

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.317 of 2017

Arising Out of PS.Case No. -33 Year- 1994 Thana -PATNA CITY CHOWK District- PATNA

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Umesh Singh son of Late Chanarik Singh, Resident of Village- Marchi,
P.S.- Chowk (Now Bye- Pass), District- Patna.

.... Appellant

Versus

1. The State of Bihar.
2. Ramdin Singh, Son of Late Ram Chandra Singh.
3. Ramji Singh, Son of Late Ram Chandra Singh.
4. Mukut Singh @ Kamal Kishore Singh, Son of Ramdin Singh.
5. Shivaji Singh, Son of Ramdin Singh.
6. Arjun Singh, Son of Ramdin Singh.
7. Tuntun @ Rao Birendra Singh, Son of Ram Dewan Singh.
8. Bhim Singh, Son of Ram Dewan Singh.
9. Om Prakash Singh, Son of Late Baliram Singh.
10. Dilip Singh, Son of Ramji Singh.

All Nos. 2 to 10 are residents of Village- Marchi, P.S.- Chowk (now
Bye- Pass), District- Patna.

.... Accused/Respondents

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Appearance :

For the Appellant/s : Mr.Pankaj Kumar Sinha, Adv.
Mr, Amitesh Kumar, Adv.
For the Respondent/s : Mr. A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

6 30-06-2017 Heard Sri Pankaj Kumar Sinha, learned counsel,

assisted by Sri Amitesh Kumar, learned counsel for the

appellant/informant and learned Addl. Public Prosecutor.

2. The present appeal has been filed against the

Judgment of acquittal dated 29.10.2016 passed by Sri Manoj

Kumar, learned Addl. Sessions Judge-VII, Patna City in Sessions

Trial No.598 /96. Along with the appeal, the appellant has also



filed a petition under Section 378(3) of the Code of Criminal Procedure, 1973, vide I.A.No.1310 of 2017 for grant of leave.

3. Short fact of the case is that on the basis of the fardbeyan of the appellant, who was examined as P.W.4, an F.I.R. was lodged vide Chowk P.S. Case No.33/94. It was case of the informant that while he along with his brother (deceased) was going to court, they were intercepted by eleven accused persons, which includes respondent nos. 2 to 10. In the occurrence, it was alleged that respondent no.4 fired from his gun, which hit the right knee of brother Tuntun Singh@ Satish Kumar. In the fardbeyan, he disclosed that from back he had witnessed the occurrence. In the fardbeyan, nothing was indicated as to whether he was also assaulted or not. After registering F.I.R. the case was investigated and on 13.06.1994 chargesheet was submitted under Sections 148, 149, 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959 against eleven accused persons. However, during trial two accused persons died and, as such, their names were expunged from the record. During trial, to prove the case, ten witnesses were examined as prosecution witness, out of whom the appellant has come forward as sole eye witness and examined as P.W.4. During trial, the doctor, namely, Dr.S.K. Mallik who had initially examined the injury of the deceased, was examined as P.W.10,



whereas Dr. N.K.Singh, who had conducted autopsy on the dead body of the deceased, was examined as P.W.8. Other witnesses, though, were not eye witnesses, they have stated regarding the occurrence.

4. Sharfia Devi (P.W.1), mother of the deceased in her examination before the trial court had said that while her two sons, namely, Satish and Umesh were going to court, they were intercepted by accused persons and accused persons gave fire-arm injury on right leg and also assaulted the victim by back of gun(*kunda*), *lathi* and *paina*. She has categorically stated that after getting information, she visited P.M.C.H. and saw her injured son. Since in the present case, the appellant (P.W.4) was sole eye witness, the learned trial judge has indicated that firstly he had found that witnesses had not disclosed true fact of the case. However, during cross-examination, witnesses accepted that there was case and counter case in between the parties. It is also not in dispute that first F.I.R. was lodged from accused/respondents side of the case, which was numbered as Chowk P.S. Case No.32/94 registered for the offence under Section 307 of the Indian Penal Code and Section 27 of the Arms Act. The learned trial judge has noticed that there was vital contradiction in the deposition of P.W.4 as well as in his disclosure in the fardbeyan regarding place



of occurrence. Besides this, in the fardbeyan, P.W.4 has stated that he had seen the occurrence, but he has not stated as to whether he was assaulted or not. In his deposition, before the court, he developed a story that he was also assaulted by accused persons. The learned trial judge has noticed that the doctor had not found any fire-arm injury on the person of deceased. Learned trial judge has noticed that the informant (P.W.4) had not given true picture during trial and he has suppressed the fact that after getting injury the victim was firstly carried to Guru Govind Singh Hospital and, thereafter, he was carried to Patna Medical College & Hospital. In the deposition before the trial court, P.W.4 has stated that from P.M.C.H., the victim was carried to private Nursing Home and finally he was again shifted to N.M.C.H. and he was admitted in the Tetanus Ward, where he died on 10.03.1994, whereas the occurrence had taken place on 01.03.1994. Accordingly, the learned trial judge has raised serious doubt on the veracity of evidence of P.W.4. The learned trial judge has also noticed that the doctor, who had firstly examined injury of the victim, had not stated in affirmative that the victim had received fire-arm injury, but he had stated that the victim himself had said that he had received firm-arm injury. Even P.W.8, who had conducted postmortem examination on the dead body of the deceased, had



not found any fire-arm injury or any blackening near the injury.
Only lacerated wound was found.

5. Considering the fact that there was contradiction in the deposition of only eye witness (P.W.4), none finding of fire-arm injury by P.W.10 , who had examined the injury as well as no mark of fire-arm injury in the postmortem examination held by P.W.8, the learned trial judge has rightly given benefit of doubt to all accused persons and acquitted them.

6. Learned trial Judge has discussed the evidence in detail and also examined the material available on record. Considering the detailed reason assigned by the trial judge, whereby respondent nos. 2 to 10 have been acquitted, the Court is of the opinion that there is no need to grant leave to appeal.

7. Accordingly, leave petition i.e. I.A. No.1310 of 2017 filed under Section 378(3) of the Code of Criminal Procedure is dismissed and simultaneously the appeal against acquittal stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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