

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.569 of 2015

Arising Out of PS.Case No. -219 Year- 2010 Thana -BIHIYA District- BHOJPUR

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Bhola Singh, Son of Baban Singh, resident of Village-Jhawan, P.S.-Bihiya,
District-Bhojpur.

.... Appellant

Versus

The State of Bihar

.... Respondent/s

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Appearance :
For the Appellant : Mr. Ashok Kumar Singh, Advocate and
Mr. Anand Kumar, Advocate
For the State : Mr. Syed Ashfaque Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date: 12-09-2017

The sole appellant, Bhola Singh, has been found guilty for an offence punishable under Section 307 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for 10 years as well as to pay fine appertaining to Rs. 25,000/- in default thereof Rigorous Imprisonment for a month, additionally, Rigorous Imprisonment for 10 years with fine of Rs. 20,000/- and in default thereof, to undergo Rigorous Imprisonment for one month additionally under Section 326 of the Indian Penal Code and to undergo Rigorous Imprisonment for 3 years, with a fine of Rs. 5000/- and in default thereof, to undergo Rigorous Imprisonment for 15 days additionally for offence under Section 452 of the Indian Penal Code and Rigorous Imprisonment for 3 years with fine of Rs. 10,000/-, in default thereof, Rigorous Imprisonment for 15 days for offence under section 27 of the Arms Act with a further direction to run the sentences concurrently, by the



learned 1st Additional Sessions Judge, Bhojpur, Ara, in Sessions Trial No. 94 of 2011, vide Judgment of conviction dated 17.08.2015 and order of sentence dated 24.08.2015.

2) P.W.-6, Sanjay Kumar Yadav, gave his fardbeyan on 29.10.2010 while he was admitted at the Emergency Ward, Sadar Hospital, Ara, disclosing therein that in the night of 27.10.2010 at about 9.30 P.M. while he was sleeping inside the room located at his Darwaza and his younger brother was sleeping at the Darwaza, two persons entered inside his room, out of whom, one was identified as Bhola Singh (Appellant), who shot at him, causing injury below the knee of his leg. Thereafter, his younger brother chased the assailants but they succeeded in their escape. They have seen the other also and claimed to identify. After hearing the sound of firing, people arrived there and got him admitted in the hospital. The motive of the occurrence was shown that inspite of threatening given by Bhola Singh, who happens to be an accused of murder case relating to Hare Ram Yadav, his Co-villager, his father had deposed against him.

3) On the basis of the aforesaid fardbeyan, Bihiya P.S.Case No. 219 of 2010 was registered followed with an investigation and after completing the same, charge sheet was submitted, facilitating the trial, which concluded adverse to the appellant. Consequent, there upon, the instant appeal.

4) The defence case, as is evident from mode of cross examination as well as the statement recorded under Section 313 Cr.



P. C. is complete denial. It has also been suggested that prosecution party happens to be member of MALLE Group and on account thereof, they might have sustained injury in different manner at different place and finding it an opportunity to falsely implicate the Appellant maneuvering the situation, got this false case. However, no chit of paper has been brought up on record nor oral evidence has been adduced in defence.

5) In order to substantiate this case, the prosecution had examined altogether nine witnesses Viz P.W.1, Kamal Sharma, P.W.-2, Saligram Yadav, P.W.-3 Sudarshan Yadav, P.W.-4 Rabindra Kumar Yadav, P.W.-5 Surendra Pal, P.W.-6- Sanjay Kumar Yadav, P.W.-7 Vikash Kumar, P.W.-8 Dr Ajay Kumar Pandey and P.W.-9 Birendra Prasad Yadav. Side by side, also exhibited documents as Exhibit-1 fardbeyan, Exhibit-1/1 endorsement over on fardbeyan, Exhibit-2 Formal F.I.R. and Exhibit-3 injury report, Exhibit-4 charge sheet and Exhibit-5 injury report issued by the police. As stated above, nothing has been adduced on behalf of the defence.

