

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.518 of 2002
(Against the judgment of conviction dated 4.9.2002 and order of sentence, dated 7.9.2002 passed by Shri Chiranji Singh, Presiding Officer, Fast Track Court No.1, Gopalganj, in Sessions Trial No. 72/90/311/2001, arising out of Kuchaikote P.S. Case No. 97/89)

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Ram Equbal Rai, son of Manager Rai, resident of village-Bangra, P.S.-Kuchaikot,
District-Gopalganj.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. N.A. Shamsi, Advocate
For the informant : Mr. Sanjay Kumar Pandey, Advocate
For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 25-11-2017

The sole appellant was convicted by the Fast Track Court No.1, Gopalganj in Sessions Trial No. 72/90/311/2001 vide judgment dated 4.9.2002 and sentenced to undergo R.I. for four years vide order dated 7.9.2002 under section 307 of the Indian Penal Code.

2. The prosecution case as made out on the basis of First Information Report is as follows:-

On 13.6.1989 Dhananjay Rai and minor son of Ram Equabal Rai were playing together near the house of Baijnath Rai (informant). Both the boys started quarreling among themselves. On this, Ram Equabal Rai came out from his house with a country-made pistol and fired which hit the informant, as a result of which, he fell down. In the meantime, Dharamnath Rai, brother of the informant



came and snatched the pistol from Ram Equbal Rai. The informant was taken to the hospital for treatment.

3. The police after investigation submitted charge-sheet against the appellant and after cognizance, the case was committed to the court of sessions.

4. The trial court framed charge under section 307 of the Indian Penal Code and 25 (1-B)(a) and 26(1) of the Arms Act. The appellant pleaded not guilty and submitted that he has been falsely implicated due to previous enmity.

5. On behalf of the prosecution, seven witnesses were examined. P.W.-1 Umesh Rai, P.W.-2 Dharamnath Rai, P.W.-3 Ramayan Tiwary, P.W.-4 Bindyachal Dubey, P.W.-5 Baijnath Rai, informant of the case, P.W.-6 Dr. Janak Lal Sharma who has examined the informant and P.W.-7 Taj Mohammad, a formal witness. Out of seven witnesses, P.W.-4 was tendered. The Doctor who was examined in this case has deposed in the court that he did not collect gun powder from the injuries. He did not find foreign material in the injury. The x-ray report was not put before him. He admitted that the injuries were simple in nature.

6. The trial court on scrutiny of the evidence of the witnesses and on the basis of material available on record held out that for want of under section 39 of the Arms Act, the accused persons cannot be convicted for the offence under the Arms Act. However,



the trial court convicted the appellant for the offence under section 307 of the Indian Penal Code.

7. Mr. N.A. Shamsi, appearing on behalf of the appellant submits that the trial court committed error in convicting the appellant for the offence under section 307 of the Indian Penal Code notwithstanding the fact that the doctor neither found any foreign material in the injuries nor gun powder from the injuries nor x-ray report was either placed before the doctor or in the court it was produced which creates doubt about the allegation of firing. In the alternative, he submits that the trial court has failed to appreciate hypothesis of the defence about the informant sustaining injury in scuffle between the brothers causing injury to the informant.

8. Mr. Shamsi further submitted that prosecution case is in regard to quarrel between the minor son of the appellant Ram Equabal Rai and Dhananjay Rai Bhagina of informant while playing, the appellant came out from his house with a country-made pistol and fired which hit the informant. He submitted that this prosecution story is most unrealistic and artificial. He further submitted that the occurrence is alleged to have taken place on 13.06.89 and the trial remained pending for 12 years and the present appeal remained pending for 15 years.

9. Mr. Sanjay Kumar Pandey, appearing on behalf of the informant submits that the trial court has adopted leniency in



awarding the sentence as after conviction of the appellant under section 307 of the Indian Penal Code, the trial court was required to award a heavy sentence commensurate with offence under section 307 of the Indian Penal Code.

10. Mr. Binod Bihari Singh, learned APP appearing on behalf of the State submits that specific allegation against the appellant for using firearms and causing injury to the informant has been established in the instant case. He referred to the deposition of P.W.-2 Dharamnath Rai, P.W.-3 Ramayan Tiwary and P.W.-5 Baijnath Rai who have supported the prosecution case and as such conviction of the appellant by the trial court is well founded.

11. The background of the incident is quarrel between the informant with the son of the appellant and there is no explanation what was the provoking circumstances which led to the appellant to instantly come out from his house with a country-made pistol and open fire on the informant.

12. I have gone through the deposition of the doctor (P.W.-6). This witness has admitted that he has neither collected gun power nor found foreign element from the injury of the informant. He maintained his stand that the nature of the injury was simple. The appellant and informant are neighbours. I have also examined the record of the case and found that the appellant fired at the informant and while making attempt to repeat firing, P.W.-2 snatched Katta



from the appellant .

13. While examining the accused under section 313 of the Cr.P.C. the trial court has not confronted the appellant on adverse circumstances of depositions of the witnesses that he tried to repeat firing but his gun was snatched away by P.W.-2. The trial court, in fact, completed the formality in examining the accused and without confronting the materials which surfaced during trial and on that basis trial court convicted the appellant i.e. the accused Ram Equbal Rai fired and caused injury to the informant and thereafter when he attempted to repeat the firing his country made pistol was snatched by P.W.-2. However, the court asked different question i.e. P.W.-2 has taken away country-made pistol (katta) hidden by the appellant and as such the trial court committed error in not confronting the appellant with the materials with trial court used to convict the appellant.

14. Considering the totality of the fact that the trial court has not scrupulously followed the requirement of Section 313 of the Cr.P.C. and that neither x-ray plate was produced nor the doctor has found any gun powder or foreign element from the injuries of the informant and the nature of the injury found by the doctor was simple, as such the conviction under section 307 of the Indian Penal Code is not made out in this case.

15. In the totality of the facts situation, the court is of the view that the conviction of the appellant at the highest for causing



simple injury can be under section 323 of the Indian Penal Code. Accordingly, the conviction of the appellant is converted from section 307 of the I.P.C. to 323 of the I.P.C. and considering the fact that the incident is 1989 and during the intervening period, 28 long years has elapsed, the sentence of the appellant requires modification particularly in view of the fact that on the date of conviction i.e. 4.9.2002 the appellant was 53 years old. He has now become 68 years old. Accordingly, the judgment of conviction and order of sentence of the trial court is modified and the appellant is convicted under section 323 of the Indian Penal Code instead of 307 of the Indian Penal Code and as such considering the peculiar facts and circumstances of the case, sentence is reduced to period undergone.

16. Since the appellant is on bail, he is discharged from the liability of the bail bond.

The appeal is disposed of.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.11.2017
Transmission Date	30.11.2017

