

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.5 of 2015

Arising Out of PS.Case No. -11 Year- 2008 Thana -SIKRAUL District- BUXAR

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Sheoji Rai @ Shia Jee Rai son of late Sakaldeep Rai, resident of Village-Kanjiya,
PS-Sikroul, Distt-Buxar.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar, Adv.
Mr. Surendra Kr. Chaubey, Adv.
For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 29-11-2017

Appellant, Sheoji Rai @ Shia Jee Rai has been found guilty for an offence punishable under Section 307 IPC and sentenced to undergo RI for 10 years as well as fined appertaining to Rs. 5,000/- having no default clause, under Section 27(1) of the Arms Act and sentenced to undergo RI for 3 years with a further direction to run the sentences concurrently vide judgment of conviction dated 22.11.2014 and order of sentence dated 25.11.2014 passed by Additional Sessions Judge-III, Buxar in Sessions Trial No. 307/2008.

2. Jitendra Rai filed a written report on 20.04.2008 at about 8.30 PM disclosing therein that on the same day about 7.00 PM while he along with his father Gauri Shankar Rai (PW 2) and brother Bijendra Rai (PW 6) were harvesting wheat crop at Chiraiyataar lying east southern flank of his house, Sheoji Rai @ Shia Jee Rai son of late



Sakaldeep Rai armed with gun along with Narad Rai, Krishna Bihari Rai @ Khatai Rai (co-villager) came from village side. When they came near to him, inquired his name, over which he responded, Jitendra. Till then, Sheoji Rai @ Shia Jee Rai made indiscriminate firing as a result of which, he sustained injury over his forehead (right side), chin, back, thigh and other 4-5 places over his body. His father and brother raised alarm whereupon, all the miscreants proceeded towards eastern direction. Amar Rai, Dharmendra Rai, Tej Narayan Rai and others came in rescue whom they disclosed regarding the occurrence. The motive for occurrence has been disclosed as in the last Aghan Season, there was dispute with regard to beating of bull.

3. After registration of Sikraul PS Case No. 11/2008, investigation commenced and concluded by way of submission of charge-sheet whereupon trial commenced and concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has also been pleaded that informant was shot at, at some different place in different manner by different person and because of the fact that for beating of bull, there was dispute and for that, Krishna Rai, one of the co-accused (since acquitted) had instituted a Complaint Case No. 1397/2007, they have been falsely



implicated in this case.

5. In order to substantiate its case, prosecution had examined altogether 14 PWs out of whom PW-1, Madan Pandey, PW-2, Gauri Shankar Rai, PW-3, Suraj Singh PW-4, Jitendra Rai, PW-5, Santosh Sah, PW-6, Bijendra Rai, PW-7, Yog Narayan Tiwari, PW-8, Kamlesh Mishra, PW-9, Nagendra Bind, PW-10, Ranjit Singh, PW-11, Kino Bind, PW-12, Sipahi Bind, PW-13, Dharmendra Rai, and PW-14, Dr. Parmanand Chuodhary, as well as had also exhibited as Ext-1, Formal FIR, Ext-Endorsement over the written report, Ext-Written report, Ext-4, initial injury report relating informant PW-4, and Ext-4/A, Supplementary injury report. Side by side defence had also examined two DWs, DW-1, Gopalji, DW-2, Dashrath Singh. Both happens to be over alibi relating to Krishan Rai (Since acquitted) as well as appellant had also exhibited order dated 02.05.2011 passed in connection with Complaint Case No. 1397/2017 along with Complaint petition as Ext-A, B respectively.

6. While challenging the judgment of conviction and sentence recorded by the learned lower court, it has been submitted by the learned counsel for the appellant that once the learned lower court had disbelieved the evidence of the prosecution witnesses relating to other two co-accused (since acquitted) then in that circumstance, the same should have also been rejected relating to the appellant as there



happens to be no cogent reason to differ therefrom. Furthermore, it has been submitted that the prosecution case suffers from so many flaws whereupon, the finding recorded by the learned lower court appears to be non sustainable in the eye of law. To substantiate the same, it has been submitted that though 14 witnesses have been examined on behalf of prosecution but so far independent material witnesses are concerned, none had supported the case of the prosecution so far proper identification of appellant being author of the injury. Furthermore, it has also been submitted that though from the initial version presence of PW-6 Bijendra Rai brother of informant (PW 4) has been shown by him but during course of cross-examination, PW-4 had stated that Bijendra Rai came on an alarm along with others whom they had disclosed the event of occurrence and that being so, PW-6, Bijendra Rai could not be an eyewitness to the occurrence although he claimed so.

7. Further it has also been submitted that now remains the evidence of PWs-2 and 4 which, if taken together with the evidence of other PWs, though is found supportive so far sustaining of fire arm injury by PW-4 is concerned, but involvement of appellant is found very much exposed and in the background of the Ext-A and B. Though, admitted as motive for committing an occurrence, the same happens to be reason to falsely implicate. That being so, the evidence



of PWs-2 and 4 in spite of the fact that PW-4 had sustained gun shot injury, did not appear to be reliable whereupon judgment of conviction and sentence recorded against the appellant is fit to be set aside.

