

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.578 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- BHAGALPUR

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1. Ajay Kumar Das son of Ganesh Das
2. Ashok Kumar Das, son of Late Sukhdeo Das
Both residents of Mukharia, P.S.-Jagdishpur, District-Bhagalpur
.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi(Amicus Curiae)

For the State : Mr. S. Ahmad, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date: 14-10-2017

Challenging his conviction in Sessions Trial No.
734/92/53/02 for an offence under Section 337 of the Indian Penal
Code and granting them the benefit of probation under Section 4 of
the Probation of Offenders Act, directing for their release after
convicting them for the offence under Sections 307/34 of the Indian
Penal Code and Section 27 of the Arms Act, this appeal has been filed
by the appellants.

In short, the story of the prosecution is that on
10.03.1992 at about 9:00 P.M when the informant PW 3 Zira Devi
along with her husband P.W. 2 Ram Das were watching a *Barat*
which had come to the village, the accused persons Ajay Kumar Das
and Ashok Kumar Das were also present. They were standing nearby



and all of a sudden, appellant Ajay Kumar Das took out a pistol and fired which hit on the right side below the eye of the informant. She was rushed to the hospital for treatment and on the complaint made the appellants have been prosecuted.

The prosecution examined witnesses in support of the claim. They were P.W. 1 Ambica, nephew of the informant who speaks about the incidence taking place when the *Barat* was coming. P.W. 2 Ram Das is the husband of the informant and PW 3 Zira Devi is the informant herself. That apart, only the other witness examined is P.W. 4, Goku Singh, the I.O. of the case.

Learned Trial Court, accepting the oral testimony of the three witnesses i.e. P.W.s 1, 2 and 3, without there being any medical evidence available on record, has ordered the conviction of the appellants under Section 307 of the Indian Penal Code. Surprisingly, the doctor who had examined the injured informant and who had given the medical report which was relied upon by the Trial Court, was never examined. Exhibit-1 is the so called medical report submitted by the Doctor and even without doctor entering witness box and the medical report Exhibit-1 is held proved, the same has been relied upon by the learned Court for convicting the appellants. Exhibit-1 is available on record and it is a slip in a plain paper issued under the signature of somebody on 10th of



March, 1992, wherein, the name of the doctor who has issued the slip or his seal are not affixed in the document. The document indicating name of the informant, her husband's name and the injury is said to be as "allegedly a fire arm injury" and the wound indicated is a skin deep wound $\frac{1}{4}$ " x $\frac{1}{4}$ ". Even the place where the injury has been caused, i.e. eye or which part of the body is not indicated. On the contrary, it is the defence of the appellants that while watching Barat, the fire crackers hit the informant and she sustained injuries. It is a case of false implication.

From the evidence that has come on record, the story put forth by the informant seems to be totally untenable. If apart from the fact that the injury is said to have been caused by the appellant Ajay Kumar Das by use of his gun, it is surprising that gun shot injury hits the eye of the informant and the only injury is skin deep, small injury. No other witness except the family members speaks about any such happening in the *Barat* and adding to all these, the fact about non-examination of the doctor is clearly unsustainable and vitiate the case of the prosecution. It is a case where the prosecution has miserably failed to prove the allegation and therefore this Court has no hesitation in allowing the appeal and direct for release of the appellants.

Accordingly, the appeal is allowed. The



judgment of conviction and order of sentence dated 24.09.2002 passed by the learned Additional District & Sessions Judge, Fast Track Court, Bhagalpur in Sessions Trial No. 734/92/53/2002 is set aside. The appellants are on bail, hence, they are discharged from the liability of the bail bonds.

(Rajendra Menon, CJ)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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