

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.264 of 2015

Arising Out of PS.Case No. -301 Year- 2013 Thana -MUZAFFARPUR TOWN District- MUZAFFARPUR

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PINTU SINGH @ RAJNISH SINGH, SON OF LATE UMESH SINGH
RESIDENT OF VILLAGE - YOGIA MATH, SARAIYAGANJ, P.S. NAGAR,
DISTRICT MUZAFFARPUR.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Chandra Mohan Jha, Adv.

Mr. Dhananjay Singh, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 27-07-2017

Appellant, Pintu Singh @ Rajnish Singh has been found guilty for an offence punishable under Section 307 of the IPC and sentence to undergo R.I. for ten years as well as to pay fine of rupees ten thousand and in default thereof, to undergo imprisonment for one months, additionally under Section 27 of the Arms Act whereunder sentenced to undergo R.I. for three years and to pay fine of Rs.3000, in default thereof, to undergo imprisonment of six month, additionally, with a further direction to run the sentences concurrently by the Additional Sessions Judge, IIIrd, Muzaffarpur in Sessions Trial No.29 of 2014 vide judgment of conviction dated 07-04-2015, order of sentence dated 09-04-2015.

2. Pratibha Gupta, PW.4 gave her fardbeyan on 17-06-2013 at about 04:30 PM alleging inter alia that her younger son Raj Kishore Gupta @ Raju runs a grocery shop under tenancy of Sital Gupta. At about 04:00 PM he was sitting inside ship after opening the



shop while she was in front of the shop, Pintu Singh, who happens to be her neighbour came at his shop and uttered whereupon, her son got up. During midst thereof, Pintu Singh took out loaded pistol and shot at. No sooner than, Pintu Singh pushed her whereupon she fell down and escaped therefrom. Sanjay Kumar Gupta came raising alarm that 'Pintua' has shot at Raju whereupon, her mohalla people assembled and lifted her son to hospital. It has also been disclosed that Pintu Singh happens to be criminal minded and used to show his power over the mohalla people. Usually, he took away goods from the shop and on demand of dues threatened.

3. On the basis of the aforesaid fardbeyan, Town P.S. Case No.301/2013 was registered followed with an investigation as well as submission of charge sheet after completing the same. After taking of cognizance, the case was committed, trial commenced and concluded in a manner, the subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. It has also been pleaded that on the alleged date and time of occurrence appellant/accused was at Patna participating in 'Shardh' of father, of his Fufa along with his brother Sachin Kumar, during stay he developed liver problem and for that he was examined by Dr. Gulam Ahmad Sami. It has also been pleaded that injured might have



sustained the injury at the hands of other criminals and for that, name of one Bittu Gupta has also been flashed at his end and further, it has also been suggested that he was arrested on the same day for the activity. Furthermore, it has also been pleaded that on account of prevailing animosity, he has been falsely implicated. In order to substantiate the same, also examined five DWs including Ext.A-the prescription having at the end of Dr. Gulam Ahmad Sami (DW.4).

5. The learned counsel for the appellant while challenging the judgment of conviction and sentence has submitted that prosecution utterly failed to substantiate its case on account thereof, the judgment impugned is fit to be set aside. In order to substantiate such plea, learned counsel for the appellant has submitted that injured has not examined and in likewise manner, his wife Mona, the FIR attesting witness. No explanation is there at the end of the prosecution on that very score. It has also been submitted that not even a single independent witness has been examined nor, there happens to be explanation at the end of the prosecution which has got primacy while appreciating the evidence of the witnesses. Because of the fact that P.O. happens to be a crowded place over main road and so, non-examination of independent witness is a circumstance which could be looked into in order to trace out false implication of the appellant as, appellant happens to be sole survivor in that mohalla dominated by the caste men of informant and so, they were bent upon to banish the informant therefrom and for that, he has been falsely



implicated in this case.

