that there are four material witnesses of the case namely, PW-1 (Gopal Yadav) PW-2 (Gyan Yadav), PW-3 (Bhola Yadav) and PW-5 (Sitaram Yadav). Out of them PW-5 happens to be informant of the case and



PW-1 happens to be own brother of the informant. From perusal of testimony of PWs-1, 2 and 3, it appears that the aforesaid witnesses do not happen to be eye witness of the occurrence. As as per prosecution case, the appellant Radhe Tanti resorted firing upon the informant by means of pistol, but the informant left unhurt then Rameshwar Tanti assaulted by means of spear which hit on the left elbow of the informant and after catching hold of the sharp edge portion of the spear by the informant, the blunt portion was separated from it and then Rameshwar Tanti assaulted on his head with blunt portion (lathi) inflicting bleeding head to him. But, PW-1 (Gopal Yadav) in paragraph 4 of his cross-examination has stated that after resorting fire, he rushed to the place of occurrence and on his rushing, the accused persons left the scene. In the said paragraph, he has further stated that rest witnesses arrived at the place of occurrence after a short while. PW-2 (Gyan Yadav) has also stated in paragraph 9 of his cross-examination that he arrived at the place of occurrence after Gopal Yadav. The accused persons left the scene on his arrival. The aforesaid statements of PW-1 (Gopal Yadav) and PW-2 (Gyan Yadav) eloquently indicates that Gopal Yadav had arrived at the place of occurrence after resorting fire and PW-2 Gyan Yadav had arrived there after a short while of Gopal Yadav and then accused persons left the scene meaning thereby that



Rameshwar Tanti had not assaulted the informant by means of lathi before them and they had not witnessed the occurrence of assault by the Rameshwar Tanti upon the informant while the occurrence of resorting firing by Radhey Tanti had taken place before their arrival at the place of occurrence and they had also not witnessed the said occurrence. Moreover, PW-3 has stated in paragraph 7 of his cross-examination that by the time of his arrival at the place of occurrence, the accused persons left the scene and after his arrival, Gopal Yadav had arrived at the place of occurrence. Gopal Yadav had arrived there after escaping of the accused persons. The aforesaid statement of said witness candidly indicates that first of all the said witness had arrived at the place of occurrence at the time of escaping of accused persons from the place of occurrence and thereafter Gopal Yadav and Gyan Yadav had arrived at the place of occurrence after escaping of accused persons therefrom and all the aforesaid three witnesses had not witnessed any sort of the occurrence.

16. So far as the testimony of informant is concerned, as per the prosecution case as narrated by the informant in the written report, the Rameshwar Tanti assaulted on his head by means of lathi inflicting only head injury to him. But, in quite contradiction to the aforesaid case the informant in paragraph 10 of



his cross-examination has stated that he sustained three lathi blows on the head and two on his hand. As per account of informant as given by him in paragraph 7 of his cross-examination, after the occurrence, he did not rush to village English i.e. his own village rather got admitted in the hospital. But, in quite contradiction to the aforesaid statement of the informant PW-3 (Bhola Yadav) has stated in paragraph 8 of his cross-examination that after the occurrence, they rushed informant to his house. From the aforesaid statement of the informant, it appears that after the occurrence, he was rushed to the hospital and got admitted in the hospital. But, from perusal of written report, it appears that his statement was not recorded by the police in the hospital rather he had given his written report to the police at P.S. Sabour.

17. As per witnesses account, the blood was fallen on the ground and also on attire of the informant and his attire was also torn in the occurrence. The empty cartridge was displayed to the I.O., but the I.O. of the case has not been examined by the prosecution in substantiation of the aforesaid case, which creates serious doubt about the prosecution case and due to non-examination of the I.O., the place of occurrence also does not stand established by the prosecution.

18. As per statement of informant, he was treated in the



hospital and was admitted there, but no injury report has been brought on record by the prosecution. Doctor treating the informant has also not been examined by it in substantiation of any injury sustained by the informant in the occurrence. The aforesaid aspect of the case also creates serious doubt about the prosecution case regarding sustaining injury by the informant during the occurrence.

19. From perusal of record, it appears that the FIR was lodged in P.S. Sabour on 30.11.1986 at around 08:00 PM, but the same was received in the court after abnormal delay of eight days i.e. on 08.12.1986 and no reason has been assigned by the prosecution to explain the aforesaid delay in sending the FIR to the court. So, the aforesaid aspect of the case creates serious doubt about the prosecution case as such abnormal delay in sending the FIR to the court has given ample time and hiatus to the prosecution for concocting the case against the appellant.

20. From perusal of statement of informant as given by him in paragraph 4 of his cross-examination, it appears that the appellant Rameshwar Tanti had filed petition under Section 107 of the Cr.P.C. against the informant and the case was filed under Section 107 of the Cr.P.C. against both the parties preceding to the occurrence. The aforesaid statement of the informant indicates that the informant happens to be on inimical terms with the appellant.



21. It is the settled principle of law that the testimony of the interested witness should not be discarded outrightly rather it should be scanned and scrutinized cautiously and carefully. On careful and cautious scanning and scrutiny of the testimonies of the PW-5 and PW-1 who happen to be informant and his own brother respectively and highly interested witnesses of the case, it appears that there is vital contradictions between the prosecution case and testimony of the witnesses and testimonies of the witnesses inter se regarding manner of occurrence, assault, injury, rushing the victim to the police station from the place of occurrence etc. and in view of the aforesaid vital contradiction, the testimony of the aforesaid interested witnesses do not appears to be worth credence and reliable and do not inspire my confidence to hold the conviction of the appellant relying on the same.

22. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charge levelled against the appellant (Rameshwar Tanti) beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned lower court is set aside and the appellant (Rameshwar Tanti) is acquitted of the charge levelled



against him. As the appellant (Rameshwar Tanti) is on bail, he is discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

(Prakash Chandra Jaiswal, J)

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