

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.281 of 2011

(Against the Judgment and order of conviction and sentence dated 10.02.2011 passed by the learned Assistant Sessions Judge, Patna City in Sessions Trial No. 96 of 2001 (Tr. No.13 of 2001) arising out of Fatuha P.S. Case No.292 of 1996 under Sections 307/34 IPC and Section 27 of the Arms Act.

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Dinesh Singh @ Binesh Singh, son of Lagandeo Singh, resident of village - Bibipur, Police Station - Gourichak, District - Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Nadimul Hasan (Amicus Curiae)
For the State : Mr. Binod Bihar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 22-03-2017

This appeal is preferred against the judgment/order of conviction and sentence dated 10.02.2011 passed in Sessions Trial No.96 of 2001 by Mr. Anjani Kumar Singh, Assistant Sessions Judge, Patna City whereby the sole appellant has been convicted under Section 307/34 of the Indian Penal code as well as under Section 27 of the Arms Act and sentenced to undergo seven years of rigorous imprisonment and fine of Rs.25,000/- and in case of default of making payment of fine to further undergo rigorous imprisonment of six months for committing offence under Section 307/34 of I.P.C. and also sentenced for a period of three years of rigorous imprisonment and a fine of Rs.10,000/- for the offence under Section 27 of the Arms



Act and in default of payment of fine further undergo rigorous imprisonment of three months. However, both sentences are directed to run concurrently and further 70% of the imposed fine is to be paid to the victim, the informant of this case.

2. Being aggrieved and dis-satisfied with the above said judgment and conviction, the appellant has preferred the present appeal.

3. The prosecution case as unravelled by Jayanti Devi (P.W.2), the informant of this case in her fardbeyan recorded at around 7.00 P.M. on 17.12.1996 at Fatuha Hospital is that her parents (now died) had four daughters out of which one died and remaining three sisters are alive. Ancestral land of father was partitioned among sisters. Out of 10 bighas of total land, one share was also given to her but Shambhu Singh, husband of her youngest sister Uma Devi wants to grab all 10 bighas of land and, therefore, relation is strained, many times, he threatened her to leave her claim on that property. Further case of the prosecution is that at 12.00 Noon on 17.12.1996, Guddu Singh, Dewar of her younger sister Uma Devi and brother-in-law of Guddu Singh whose name not disclosed came to her house and after having lunch, she went to Fatuha market in connection with Bank related work, Guddu Singh and his brother-in-law also accompanied her. They came to Fatuha market and it was already evening while



getting her work done in the Bank so she wanted to return back but both persons on some pretext engaged her as a result it became dark. Thereafter, they started to return back to the informant's home while she reached near Fatuha College to go to railway station at around 6.00 P.M. all of a sudden, Guddu Singh and his brother-in-law took out pistol and Guddu Singh shot at her back from point blank range causing injury below her left shoulder. Meanwhile, brother-in-law of Guddu Singh also shot at her causing injury near her left waist. Again Guddu Singh opened fire on her. When she raised alarm, some farmers present nearby reached there but both accused succeeded in fleeing away.

4. It is alleged that in conspiracy with his brother-in-law Shambhu Singh, these two accused Guddu Singh and his brother-in-law made an attempt on her life. However, one accused Shambhu Singh brother-in-law of the informant was acquitted by the trial court as no reliable evidence was found against him.

5. Nagendra Singh, S.I. (P.W.5) recorded her statement at Fatuha Hospital, who visited the place of occurrence, got the statement of witnesses recorded and submitted charge sheet in this case against all three accused persons. The learned A.C.J.M., Patna City took cognizance of the offence and committed the case to the court of Sessions for trial.



6. In this case, the prosecution has examined altogether nine witnesses, namely, (1) P.W.1, Suresh Prasad, (2) P.W.2, Jayanti Devi (Informant), (3) P.W.3, Krit Narayan Singh (Hostile), (4) P.W.4, Dr. Jainendra Kumar, (5) P.W.5, Nagendra Singh, (6) P.W.6, Dr. Birendra Kumar Verma, (7) P.W.7, Ram Autar, (8) P.W.8, Jiya Lal Mathur and (9) P.W.9, Ram Kishun Yadav out of these witnesses, Suresh Prasad (P.W.1) is only hearsay witness, who reached at the place of occurrence after hearing sound of firing but did not see any assailant.

7. P.W.5, P.W.7, P.W.8 and P.W.9 are I.Os. of this case. However, major part of investigation was conducted by P.W.5 and no any investigation was conducted by P.Ws.7 and 8 and P.W.9 has only submitted charge sheet in this case.

8. P.W.3, Krit Narayan Singh, the only independent witness has turned hostile to the prosecution case and during cross examination, the prosecution has failed to illicit any material evidence in favour of the prosecution. However, the prosecution has drawn attention to the witness as recorded under Section 161 Cr.P.C. that he stated before the police that Guddu Singh and Shambhu Singh shot at Jayanti Devi, the informant of this case but the same was denied by him. There is no suggestion that he had stated before the police about shooting Dinesh Singh to the informant.



9. The trial court, relying only on the testimony of Jayanti Devi (P.W.2), the informant of this case, has convicted the appellant but disbelieved a part of her testimony so acquitted Shambhu Singh, another co-accused.