6) Learned counsel for the appellant while challenging the judgment of conviction and sentence has submitted that basically he does not want to challenge the finding recorded by the learned lower court, save and except, that from the evidences, available on the record, it is apparent that no offence under Section 307 of the Indian Penal Code is made out. It has also been submitted that appellant has been in custody for seven years and on account thereof,



even as per evidence of P.W.- 8, Dr. Ajay Kumar Pandey, in consonance of Exhibit-3, grievous injury has been found over the person of the informant, P.W.-6, its location being below of the knee, would justify saturating the period of sentence by way of modification and identity of the appellant, being guilty under Sections 326 , 452 of the I.P.C. and 27 of the Arms Act, 1959 erasing the findings with regard to Section 307 of the Indian Penal; Code.

7) The Learned Additional P.P. opposes the prayer and submits that the appellant entered in the house of the informant in unusual way and fired in the back ground of some sort of grievances on account of insisting upon the father of the informant, namely, Sudarshan Yadav, not to depose in murder case against him, launched for the murder of Hare Ram Sharma. From the evidence of PW-9, it is apparent that appellant happens to be an accused relating to so many cases and that being so, the submissions have been made on behalf of the appellant is not at all found appropriate in consonance with the conduct of the appellant.

8) In order to appreciate rival contentions, let it be looked to the evidences, available on the record. It has to be noted down that at initial stage, the prosecution had not disclose source of identification, which during course of trial has been introduced but as, neither identification of Appellant has been challenged nor the development on the score of mode of identification has been casuist



on account thereof, that apparently gone worthless.

9) From the record, it is evident that occurrence happens to be dated 27.10.2010 at 9.30.P.M., while fardbeyan was recorded on 29.10.2010 but no cross-examination has been made on behalf of the defence either from P.W.-6, injured or P.W.-7, Vikash Kumar, one of the Police Officials of Bihiya P.S. as well as from P.W.-9, Birendra Prasad Yadav an Investigating Officer of the case. More particularly on this score, he had deposed that on 27.10.2010, he had telephonically informed with regard to having a person shot at whereupon, making S.D. entry as Sanha No. -618 dated 27.10.2010, proceeded towards the P.O. and reached at the P.O. at 1.30 A.M. where he came to know that injured was shifted to Sadar Hospital, Ara . The female members told the direction towards which accused fled away.

10) In the aforesaid back ground, he had directed PW-1 to record the fardbeyan of the injured and for that, he was deputed, but he failed to record the fardbeyan of injured on 28.10.2010, rather on 29.10.2010, the fardbeyan was recorded. There happens to be no cross-examination on the part of the appellant on the score where local police officials were available at Sadar Hospital, Ara, but respective P.Ws were also not cross- examined at his end.

11) On account of own lapses at the end of the appellant, now coming to the nature of the evidence, it is evident that in terms of Section 134 of the Evidence Act and it is the quality not



the quantity, which happens to be crucial for proper adjudication. Moreover, when the question comes over appreciation of evidence of an injured in that event, his evidence happens to be on a pivotal role and unless and until accused happens to be in a position to place that the evidence is so exaggerated that it's difficult to accept, or there is every possibility to depose falsely then and then only his evidence is to be disbelieved, otherwise the same is to be accepted without any impediment.

12) In the aforesaid back ground first of all, evidence of PW-6 is to be taken note of. During his Examination-in-Chief, he had deposed that he happens to be the informant. The occurrence is at about 9.30. P.M. on 27.10.2010. At that very time, he was sleeping in a room located at his Darwaza. Door was opened. His younger brother, Ravindra Kumar Yadav, was sleeping outside the room. Two persons entered his room. At that very time, lamp was burning in his room while Bulb was lightened in the Courtyard. On account thereof, he had occasioned to see both the persons. He identified one of the accused, Bhola Singh, who took out his pistol and opened fire, causing injury below the knee of his left leg. Then, thereafter, his brother and father chased them but they managed to succeed. Blood began to ooze out from his injury till the villagers arrived, who bandaged the injury by means of Gamcha and then, he was taken to Sadar Hospital, Ara . The motive of the occurrence has been shown as the father of the informant gave evidence against Bhola Singh, who



happens to be an accused in Hare Ram's murder case and for that, he was regularly threatened him (his father). He had also exhibited his fardbeyan.

