

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.323 of 2014

Arising Out of PS.Case No. -65 Year- 1997 Thana -KURTHA District- JEHANABAD

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1. Raja Ram Son of Late Kameshwar Ram resident of village- Dhibari Rampur,
Police Station- Shakurabad, District- Jehanabad

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Gauranga Chatterjee, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A.V. JUDGMENT

Date: -08-2017

This appeal is directed against the judgment dated 19.05.2014 and order of sentence dated 21.05.2014 passed by Sri Panchanan Sharma, District and Sessions Judge, Jehanabad in Session Trial No. 461 of 2012 by which he has convicted the appellant under section 307 of the Indian Penal Code and under Section 27 of the Arms Act and sentenced him to undergo rigorous imprisonment for ten years under Section 307 of Indian Penal Code and a fine of Rs. 5,000 and in default of the payment of fine, further simple imprisonment of three months and further sentenced him to undergo rigorous imprisonment of three years under Section 27 of the Arms Act and acquitted the co-accused Om Prakash from all the charges.

2. Prosecution case, in brief, based on the fardbeyan of the



informant (P.W.3) is that on 18.04.1997, the informant was returning to his house at 11.30 PM from his khalihan after chaita. When he reached near the house of Dinesh, he saw accused Raja Ram, Shyam Nandan Yadav and Sunil sitting over there. The informant along with Ram Babu, Dinesh and Vinod Kanu was going, the appellant asked about the registration/ sale of seven kathas land that he purchased on 17.04.1997, as the accused was also interested in the said property. Thereafter, they encircled the informant and accused Raja Ram fired from his pistol which hit the chest of the informant and he fell unconscious. The informant found himself at P.M.C.H. when he gained consciousness where he was being treated.

3. On the basis of fardbeyan of the informant, Kurtha P.S. Case No. 65 of 1997 was instituted under Section 341, 307 and 504/34 of Indian Penal Code and Section 27 of the Arms Act against accused Raja Ram, Sunil and Shyam Nandan and investigation started. The Investigation Officer submitted charge sheet against Om Prakash under Section 307 of Indian Penal Code and Section 27 of Arms Act and found the accused Raja Ram, Sunil and Shyam Nandan as innocent.

4. The Chief Judicial Magistrate, however, disagreed with the Investigation Officer and took cognizance on 24.08.2001 against all



the accused persons including the appellant under Section 307 Indian Penal Code and Section 27 of the Arms Act and the case was committed to the court of session. However, the case against the accused Sunil and Shyam Nandan was dropped on 24.06.2002 due to their death.

5. The charges against the appellant and one co-accused were framed on 31.08.2005 under Section 307 of the Indian Penal Code and Section 27 of the Arms Act. Appellant pleaded not guilty.

6. Defence of the appellant as per the statement made under Section 313 Cr. P. C. is that he is not guilty and the informant was hurt due to the mistake of Om Prakash and that the informant is relative of Om prakash, therefore, in order to save Om Prakash, the informant has shifted the allegation on the appellant.

7. During trial altogether eleven witnesses have been examined on behalf of prosecution, they are P.W.1. Ram Babu Ram, P.W.2. Dineshwar Prasad, P.W.3 Ramesh Kumar(informat), P.W.4 Surendra Thakur, P.W.5 Manikchand Pandey, P.W.6 Dhananjay Pandey, P.W.7 Mahendra Prasad, P.W.8 Panna Lal Ram, P.W.9 Jageshwar Ram, P.W.10 Baijnath Singh, P.W.11 Dr. Uday Kant (doctor that examined the informant).

8. Apart from the above, following documents have been admitted



as exhibits in this case, they are Ext.1- signature of informant Ramesh Kumar on Fardbeyan, Ext. 1/1- signature of Umesh Kumar on Fardbeyan, Ext. 2- Injury Report of the informant, Ext. 3- Sale deed dated 17.04.1997 by Baikunth Singh in favour of father of informant, Nandan Ram.

9. On behalf of defence neither any ocular evidence has been advanced nor any documents have been brought on record.

10. After conclusion of trial, the learned trial court has convicted the appellant under Section 307, IPC and Section 27, Arms Act and sentenced him for RI of ten years and Rs. 5,000 fine and acquitted co-accused Om Prakash from all the charges.

11. Being aggrieved by the aforesaid judgment and order, the present appeal has been preferred by the sole appellant on various grounds.

12. On perusal of oral evidence adduced on behalf of the prosecution, it appears that the prosecution evidence are of three different nature: (i) P.W. 1, P.W.2 and P.W.3 (injured), claims to be eye witness of the incident and their evidence discloses about firing by the appellant Raja Ram (ii) P.W. 5, P.W. 9 and P.W. 10 also claims to be eye witness and their evidence suggest firing by co-accused Om Prakash (iii) P.W. 4, P.W. 6, P.W. 7 and P.W. 8, though supporting



the case of prosecution but not stated as to who fired on the injured (P.W. 3).