6. Furthermore, it has also been submitted that from the evidence of the Investigating Officer PW.8, it is evident that expert from FSL Laboratory have come to inspect the place of occurrence who have also been examined as PW.5, PW.6 and PW.7, who seized bloodstain from inside the shop but up till now, report is not on the record. Therefore, one could not infer that it was a human blood that too of injured.

7. It has further been submitted that during investigation, the Investigating Officer failed to locate and search out the firearm by which, allegedly appellant/ accused had fired upon the informant. So, cumulative effect of those infirmities clearly indicates that appellant has fallen victim of circumstance.

8. Side by side it has also been submitted that by examining DWs along with Ext.A, Prescription, the appellant had substantiated his plea of alibi and that being so, the learned lower court should have accepted the same and acquitted. As such, the learned lower court proceeded in illegal manner while recoding guilt against the appellant discarding the evidence of DWs, consequent thereupon, the same is fit to be set aside.

9. The learned Additional Public Prosecutor opposed the prayer and submitted that none of the witness would be said to be interested partisan witness because of the fact that although suggested



but appellant failed to bring on record that there was any kind of prevailing hostility in between before the occurrence. Once, plea of animosity is found completely washed away irrespective of the fact that animosity is a double edged sword, then in that circumstance, witnesses being the family members or associated therewith happen to be the natural witness and so, their evidences are bound to be accepted. Side by side it has also been submitted that on account of failure on the part of the appellant to bring on record the relevant materials with regard to his false implication, then in that circumstance there happens to be no motive to the prosecution to falsely implicate the appellant. On the other hand there happens to be consistent evidences of the eyewitnesses whereupon, the prosecution case should be held duly substantiated whereupon, the judgment impugned is fit to be confirmed.

10. In order to substantiate its case, prosecution had examined altogether ten PWs out of whom PW.1 is Sanjay Kumar Gupta, PW.2 is Amit Kumar @ Amit Gupta, PW.3 is Ravi Shankar Gupta, PW.4 is Pratibha Gupta, PW.5 is Bharat Bhushan Prasad, PW.6 is Nayan Ojha, PW.7 is Jitendra Kumar, PW.8 is Shailendra Kumar Singh, PW.9 is Anil Kumar Gupta and PW.10 is Dr. Ramesh Chandra Singh. Prosecution had also exhibited Ext.1 Series-Signature of respective witnesses over seizure list, fardbeyan, Ext.2-Fardbeyan, Ext.3-Seizure list relating to seizure of empty cartridge (Khokha), seized from inside the shop, marked-A for Identification, the



collected bloodstain simple and Ext.-4 is the injury report. On the other hand defence had also examined five DWs out of whom DW.1 is Sachin Kuamr, DW.2 Azaz, DW.3 is Renu singh, DW.4 is Dr. Gulam Ahmad Sami, DW.5 is Ashok Kumar Agrawal as well as also exhibited prescription issued by DW.4 as Ext.A.

11. From the evidence of PW.10, it is evident that he had examined the injured Raj Kishore Gupta @ Raju in 17.06.2013 at 04:10 PM and found following injuries over his person:

- i. Lacerated wound on left and anterior part of scalp 1½"x3" bone deep in antero posterior direction.
- ii. Lacerated wound in left posterior part of scalp 1"x½"x bone deep.

Age of injury - within one hour.

Cause of Injury – Gun Shot.

Nature of Injury – Opinion will be given after getting report from PMCH.

12. During his cross-examination, it is evident that he was not at all cross-examined over the nature of the injuries and the weapon used for causing the injury rather it has been with regard to the procedure adopted by the aforesaid doctor during course of preparation of the injury report which, after going through the same, is not at all found adverse to the finding recorded by the aforesaid doctor. That being so, it is evident that the injury which was found over the head of the injured was a gun shot injury and that just after examining the victim he was referred to PMCH. Final report relating



to the nature of the injury was not at all given as, no relevant document of any other hospital has been produced before him, though oral evidence discloses that injured was treated at Rajeshwar Nursing Home, Patna. Furthermore, there also happens to be disclosure at the end of the doctor that aforesaid injuries were caused within an hour which again gone unchallenged.