13) During cross examination at para-7, he had stated that accused persons had not concealed their face. At para-9, he had stated that he had seen Bhola Singh after sustaining injury. Then he also stated that Bhola Singh had fired from a distance of five feet and thereafter, ran away. He had not chased Bhola Singh. Bhola Singh had not attempted to repeat firing. In para-13, he had further stated that he was unable to say the area whereunder the blood had spread over. In para-14, he had stated that even after sustaining the injury, he was conscious. Then had stated that the appellant had gone towards West but he had not chased. In para-18, he had stated that police came at Sadar Hospital, Ara, while he was being treated. In para-20, he said that he had not produced lamp or electric bulb before the police. In para-22, he had stated with regard to other and said that he had not tried to trace out his identity. In para-31, he had stated that he had not tried to chase them while fleeing away. In para-32, he has stated that he had not fired repeatedly with arm after sustaining injury. In para-34, he has stated that he had not produced Gamcha as well as Paizama to the police.

14) P.W.8 is the doctor, who had examined P.W.-6 Sanjay Kumar Yadav on 27.10.2010 at about 11 P.M. and found the following injuries:-



“Lacerated wound 1 and ½ x 1/2x muscle deep margin inverted with redness and blood around it situated over left calf muscle from outer aspect of leg (wound of entry) and there was no wound of exit. After X-ray he had found communicated fracture of shift of left fibula caused by fire arm within 6 hours.”

15) During cross examination, he had stated that the injury was not on the vital part of the body. He had further stated that he had found flame of gun powder around the injury. He had further stated in Para-7 that no bullet or pellets were found lodged inside the wound vide X-ray. In para-8, he had further stated that it is doubtful that injury was caused by fire arm as no pellets was found inside the injury as there was no wound of exit.

16) Now coming to evidence of other witnesses. It is apparent that though their appearance at the place of occurrence happens to be just after the occurrence and on account thereof, their status appears to be duly acknowledged in term of Section 8 of the Act in spite of the fact that none of them claimed to be an eye witness to the occurrence. Furthermore, they have deposed that after hearing firing sound, they came at the place of occurrence and found Sanjay Kumar Yadav in an injured condition. P.W.-4, Ravindra Kumar Yadav and P.W.-3, Sudarsan Yadav have claimed to have chased the appellant and during course thereof, they have seen, Bhola Singh armed with pistol.



17) Whenever there happens to be inconsistency amongst the medical evidence as well as ocular evidence, unless and until medical evidence has gone to the root of the case, more particularly suggesting presence of injury in consistence with the ocular evidence then in that circumstance, the prosecution version could be seen with suspicious eye. But, suggesting probability as deposed by the ocular evidence, would not be considered adverse to the prosecution case. Now coming to the facts of present case, though the doctor found the injury caused by fire arm, but on account of non-presence of exit wound, non presence of pellet inside the injury, cast doubt. However, it is not on the record, whether injured was put under surgical knife, or the pellet reflected after coming in contract of bone, which, the Modi in his medical evidence did suggest, so mere absence of pellet, would not make dent in the prosecution case, regarding mode of assault by fire arm.

18) Now coming to applicability of Section 307 of the Indian Penal Code, certainly after going through the evidence of the victim of P.W.-6, it is apparent that injury was found below knee, without any repeated attempt, whereupon, though appellant was armed with fire arm, could not attract the same. Hence the finding of the learned lower Court to that extent is set aside. On the other hand, considering the nature of the injury, the conviction under Section 326 and 452 of the Indian Penal Code as well as 27 of the Arms Act is affirmed.



19) Now coming over sentence, although P.W.-9, the I.O. identified the appellant to be an accused in so many cases but previous conviction has not been substantiated. The Appellant happens to be in custody for the last seven years on account thereof, sentence is modified with regard to Section 326 of the Indian Penal Code as period already undergone instead of sentence inflicted by the learned lower Court enhancing quantum of fine appertaining to Rs. 50,000/- (Rupees Fifty Thousand only) in default thereof, to under go Rigorous Imprisonment for 2 years, additionally while maintaining sentence relating to Section 452 of the Indian Penal Code as well as Section 27 of the Arms Act with a further direction to run the sentences concurrently.

20) On account of the aforesaid modification, this appeal is partly allowed. In case, fine is deposited at the end of the appellant then in that circumstance, half of the fine amount will be paid to the informant on proper identification by the learned lower Court.

(Aditya Kumar Trivedi, J)

Sudha/-

AFR/NAFR	NAFR
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