

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.638 of 2002

Against the judgment of conviction and order of sentence dated 20.08.2002 passed in Sessions Trial No.451 of 1991 by Fast Track Court 4th, Bhojpur, Arrah.

Uma Shankar Singh, son of Gaya Prasad Singh, resident of village Purana
Haripur, P.S. Koilwar, District Bhojpur at Ara.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : None

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

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 09-11-2017

Challenging his conviction ordered by the Additional Sessions Judge-cum- Presiding Officer, Fast Track Court- 4, Ara, Bhojpur in Sessions Trial No.451 of 1991 vide judgment dated 20th August, 2002 convicting him to seven years rigorous imprisonment for an offence under Section 307 IPC and three years rigorous imprisonment for offence under Section 27 of the Arms Act with fine of Rs.2,000/-, this appeal has been filed by the appellant.

The case of the prosecution is that on 03.04.1989, the informant, P.W.2, Gaya Prasad Singh, registered the ferd beyan to Sub-Inspect of Police, Koelwar Police Station at Koelwar Hospital alleging that on 03.04.1989 while he was coming to his residence from Jamalpur Market after purchasing starter for a boring motor



along with P.W.1 Ganesh Singh on a motorcycle and when he reached a place near the house of Lalan Sah, which is adjacent to his house, the accused came in front of his motorcycle, stopped him and fired on him with a country-made pistol causing injury on his chest and right arm. Thereafter, it is said that the accused fled away. The informant was brought by P.W.1 Ganesh Singh to the hospital in question where he was treated and the medical report was granted. It was stated that the aforesaid incident was witnessed by various persons. Investigation was conducted and the prosecution was launched.

In the trial in question, P.W.1 Ganesh Singh was examined as an eye witness, P.W.2 was the informant, an injured person Gaya Prasad Singh himself, P.W.3 Prabhu Nath Singh was examined also as an eye witness, P.W.4 Dr. Satish Kr. Sinha was examined to prove the medical report and P.W.5 Munmun Lal was a formal witness to testify about the medical report. Based on the evidence that came on the record and the injury report, Ext.-2, the conviction has been ordered.

However, it is case of the appellant that the injury report, Ext.2 has not been proved. P.W.4 Dr.Satish Kr. Sinha categorically denied his signature on the injury report, Ext.2 and submits that the same has not been prepared by him. P.W.5 Munmun Lal who is



a witness to the injury report also submits that Dr. Satish Kr. Sinha, P.W.4 has not prepared the report. It is prepared by one Dr. S.K. Rungta. However, this doctor has not been examined.

It is further pointed out that the informant is the step uncle of the appellant. He has two wives, the first wife of the informant has three children and from the second wife also he has three children and P.W.2 Gaya Prasad Singh is the brother of the second wife and the present appellant has also certain relationship with the first wife as the result there are inimical family terms and therefore he is being falsely implicated.

Even though learned counsel for the State tried to argue that the prosecution has proved its case beyond reasonable doubt, I am of the considered view that if the entire evidence of P.W.1 Ganesh Singh, an eye witness, P.W.2 Gaya Prasad Singh, the informant and P.W.3 Prabhu Nath Singh is taken note of, they only testify about the appellant firing on the informant. However, the nature of injury caused by this firing is an important factor for punishing the appellant. It would be on the nature of the injury sustained and the gravity of the injury that would decide the nature of offence committed in the matter. Except for producing the injury report, Ext.2 and examining two witnesses in support of the injury report, namely P.W.4 Dr. Satish Kr. Sinha and P.W.5 Munmun Lal, there is



no evidence available with regard to the nature of the injury sustained by the informant, P.W.2 in the incident in question. P.W.4 Dr. Satish Kr. Sinha categorically denies the preparation of the injury report, Ext.2. It is his specific case that this injury report was never prepared by him and he does not have any role in examining the informant. That apart, P.W.5 Munmun Lal, who is a witness to preparation of the injury report Ext.2, submits that it has been prepared under the signature of one Dr. S. K. Rungta and surprisingly, this doctor, namely S. K. Rungta, is not produced by the prosecution, the nature of the injury sustained and the injury report Ext.-2 is not proved by the doctor, who conducted the medical examination of the informant. That apart, even the police officer to whom ferdbeyan Ext.1 was recorded, namely the Sub-Inspector of Police Station of Koelwar, the I.O. has not been examined and even recording of the ferdbeyan has not been proved in accordance to the requirement of law. These are vital lacuna in the case of the prosecution and in the absence of there being any evidence to indicate as to what was the nature of injury proved, the conviction of the appellant under the provision of Section 307 of the Indian Penal Code cannot be sustained. Therefore, this Court has no hesitation in allowing the appeal, setting aside the



conviction and acquitting the appellant. His bail bond be discharged and he be set free.

(Rajendra Menon, CJ)

Sunil/-

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