

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.276 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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Raj Kishore Singh

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharnidhar Mishra

For the Respondent/s : Mr. Abhay Kumar

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 30-06-2017

This appeal has been preferred against the judgment dated 24.05.2002, passed by Sri Narendra Bahadur Verma, learned Sessions Judge -1st , Fast Track Court, Ara, District - Bhojpur in Sessions Trial No. 259 of 1988, by which he has convicted the appellant under Section 324 Indian Penal Code and instead of sentencing him, he was directed to be released on probation on entering into bond of Rs. 5,000/-, with two sureties of like amount each.

This case has been instituted on the basis of the written report lodged by Tapeswar Singh (P.W. 5) son of the injured Bishwanath Singh (P.W. 6) stating therein *inter alia* that on 05.11.1986 at 11.00 A.M. appellant and other accused persons came variously armed and accused Brijnandan Singh fired from a



country made pistol and when Baijath Singh protested, appellant – Raj Kishore Singh assaulted with *bhala* on the right side of chest of Bishwanath Singh causing bleeding injury, thereafter, Jai Kishore Singh fired from a country made pistol but nobody was hit by the said fire. Further case is that accused persons went over the roof of one Krishna Singh, from where they also made firing. He has also stated that the bone of contention between the parties was land of Khata No. 446, Plot No. 2436, measuring area of 2 decimals, over which, Adarsh Bal Ratri Vidyalaya was being run.

Police after investigation, submitted charge-sheet and cognizance of offence was taken, thereafter, the case was committed to the Court of Sessions.

In this case charges have been framed against the appellant and other accused persons under Section 307/149 of Indian Penal Code for attempting to kill Bishwanath Singh. Further accused persons were also charged under Section 148 for committing the offence of rioting and further accused Brijnandan Singh and Jai Kishroe Singh were charged under Section 25(1)(A) and Section 27 of the Arms Act.

Defence of the appellant is of total denial of the occurrence and is of innocence.

Learned trial court after conclusion of Trial convicted the



appellant under Section 307 Indian Penal Code vide impugned judgment and instead of sentencing him, he was released on probation on entering into bond of Rs. 5,000/-. So far other accused persons are concerned, they have been acquitted from the charges framed against them and appellant is also acquitted from other charges levelled against him.

In this case, altogether seven witnesses have been examined on behalf of the prosecution and they are; P.W. 1- Awadh Bihari Singh, P.W. 2-Rampujan Singh, P.W. 3-Vimal Singh, P.W. 4-Shivji Singh, P.W. 5- Tapeswar Singh, P.W. 6-Bishwanath Singh (injured) and P.W. 7 – Doctor Janardan Prasad Sharma. It further appears that in this case Investigating Officer has not been examined.

From perusal of P.Ws, it appears that P.W.1, is not the eye witness of the occurrence though he has stated that on the '*hulla*' he went there and saw Bishwanath Singh in injured condition. So far P.W. 2 is concerned, it appears from para -2 of his cross-examination that he is also not the eye witness of the occurrence and further in para -3, he has stated that whatever he has stated in the Court, he has not stated before the police in his statement. So far P.W. 3 is concerned, it appears that though he has supported the case of the prosecution but this witness has stated in para -6 of his cross-examination that his statement has not been recorded by the Police.



In this case P.W. 5 is the informant and he has also supported the prosecution story in his evidence in chief and stated about assault to the injured Bishwanath Singh by the appellant by '*bhala*' (spear). This witness has been cross-examined also but there is nothing in his cross-examination to discredit his evidence about assault by the appellant to Bishwanath Singh. P.W. 6, Bishwanath Singh (injured) has also supported the case of prosecution with regard to assault by appellant by '*bhala*' (spear) causing injury to him. Aforesaid evidence of P.W. 5 and P.W. 6 finds further support from the evidence of P.W. 7-Doctor Janardan Prasad Sharma, who examined the injured Bishwanath Singh and found only one incised wound on right side chest below the rifle 1"X 1/3 x 1/2" and one vague swelling on left ankle joint and also stated that injuries are simple in nature.

Learned counsel for the appellant though has appeared in this case but he has fairly admitted that appellant was released on probation and the victim has already passed away after the judgment as such the appeal itself has become infructuous.

No doubt in this case, appellant has been charged under Section 307 Indian Penal Code and convicted under Section 324 Indian Penal Code but instead of passing any sentence, learned Trial Court released the appellant on probation on entering into bond of Rs. 5,000/-.



As discussed above, there is ample, cogent, reliable and consistent evidence available on record, supported by medical evidence showing that the appellant had assaulted P.W. 6-Bishwanath Singh by '*bhala*' (spear), causing simple injury to him. As such, it appears that conviction of appellant under Section 324 of Indian Penal Code is just and proper

Accordingly, I find no merit in the appeal and the same is hereby dismissed. Conviction of the appellant under Section 324 Indian Penal Code is upheld, as appellant had already entered into bond as per order passed by Trial Court, there is no need of interfering with the impugned order.

(Vinod Kumar Sinha, J)

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