13. P.W. 3 (informant) is the victim in the case and has stated in-chief that while returning to his home alongwith Ram Babu and Dinesh Kumar after chaita, he was stopped by the appellant and others and thereafter the appellant - Raja Ram fired at him from his pistol which hit his chest and he fell on the ground and became unconscious. When he regained consciousness after 16-17 days, he found himself at PMCH where he was being treated. His evidence also discloses that appellant was annoyed as he has purchased one plot of land, on which the informant was also interested in purchasing. Even in his cross-examination, there is nothing in his evidence to doubt the above testimony rather his evidence found corroboration from F.I.R. His cross examination also shows that neither he tried to escape after seeing pistol nor he tried to catch the accused. This witness has denied the suggestion of the defence that the bullet was fired by Om Prakash by mistake.

14. P. W. 1, Ram Babu is named witness in the F.I.R. He claims to be an eye witness of the incident and has supported the prosecution case in its entirety and has stated the exact same set of events as elaborated by the informant. His evidence discussed that while



returning from chaita, accused Raja Ram, Shyam Nandan and Sunil were sitting near Dinesh Prasad's house and when they reached there, the accused Raja Ram fired a bullet from his pistol at the informant which hit his chest and he fell down and became unconscious. His evidence also discloses that appellant Raja Ram told that he fired by mistake. He further stated that the incident took place due to the issue of property registration by the informant, for which appellant was also interested. In his cross- examination, he stated that he did not see Om Prakash at the place of incident and has denied any role of Om Prakash in the said incident. He has further stated that they did not go to the police station as they rushed to the hospital.

15. P. W. 2 Dineshwar Prasad, a named witness in the evidence of the informant and also claims to be an eye witness. He, while affirming the date and time of the incident has stated that while returning from chaita, he saw Sunil Kumar standing after 10 footstep when accused Raja Ram fired at the informant. Thereafter which Raja Ram ran away and the informant was taken to the hospital. he has stated in-chief that he cannot explain the reason behind the incident. In his cross- examination, he has stated that there is no role of Om Prakash in the said incident. His evidence also discloses, as to why the appellant fired on Ramesh, he could not say.



16. The aforesaid evidence of P.W. 1, 2 and 3 supports the earliest version as mentioned in the fardbeyan relating to the firing done by accused Raja Ram.

17. Apart from that, P.W. 4 has only stated in his evidence that he has heard that the informant was hit by a bullet, however he has not heard who has fired the bullet, thereafter, he has been declared hostile by the prosecution.

18. P. W. 5 Manikachand Pandey has also stated that he saw Ram Babu, Dinesh Kumar and informant Ramesh talking. He has also stated that Om Prakash had gun in his hand. Thereafter, he heard a sound and saw the informant lying on the ground but he has no idea as to who fired the bullet.

19. P. W. 6 has also stated that he saw Ram Babu, Dineshwar Singh and Ramesh together and they were talking to each other but there was nothing in their hands. He heard a bullet being fired and the informant fell down, however he did not see who fired the bullet.

20. P. W. 7 Mahendra Prasad and P. W. 8 Pannalal Ram has stated in their evidence that they came after hearing the firing of bullet and saw that the bullet hit informant, however did not see the person firing the bullet.



21. P. W. 9 has stated in his evidence that while he along with two-three other people were returning from chaita, he heard the firing of a bullet which hit the informant. He has stated that the bullet was fired by Om Prakash by mistake. In his cross-examination, he has stated that there is no fault of accused Raja Ram as he did not have pistol. He has further stated that since the informant has asked for Rs. 10,000 for medication, the accused Raja Ram and his brother was falsely implicated in the present case, Since, Om Prakash provided the money for medication therefore the informant has not alleged anything against him. In his cross-examination, he has further stated that he was already there at the place of incident and did not come on hearing the sound of the bullet.

22. P. W. 10 has stated in his evidence that at around 11 pm, Om Prakash, Dinesh, Ramesh were returning home when the pistol carried by Om Prakash was mistakenly fired and hit informant, thereafter which the informant was taken to the hospital.

23. P. W. 11 is the Doctor, who has examined the informant and has stated in his evidence that the informant was referred from Sadar Hospital and on 19.04.1997, operation of the informant was carried out. His evidence further disclosed that there was entry wound 1 ½ x ½ x cavity deep in epigastric region below xiphisternum. Even in his



cross-examination, he has stated that he found the foreign body inside the abdomen of the victim in the form of bullet.