13. Now coming to remaining part of the evidence, first of all evidence of PW.4, informant is to be considered. During her examination-in-chief she had stated that occurrence is at about 04:00 PM on 17.06.2013. At that very time she was sitting outside shop of Raj Kishore Gupta @ Raju, her son. At that very time , Pintu Singh @ Rajnish Singh came at the grocery shop of her son and engaged in an altercation. Subsequently thereof, took out pistol and shot at her son Raj Kishore Gupta @ Raju causing injury over his head. Her son sustained injury and fell down in the shop itself. Pintu Singh @ Rajnish Singh, after pushing her escaped therefrom. So many mohalla people assembled and lifted her son to medical college for treatment and from there, he was referred to Patna where he was admitted at Rajeshwar Nursing Home. She had further stated that accused Pintu Singh @ Rajnish Singh happens to be of criminal mind and mohalla people are very much apprehensive. He used to take goods from shop of her son without any payment and for that, her son had advanced demand. She had further stated that after arrival of the police, she recorded her fardbeyan in presence of her daughter-in-law, Mona



Gupta (exhibited) identified the accused. During cross-examination, it is evident from para-5 that in her mohalla so many houses of her caste men happen to be while single house of appellant's caste (accused) happens to be. She had further stated that name of her father-in-law was Ragho Pratap while grandfather of accused Pintu Singh @ Rajnish Singh was Bhagwat Prasad. She denied the suggestion at the end of the appellant that there was litigation amongst them. In para-6 she had stated that none had disclosed regarding the occurrence to her rather she happens to be an eye witness to the occurrence. She further stated that she is not remembering whether accused had caught hold the pistol in his right hand or left had. At para-10 she had further stated that police had not recorded statement of her son Raj Kishore Gupta @ Raju. In para-13 she had further stated that Raj Kishore Gupta @ Raju fell down inside the shop after sustaining gun shot injury. Then had denied the suggestion that her son was not shot at by Pintu Singh @ Rajnish Singh rather others and for that, Bitu was apprehended by the town police. In the aforesaid background, all the members of the Gupta family hatched a conspiracy and got the appellant falsely implicated. From her evidence it is evident that defence had not cross-examined her on the question of manner of occurrence and so, that part remained intact. That means to say her credibility being an eye witness is found un-controverted, unchallenged.

14. The other eyewitness is PW.1, Sanjay Kumar Gupta,



PW.2, Amit Kumar Gupta, who categorically stated and supported the case of the prosecution identifying the appellant to be assailant of the victim, Raj Kishore Gupta @ Raju and again from their cross-examination, it is evident that defence had not tried to challenged the factum of occurrence, more particularly, the PW.1 anyway while testing PW.2, at para-10 he had categorically stated that I have seen Pintu Singh @ Rajnish Singh firing upon Raj Kishore Gupta @ Raju causing injury. He along with his brother rushed to apprehend but till then, after pushing mother of Raj Kishore Gupta @ Raju, he managed to escape. PW.3 is the brother of injured, who was inside the house and after hearing sound of firing came out and seen the accused running away with pistol in his hand being chased by mohalla people shaken at the end of accused, and in likewise manner is the evidence of PW.4. They are further consistent on the consequent event.

15. PW.5, PW.6 and PW.7 happens to be officials of FSL, Patna who as directed gone to Muzaffarpur on 17.06.2013 itself, reached at the place of occurrence, gone inside the shop collected bloodstain, sealed and handed over the Investigating Officer with a direction that it should be sent to the FSL for chemical examination. Nothing adverse is found having been during course of cross-examination at the end of the appellant. Learned counsel for the appellant has submitted that FSL report is not available on the record is not at all found sufficient to dent the prosecution case because of the fact that witnesses are consistent over the place of occurrence



apart from the fact that PW.4, informant at para-14 has been suggested that Bittu along with his associates had shot at Raj Kishore Gupta @ Raju. Furthermore, from the evidence of PW.8, the Investigating Officer, it is evident that when he visited place of occurrence on the same day he found sufficient blood spread over on floor inside the shop and such finding, as is evident from evidence of PW.8 has not been challenged.