8. Learned APP while refuting the submissions made on behalf of appellant has submitted that the evidence in its entirety is to be seen. After having such exercise in proper methodological manner clearly speaks, at least the evidence of PW-4 to be consistent and found corroborated with the evidence of PW-13, the doctor substantiating the appellant to be author of the injury. Apart from this, it has also been submitted that there happens to be own lapses at the end of the defence during course of cross-examining the witness. In the aforesaid background, when the evidence of PW-10 is taken together, there happens to be no scope for interfering with the finding recorded by the learned lower court and that being so, the appeal is fit to be dismissed.

9. So far nature of the evidence having been adduced on behalf of prosecution is concerned, PWs-1 as well as 3 have been identified as formal witnesses while PWs, 5, 7, and 13 are the witnesses who have been declared hostile. PWs-8, 9, 11 and 12 are the witnesses, who though supported the factum of occurrence whereunder PW-4, informant had sustained gun shot injury but for



that, they have shown unknown persons responsible and not the appellant. Prosecution has not declared them hostile because of the fact that their initial version also happens to be the same.

10. In the aforesaid background, now remains the evidence of PW-2, father, PW-4, informant/victim and PW-6, brother along with PW-10, I.O. as well as PW-14, the doctor.

11. While PW-4 was examined by PW-14 on 20.04.2008 at 11:00 PM found following injuries over his person:-

1. Small lacerated wound on the right side of forehead.
2. Superficial lacerated wound on the right side of chest
3. Two superficial lacerated wound on both side on back.
4. Two superficial small lacerated wound on both thigh.
5. Abrasion on right shoulder girdle.

Age of injury within six hours. Simple in nature. Nature of weapon was kept till receipt of further report as injured was sent to Sadar Hospital.

12. Subsequently, PW-14 had received X-ray report wherefrom he gathered presence of 5 radio opaque shadows in different size caused by fire arm, on the parts thereof, opined that same was caused by fire arm.

13. Apart from this, PWs, 2, 4 and 6 along with other witnesses also have substantiated sustaining of fire-arm injury by the PW-4 and in the aforesaid background, there happens to be no



controversy on that very score.

14. Now coming to the place of occurrence, again there happens to be consistency amongst the witnesses that PW-2, father and PW-4 the injured were harvesting wheat crop, where he sustained gun shot injuries. Furthermore, from cross-examination of the PW-8, it is further evident that the same also not been challenged.

15. Only question remains to be properly answered is whether the appellant happens to be the author of the injury. Enmity is a double edged sword. It may a motive for false implication. Simultaneously, it may be a motive for commission of an occurrence. Side by side, whenever reliability of evidence of injured is concerned, it has been settled at rest that in normal circumstance, the evidence of injured could not be brushed aside unless and until there happens to be glaring infirmity going deep to root of the prosecution case or it happens to be soaked with personal vendetta as well as malicious prosecution. Furthermore, for proving the facts in issue, number of witnesses are immaterial, it is the reliability of the evidence deposed by a witness and that happens to be the principle of law as provided under Section 134 of the Evidence Act. In the backdrop of the aforesaid basic principle, now evidence of PW-4 which has got primacy on account of being an injured is to be seen, firstly.

16. From the lower court record, it is evident that there



happens to be some sort of flaw visualizing but, as during course of cross-examination, neither PW-4 nor the I.O., PW-10 was cross-examined on that very score, on account thereof, the same would not be taken into consideration though, it looks wise to make reference regarding the same. There happens to be over-writing in coloumn-3 of the proforma of formal FIR (regarding date of occurrence) and that was not at all questioned to the I.O. In likewise manner, the FIR was seen by the CJM on 22.04.2008. That means to say beyond 24 hours whereupon also, the I.O. had not been cross-examined. In similar way, Ext-4, injury report is of dated 03.05.2008 while Ext-4/A happens to be dated 21.06.2008 and again the defence had not cross-examined the doctor, PW-14. Unless and until witness has got an opportunity to explain the infirmity whatsoever may be persisting on the record would not be taken into consideration. That being so, those deficiencies go out of consideration.

17. Furthermore, it is evident from the deposition of the witnesses that the case was hopelessly conducted and that happens to be apparent from the evidence of the respective witnesses. PWs-2, 4 and 6 have not been properly taken care of during course of cross-examination regarding manner of occurrence, proper identification of the assailant as well as with regard to surrounding circumstances because of the fact that in the written report itself there happens to be



specific disclosure that Sheoji Rai @ Shia Jee Rai appellant only made indiscriminate firing.