24. As stated above, the learned trial court relying upon the evidence of P. W.3 (informant and victim) corroborated by other evidences has convicted the appellant under Section 307, IPC and Section 27, Arms Act.

25. Learned counsel for the appellant has assailed the judgment mainly on the ground that there is delay of eighteen days in lodging the F.I.R and for that no plausible explanation has been offered by the prosecution coupled with the fact that Investigating Officer has not been examined in this case and the Hon'ble Apex Court in a catena of decisions has held that delay in lodging F.I.R, gives a chance of manipulation and false implication, which goes to create doubt about the veracity of prosecution story. He has also assailed the conviction of appellant on the ground that in this case there are two sets of evidence, in one set of evidence, there is story of firing against the appellant whereas in the another set of evidence, there is story of firing by other co-accused person, namely, Om Prakash and I.O. has also submitted charge-sheet against the said Om Prakash, in such a situation non-examination of Investigation Officer in this case has caused serious prejudice to the appellant. Further submission is that



even for the sake of argument, if it is accepted that appellant has fired on the informant – Ramesh Kumar (P.W. 3), the evidence of P.W. 1, shows that the said firing was accidental and there was no motive of the appellant to kill the informant. Further in this case, police after investigation had submitted final form and as the Investigating Officer has not been examined, the defence has not got a chance to cross-examine him on the contradictions in the evidence of witnesses as well as on the point of recovery of pistol and empty cartridge from the place of occurrence, however, the learned Trial Court without taking into consideration all these vital circumstances, has convicted the appellant under Section 307 Indian Penal Code and 27 of the Arms Act, which is not sustainable in the eye of law and if allowed to continue, the same would result in travesty of justice.

26. On the other hand, learned counsel for the State has counter the submission of learned counsel for the appellant and submitted that the evidence of injured P.W. 3, clearly shows that it is the appellant – Raja Ram, who fired causing grievous injury to him and the said fact has been corroborated by the evidence of Doctor as well as by the injury report (ext. 2) and also got corroboration from evidence of P.W. 1 & 2. No doubt, there is other set of evidence



also, showing allegation against the co-accused Om Prakash of firing but the evidence of injured is always considered to be on higher footing, which has also been corroborated by other evidence, hence, conviction of appellant under Section 307 and 27 of the Arms Act, is just and proper.

27. Considering the submissions of the above parties, let me examine the evidence adduced on behalf of the prosecution to find out as to whether the judgment of conviction and order of sentence requires any interference by this Court.

28. As discussed above, in this case the evidence of prosecution witnesses are on three different lines. Firstly, PW3 who is injured in this case has named the appellant as the assailant and whose evidence is corroborated by the evidence of doctor P.W. 8 as well as evidence of P.W. 1 & 2, who are FIR named witness and in spite of cross-examination, their evidence remained impeccable. Though evidence of P.W. 1 shows that the appellant, on being asked by him has stated that firing was accidental. Motive behind the occurrence as per evidence of P.W. 3 is that appellant was annoyed with P.W. 3 as he has purchased the plot of land in which appellant was interested. Evidence of P.W. 3 also shows that appellant has told P.W. 3 "*Ruko, main tumhe batata hun*". However, neither P.W. 1 nor P.W. 2 has



stated so in their evidence rather the evidence of P.W. 1 shows that appellant has not stated anything prior to firing. On the other hand, P.W. 5 has stated that co-accused Om Prakash was carrying gun and P.W. 9 & 10 has stated that firing was made by co-accused Om Prakash but their evidence shows that it was accidental. Submission of Learned Counsel for prosecution is that P.W. 9 is the brother of appellant as such he is an interested person. P.W. 9 has been examined as prosecution witness and he has not been declared hostile by prosecution. His evidence further goes to show that there is no fault of accused Raja Ram and he was not carrying pistol. However, as informant has demanded Rs. 10,000 from him for medical expenses but appellant could not provide the same whereas accused Om Prakash has provided the same, as such he has been falsely implicated in the present case.

29. So far evidence of P.W. 4, 6, 7 & 8 are concerned, though they have supported the occurrence but has not stated as to who fired on the injured.

30. As discussed above, in the present case, charge sheet has been submitted against co-accused Om Prakash and the appellant and two other co-accused has not been sent up for trial. However, cognizance has been taken against all the accused including the appellant and Om



Prakash. Later on, as two accused persons died, the proceedings against them were dropped.

31. In the above background, none examination of IO caused prejudice to the appellant as had he been examined in this case, appellant would have got a chance to cross-examine about the recovery of arms and empty cartridges as the evidence of PW 5, 9 & 10 suggest firing by Om Prakash.