16. PW.9 is the witness who had gone hostile. Though had endorsed his presence over the seizure list.

17. Appellant during course of his statement under Section 313 of the Cr.P.C. had stated that on the alleged date and time of occurrence he was at Patna. The basic principle with regard to acceptance of alibi is that presence of a culprit should be at such place in such manner that there would not be possibility of his presence at the place of occurrence. It is needless to say that court on that very score could take judicial notice regarding the communication available, the distance in between. Apart from this, on the score of alibi two witnesses that means to say DW.1 brother of appellant and DW.3-Fuwa of appellant has come forward to depose orally. The occasion as has been shown over death of father-in-law of DW.3. So, it was incumbent upon the defence at least the appellant to have substantiated the funeral whether it was at native home or at Patna within corporation area and if so, there would have been a



certificate having been issued by the municipal corporation with regard to funeral of father-in-law of DW.3 on 16.06.2013. Appellant was very much knowing since before the deficiencies and so, got Ext.A, prescription issued by DW.4-Dr. Gulam Ahmad Sami. Ext.A has been gone through and after going through the same, it is evident that manner in which it has been prepared, suggest a lot. Ailment of liver is not a one day event and in likewise manner simply noting down will not be suffice unless and until there happens to be proper diagnosis on that very score. Ext.A completely lacks the same. The DW.4, during course of his evidence had not stated what kind of ailment appellant was suffering. In the aforesaid facts and circumstances, the plea of alibi is not at all found substantiated in the eye of law and so, is hereby rejected. So far remaining witnesses are concerned that means to say DW.2 as well as DW.5 they are of no use.

18. With regard to proper identification of application of Section 307 of the IPC, from plain reading of the Section it is evident that any sort of activity having at the end of an accused with an intention or knowledge that his activity would ultimately result death of the victim, then in that event, Section 307 would be applicable, irrespective of the fact that injury has been caused or not. Injury is not at all *sine qua non* for attracting Section 307 of the IPC. Injury is identifiable only for the purpose of sentence and that too, in terms of hurt. Hurt is identified under Section 319 Cr.P.C. which did not



attract nature of injury, as those are consideration of other provisions of the penal law.

19. In State of *Madhya Pradesh v. Mohan* as reported in (2013) 14 SCC 116, it has been held as follows:-

“13. High Court, in our view, while reducing the sentence, has not properly appreciated the scope of Section 307, IPC under which the respondents were found guilty. The relevant portion of Section 307 reads as follows:

“307. Attempt to murder- Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

14. High Court was of opinion that injuries has not been caused on vital parts of the body. In order to attract Section 307, the injury need not be on the vital parts of the body. In order to attract Section 307, causing of hurt is sufficient. If anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract life imprisonment. Section 307 uses the word ‘hurt’ which has been explained in Section 319, IPC and not “grievous hurt” within the meaning of Section 320, IPC. Therefore, in order to attract Section 307, the injury need not be on the vital part of the body. A gun shot, as in the present case, may miss the vital part of the body, may result in a lacerated wound, that itself is sufficient to attract Section 307. High Court is, therefore, in error in reducing the sentence, holding that the injury was not on the vital part of the body. Period undergone by way of sentence also in our view is not commensurate with the guilt established.”



20. After giving anxious consideration of the facts and circumstances of the case, it is evident that prosecution has succeeded in proving its case and so, the conviction and having recorded at the end of the learned lower court is found legal one. So far sentence is concerned, the manner whereunder victim was assaulted and further, as per para-27 of the judgment impugned, it is evident that on account of aforesaid injuries the life of injured has become hell as has suffered from paralysis unable to move, unable to speak which the court found after appearance of victim for evidence and on that very score, the sentence having been inflicted by the learned lower court is also found to be proper, just and legal. Consequent thereupon, the instant appeal lacks merit and is accordingly dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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