

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.655 of 2002

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Udai Singh, Son of Late Shyam Bihari Singh, resident of village- Tarba, P.S.
Phulwari Sharif, District- Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Binit Kumar, Adv. Mrs. Sandhya Kumari, Adv.
For the Respondent/s	:	Mr. Z. Hoda, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 09-11-2017

The sole appellant calls in question his conviction and sentence imposed vide order dated 25th of November, 2002, passed by learned Additional Sessions Judge, F.T.C.2, Patna in Sessions Trial No.358/92/264/2001, whereby the appellant herein has been convicted for the offence under Sections 307 and 324 of I.P.C. and 27 of the Arms Act and sentenced to 3 years' R.I., one year's R.I. and 3 years' R.I. for each offence respectively.

It is the case of the prosecution that on 21.3.1991, at about 8:30 p.m., the informant, P.W.3 Abhay Kumar Singh, was sitting on the Veranda of his house when accused Uday Singh came there with a double barrel gun along with co-accused Sudhir Singh and at the instance of Sudhir Singh fired on the informant which



hit on his right arm and then again fired which hit on his left thigh. On this, his wife, P.W.5, is said to have come and he was taken to the hospital, namely, P.M.C.H., Patna, where Dr. B. Mukhopadhyay treated him. Based on the aforesaid, the fardbeyan was recorded, investigation was conducted and thereafter the prosecution launched and based on the evidence that has come on record the conviction has been ordered.

Learned counsel appearing for the appellant argues that, in all, five witnesses were examined by the prosecution. They were; P.W.1 Tuntun Singh, P.W.2 Tilakdhari Paswan and P.W.4 Ashok Kumar Singh. All these three witnesses have turned hostile and have not supported the case of the prosecution. That leaves the sole testimony of the informant, P.W.3 and his wife Kiran Kumari, P.W.5, who are interested witnesses and P.W.5 does admit in his cross-examination about the family disputes between the parties. However, learned Counsel argues that for proving the injury sustained by the informant, P.W.3, neither is the doctor, who treated him, examined nor the I.O. has been examined and even the injury report and the medical evidence has not come on record. It is argued that in the absence of there being any evidence to show what is the nature of injury sustained, conviction for the offences under Sections 307 and 324 of I.P.C. is not at all permissible.



Having heard learned counsel for the parties and on going through the record, the facts as are narrated by the appellant is found to be absolutely correct. Apart from the fact that the independent eye-witness to the incident, namely, P.W.1 Tuntun Singh, P.W.2 Tilakdhari Paswan and P.W.4 Ashok Kumar Singh have denied happening of the incident or seeing it. The fardbeyan indicates that the informant was treated in P.M.C.H. and it is one Dr. B. Mukhopadhyay who had treated him. Surprisingly, neither is the statement of Dr. B. Mukhopadhyay as a witness nor is the injury report available on record by way of evidence to substantiate as to what is the nature of injuries caused, how it was caused, in which part it was caused and how offences under Sections 307 or 324 of I.P.C. are made out. Except for the oral testimony of the informant, P.W.3, and his wife, P.W.5, even the I.O. of the case has not been examined and he has not indicated as to how he had investigated the matter and what is the material collected by him during the investigation.

In view of the aforesaid, the prosecution having miserably failed to prove the guilt of the accused beyond reasonable doubt, it is a fit case where the appeal should be allowed and the appellant acquitted of the charges.



Accordingly, appeal is allowed. The impugned order of conviction and sentence is quashed and the appellant is acquitted of the charges. He is on bail. He is discharged of the liability of bail-bonds.

(Rajendra Menon, CJ)

K.C.Jha/-

AFR/NAFR	NAFR
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