32. I am aware of the fact that evidence of injured is always considered on high pedestal than that of other witnesses as his presence cannot be doubted at the place of occurrence and especially when his evidence has got corroboration from the evidence of the doctor, injury report as well as the evidence of PW 1 & 2.

33. Learned Counsel for Defence has vehemently argued that considering the contradictory evidence of prosecution witness, the delay in lodging FIR has made the prosecution evidence suspicious and unbelievable and the Hon'ble Supreme Court has held in catena of decisions that delay in lodging FIR gives a chance to prosecution for manipulation and exaggeration and false implication. Apart from that, it has also been argued that though injured claim himself to be unconscious and as such there was delay in lodging FIR but at the same time, there is evidence available that P.W. 1 & 2 were present at



that time but neither they nor the family members has taken any steps for lodging the case that creates a shade of doubt about the prosecution case.

34. So far delay is concerned, no doubt there is delay of 18 days in lodging FIR and from perusal of FIR, it appears that Fardbeyan was recorded on 06.05.1997 with respect to occurrence of 18.04.1997 by A.S.I. Basudev Ojha of Pirbahore Police Station of Patna District and same was dispatched to Kurtha Police Station on 02.06.1997 and as such FIR was registered on 02.06.1997 and the same was communicated. Further, the FIR was sent to the A.C.J.M. on 03.06.1997, Surprisingly enough, the FIR as well as Fardbeyan has not been brought on record as exhibit. However, injured is the informant and he has stated about the occurrence in his statement and stated about the details of the incident as mentioned in the Fardbeyan. Evidence of P.W. 3 also shows that he became unconscious and regained consciousness at PMCH but his evidence does not show as to when he regained consciousness. Further, evidence of doctor PW11 also does not show that P.W. 3 was brought in unconscious condition and as to when he regained consciousness. Even the injury report does not disclose the fact as to when he regained consciousness and further injury report (Ext. 2) shows that the same was prepared on 14.11.1997 i.e. after almost six months of the treatment and it further shows that



the patient was referred by Sadar Hospital, Jehanabad on 19.04.1997 and no doctor has been examined from Sadar Hospital, Jehanabad. Hence, the claim of PW3 that he was unconscious as such he could not lodge FIR is not free from reasonable doubt. Secondly, as stated above that though P.W. 1 & 2 claims to accompany injured to hospital but no step has been taken by them for lodging FIR and thirdly, in spite of injured having gun shot injury, there is nothing available on record to show that any requisition was sent by the doctor on duty.

35. Along with the above circumstances, the delay of 18 days in lodging FIR and Hon'ble Supreme Court in case of *Rajeevan & Anr. v. State of Kerala* reported in [(2003)3 SCC 355] after considering several decisions on this point in para 12, 13 and 14 which are as follows:

" 12. Another doubtful factor is the delayed lodging of FIR. The learned counsel for the appellants highlights this factor. Here it is worthwhile to refer *Thulika Kali v. State of Tamilnadu.* , wherein the delayed filing of FIR and its consequences are discussed. At Para 12 this Court says -

"...First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to



the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed the names of the actual culprits and the part played by them as well as the names of eye-witness present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets benefit of the advantage of spontaneity danger creeps in of the introduction of colored version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging the first information report should be satisfactorily explained."

13. This is the position consistently followed by this Court in [Maharaj Singh v. State of U.P.](#) , and recently in [Thanedar Singh v. State of MP.](#) .

14. As feared by the learned counsel for the appellants, the possibility of subsequent implication of the appellants as a result of afterthought, may be due to political bitterness, cannot be ruled out. This fact is further buttressed by the delayed placing of FIR before the Magistrate, non-satisfactory explanation given by the Police Officer regarding the blank sheets in the Ex. P30 counter foil of the FIR and also by the closely written bottom part of Ex.P1 statement by PW 1. All these factual circumstances read with the aforementioned decisions of this Court lead to the conclusion that it is not safe to rely upon the FIR in the instant case. The delay of 12 hours in filing FIR in the instant case irrespective of the fact the Police Station is situated only at a distance of 100 meters from the spot of incident is another factor sufficient to doubt the genuineness of FIR. Moreover, the Prosecution did not



satisfactorily explain the delayed lodging of FIR with the Magistrate.

36. Hence considering the entire discussions made above, it appears that prosecution has failed to prove its case against the appellant beyond reasonable doubt. Hence, it is not safe to convict them.

37. As such appellant is entitled for benefit of doubt. Accordingly, this appeal is allowed and conviction and sentence of appellant u/s 307 IPC and Sec 27 of the Arms Act is hereby set aside.

38. As the appellant is in judicial custody, he is directed to be released forthwith, if not required in connection with any other case.

(Vinod Kumar Sinha, J)

sunil/-

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