10. The learned counsel appearing on behalf of the appellant appearing as *Amicus Curiae*, namely, Mr. Nadimul Hasan submits that the appellant has been convicted on the basis of single testimony of P.W.2 but there are many vital contradictions in her deposition with the prosecution case narrated by her in her fardbeyan and in the evidence given before the Court. It is submitted that Jayanti Devi in her fardbeyan has stated that she went to Fatuha market for some bank work and Guddu Singh and his brother-in-law Dinesh Singh also accompanied her. However, in her deposition before the Court, she has changed the reason for going to Fatuha market as she stated that these two accused asked her to go to Fatuha market to meet her sister Uma Devi, when she reached the market, she did not find Uma Devi thereafter, moved around the market from 12.00 Noon to till 6.00 P.M. Further in her fardbeyan, this witness earlier stated that Guddu Singh opened fire twice on her body and one shot was opened by Dinesh Singh but in her evidence, she has deposed that first shot was opened by Shambhu Singh causing injury over her head, thereafter, by Guddu Singh and third one by Dinesh Singh so the



manner of occurrence is completely changed and she also stated that at the time of occurrence darkness set in because it was 6.00 P.M. in the month of December. According to her, she was shot from point blank range but Dr. Birendra Kumar Verma, P.w.6, who treated her examined has not found any blackish, charring or tattooing mark around the injury and there is no any wound of exit and the doctor for definite opinion and for treatment referred the patient to P.M.C.H. and the doctor of the P.M.C.H. examined as P.W.4 had not given any definite opinion about the injury and also could not say what foreign body was there in the victim's abdomen and it is also not the case that the informant (P.W.2) was operated in the P.M.C.H.

11. The learned A.P.P. submits that the evidence of the P.W.3 is reliable and trust worthy and there is no major contradictions in her evidence.

12. I find that the trial court has partly believed and partly disbelieved the testimony of Jayanti Devi (P.W.2), the informant of this case. The allegation in the F.I.R. levelled by her is that Guddu Singh and Dinesh Singh, whose name was not earlier disclosed in the fardbeyan are said to have opened fire from her back side and at the time of the occurrence, it was dark as the time of alleged occurrence is 6.00 P.M. In the month of December darkness sets in by that time. According to her allegation, Guddu Singh first



opened fire from point blank range which hit just below her left shoulder and thereafter, Dinesh Singh at her left waist and again Guddu Singh opened fire so two firing was opened by Guddu Singh from point blank range and one by Dinesh Singh. In paragraph-18 of the cross examination, she is not able to clarify that from what distance this appellant shot at her and she further deposed that three persons Guddu Singh, Shambhu Singh and Dinesh Singh opened fire and in paragraph-23 of her cross examination, she also failed to disclose that Dinesh Singh fire at her from which side and from the fire arm injury, she had not lost her consciousness. It is evident from the evidence of P.W.6, Dr. Birendra Kumar Verma that two lacerated wound posterior aspect of chest 5 cm x 3 cm penetrating inside of chest were found on the person of Jayanti Devi but no exist wound was found on her body whereas she has deposed in her evidence that when the appellant Dinesh Singh shot at her waist then cartridge came out piercing her abdomen. However, a case of the prosecution is that P.W.2, Jayanti Devi was shot from the point blank range by Guddu Singh but there is absence of blackish, charring and tattooing or signing mark around the wound; there is also no exist wound of two injuries. The fardbeyan stated about the manner of the occurrence that three shots were fired at her but only two injuries are found on her body without any exist wound. It also appears from the evidence of



P.W.6 that he is not definite whether both injuries were caused by fire arm, therefore, referred to P.M.C.H. for definite opinion but no such opinion was received.

13. Dr. Jainendra Kumar (P.W.4), who examined Jayanti Devi (P.W.2) in P.M.C.H. has also not given any definite opinion regarding the injury and this witness has also not disclosed relating to mode of treatment given to her; though some foreign body was found by him in the x-ray but he could not say what foreign body was there in victim's abdomen and has also not disclosed whether any surgery was done to her; even Jayanti Devi (P.W.2) has not deposed whether she was operated upon at P.M.C.H. So in view of the said major contradictions in the evidence of P.W.2 the sole eye witness, who is inimical to appellant due to property dispute and considering the medical opinion of the doctors (P.W.6 and P.W.4), the definite opinion of the injury is neither proved by the prosecution nor the manner of occurrence too was established. According to P.W.2, the shot fired by the appellant from her back chest but no exist wound found by the doctors. She has also deposed that she could not see from which angle and from what distance, this appellant shot at her so the prosecution case becomes doubtful whether the appellant had shot at Jayanti Devi; so giving benefit of doubt the appellant is acquitted from the charge under Section 307/34 of I.P.C. and also under Section



27 of the Arms Act.

14. The appellant is on bail so he is discharged from the liabilities of his bail bond.

15. In the result, this appeal is allowed.

16. I have been ably assisted by Mr. Nadimul Hasan, who was appointed *Amicus Curiae* in Cr. Appeal (SJ) No.281 of 2011, to assist this Court. I direct that Mr. Hasan be paid the prescribed fee of one hearing by the Patna High Court Legal Services Committee for assisting the Court. Let the first and the last pages of the judgment be handed over to him.

(Arun Kumar, J)

N.H./-

AFR/NAFR	AFR
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