18. PW-2, father during his examination-in-chief had stated that Sheoji Rai @ Shia Jee Rai began to fire while PW-4, the victim had stated that Sheoji Rai @ Shia Jee Rai had fired while PW-6 had stated that Sheoji Rai @ Shia Jee Rai made three rounds of firing. So far presence of PW-6 is concerned become doubtful in the background of disclosure having made by the informant under para-2 of his examination-in-chief whereunder he had stated that his father raised alarm whereupon Chirkut, Tej Narayan, Dharmendra and Bijendra had come whom he disclosed the occurrence. That happens to be the reason behind that there happens to be inconsistency in the evidence of PW-6, with regard to manner of occurrence whereunder he had stated that Sheoji Rai @ Shia Jee Rai had fired three rounds. Furthermore, at para-2, he had stated that they were harvesting wheat crop from western side of the plot which is found completely negatived by the evidence of PW-10, the Investigating Officer who had stated that wheat was harvested from eastern northern corner of the PO land.

19. PW-2 during his examination-in-chief had stated that as there was dispute amongst his brother with the accused persons on account thereof, they had committed such an offence but, during



course of cross-examination, he had stated at para-14 that Krishna Rai had not instituted any case against him since before the occurrence. In likewise manner, he had deposed in para-8 that firing was made from northern western corner. Then had stated that the accused had fired thrice. In para-9, he had stated that at the time of occurrence, he was 20 metres away from Jitendra. He was not shot at by the accused.

20. PW-4, the injured had stated in his cross-examination that while he along with his father, brother were harvesting wheat crop at Chiraiyataar, at that very moment, Sheoji Rai @ Shia Jee Rai, Krishna Rai along with others came from village side who made query and then getting his answer, he fired. During course of cross-examination at para-7, he had stated that he is unable to say that with whom his father is litigating. In para-8, he had stated that he is unable to disclose the boundary of the place of occurrence. At that very time, he was having southern front. His father was at a distance of 15-20 yard having eastern front. His brother Bijendra was also having northern front. In para-11, he had stated that he was struck from northern side.

21. PW-6 had stated that while they were harvesting the wheat crop 7-8 persons came from village side out of whom he identified, Sheoji Rai @ Shia Jee Rai and Krishna Rai who were armed with gun. They made query and getting response from his



brother, Sheoji Rai @ Shia Jee Rai fired thrice causing injury over person of his brother. He had further stated that firing was made from a distance of 100 yard. During cross-examination at para-2, he had stated that they were harvesting from western side of the plot. He had further stated in para-7 that after hearing sound of firing he had gone to his brother to see what was happening. He had seen blood oozing out from the side of his head. In para-9 he had stated that he had not identified others except three as he had not seen them vigilantly.

22. PW-10 is the Investigating Officer. He had deposed that after having been entrusted with the investigation, he had gone to the place of occurrence which happens to be 1 KM away from the village lying at Chiraiyataar Badhar where he had seen wheat crop standing. The wheat crop was harvested in an area of two Dhurs of its eastern northern side. 100 yards north to this place, firing was made.

23. P.O. happens to be lonely place. During cross-examination, he had stated that the occurrence has been alleged at about 7.00 PM. It was dawn. Under Paragraph-23, he had stated that save and except father and two sons none are eyewitness. In para-24, he had admitted that he had not recorded the statement of those persons whose land lies in the boundary.

24. Now coming to the defence case, from Ext-A, B, it is apparent that Krishna Rai, since acquitted, had lodged Complaint



Case No. 1397/2007 against the prosecution party. So far DWs are concerned, they happen to be worthless as DW-1 had come to depose over alibi against appellant, Sheoji Rai @ Shia Jee Rai that he was one of the participants in the Ashthyam. While PW-2 with regard to Krishna Rai @ Khatai Rai also on that score.

25. After going through the evidences available on the record as discussed hereinabove, it is evident that the witnesses had categorically stated that the occurrence took place at 7.00 PM. None had claimed source of identification. The witnesses also stated that it was twilight. PW-2, father and PW-4, the injured during course of their examination-in-chief had not stated that accused persons came near to them and so, in spite of darkness being fallen, being co-villager they were in position to properly identify at least, Sheoji Rai @ Shia Jee Rai who had fired while PW-6 had stated that they have fired from a distance of 100 yards supported by PW-10, the Investigating Officer, which, at 7.00 PM when there was a mob of 7-8 persons of armed with fire arms would be difficult to properly identify the assailant. Because of the fact that proper identification in the aforesaid background could not be held to be plausible, possible, reliable with regard to the appellant, Sheoji Rai @ Shia Jee Rai to be assailant, that too repeatedly firing thrice more particularly, having silence at the end of the prosecution party that they had rushed, tried



to save themselves. In likewise manner, the story of asking for identity in normal tone from a distance more than 100 yards was not possible and in likewise manner, reply given thereupon. The aforesaid event has been introduced probably to claim identification, which in the facts and circumstances of the case, could not be accepted. Furthermore, non disclosure by any of the PW that he had moved, is another circumstance. The cumulative effect makes the identification doubtful whereupon appellant is found entitled for benefit of doubt.

26. As a result of which, the judgment of conviction and order of sentence recorded by the learned lower court is set aside. Appeal is allowed.

27. Since appellant is on bail, he is discharged from the liability of the bail bond.

(Aditya Kumar Trivedi, J)

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