

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.22 of 2013

Arising Out of PS. Case No.-27 Year-2003 Thana- ASHTHWAN District- Nalanda

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1. Raghunandan Jaswar S/O Dashrath Jaswar Resident Of Village Makanpur, P.S. Bind, District Nalanda.
 2. Ranjeet Jaswar S/O Dashrath Jaswar Resident Of Village Makanpur, P.S. Bind, District Nalanda.
 3. Chandra Bhushan Prasad @ Chandra Bhushan Jaswar S/O Nawal Jaswar Resident of Village Makanpur, P.S. Bind, District Nalanda.
 4. Dharamdeo Jaswar S/O Bhagwandhari Jaswar Resident Of Village Makanpur, P.S. Bind, District Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Anil Kumar No.1 Mr. Bajarang Lal
For the Respondent/s	:	Mr. Ashok Kumar, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 13-02-2018

The appeal was filed by the appellants herein against the judgment of conviction and sentence dated 13.12.2012 passed by the learned Ad hoc Additional Sessions Judge-I, Nalanda at Bihar Sharif in Sessions Trial No. 277 of 2004, arising out of Bind Asthawan P.S Case No. 27 of 2003. By the said judgment of conviction and sentence dated 13.12.2012, the appellants herein have been convicted under Sections 307/34 of the Indian Penal Code and sentenced to undergo R.I. for three years with fine of Rs. 1,000/- each and in default thereof the appellants herein have been further directed to undergo six



months simple imprisonment.

2. The short facts of the case are that the informant namely Raj Ballabh Prasad, in his written report dated 16.02.2003, has alleged that when the informant was going home after irrigating his field and had reached near the house of Bhagwan Dhari, the appellants herein had come out of the house of Bhagwan Dhari and with the intention of killing the informant had fired from their guns as well as lobbed bombs. It has been further stated that after hearing the noise of bombs, Ramdahin Gope and Brajnandan Mochi arrived at the place of occurrence. On the basis of the said written report of the informant, the afore said Bind Asthawan P.S. Case No. 23 of 2003 was registered on 17.02.2003 under Sections 307/34 of the Indian Penal Code and Section 27 of the Arms Act. The Police had investigated the matter and filed charge sheet dated 17.02.2003 under Section 307/34 of the Indian Penal Code and Section 27 of the Arms Act against the appellants herein.

3. After supply of the police papers, the case was committed to the court of sessions and the charges were framed against the appellants herein on 20.06.2006 under Section 307/34 of the Indian Penal Code.

4. The prosecution has led the evidence by way of



examining six witnesses. P.W. 1 is one Girdhari Jaiswal who has been declared hostile, P.W. 2 i.e. Ram Eqlal Singh is a seizure list witness, P.W. 3 i.e. Brajnandan Das has also been declared hostile and P.W. 4 i.e. Raj Ballabh Prasad is the informant of the present case. P.W. 5 is Ramdahin Gope who is said to be a hearsay witness and P.W. 6 i.e. Akshay Lal Yadav is the Investigating Officer of the present case. The defence had also examined four witnesses.

5. After completion of the evidence of the prosecution witnesses, the appellants were examined under Section 313 of the Cr.P.C. and they denied to have committed any offence.

6. The Learned senior counsel the appellants, Shri Devendra Prasad, has submitted that firstly the evidence would go to show that the allegations leveled by the informant has not been proved beyond all reasonable doubt and secondly in view of the fact that no charge has been framed under Section 27 of the Arms Act, the case is liable to fall under Sections 307/34 of the Indian Penal Code. In this connection, the learned senior counsel has referred to two judgments; one reported in AIR 2000 SC 2161 (Sagayam vs. State of Karnataka) and the other one which is reported in 2007(2) PLJR 394 (Prakash Chandra Yadav vs. State of Bihar).



7. Per contra, Shri Ashok Kumar, learned A.P.P. for the State has submitted that the informant wanted to dig well, however, the appellants were preventing him from doing so, hence altercation had taken place whereupon the appellants had fired on the informant. Subsequently, the Police had arrived and recovered empty cartridges which fact is enough to show that firing was made by the appellants herein. It is further submitted that the entire occurrence as alleged has been duly proved by the evidence led by the prosecution and the surrounding circumstances also goes to show that the allegations as leveled by the Prosecution has been proved beyond all reasonable doubt.

8. At this juncture, it would be relevant to discuss in brief the evidence led by the prosecution. P.W. 6 i.e. Girdhari Jaiswal is a seizure list witness who has stated in his deposition that his statement was not recorded by the Police, hence he was declared hostile. P.W. 2 i.e. Ram Eqbal Singh is also a seizure list witness and he has stated that on the alleged date of incident i.e. 16.03.2003 at about 11:00 in the afternoon he had gone to the place of occurrence after hearing the noise of gun shot firing and when he reached at the alleged place of occurrence, he saw the appellants firing, however, no gun shot injury was inflicted



on the informant. P.W. 2 has further stated that the Police had recovered empty cartridges from the lane situated adjacent to the house of one Rajo Mochi. P.W. 3 i.e. Brajnandan Das has stated in his evidence that his statement was not recorded by the Police, hence he was declared hostile. P.W. 4 is the informant namely Raj Ballabh Prasad and he has reiterated the contents of the written information given by him to the Police Station and he had stated that when he reached near the house of Bhagwan Dhari he found that the appellants herein were standing there and were telling him that as to why he was indulging in extortion and thereafter the said appellants fired from their pistol with the intention of killing the informant, however, the bullets did not hit him and he had then ran away. P.W. 4 has identified his written report submitted before the Police and the same has been marked as Exhibit-2. In paragraph no. 5 of his cross-examination, P.W. 4 has stated that while he had entered the lane from the southern side the appellants herein had entered from the eastern side, however, nobody tried to save him and in fact the appellants herein fired on him one by one and thereafter he left for his home and the appellants had also left the place of occurrence. P.W. 5 i.e. Ramdahin Gope has stated in his evidence that he had heard about the incident from someone and



in fact he had not seen the incident with his own eyes. P.W. 6 i.e. Akshay Lal Yadav who is the Investigating Officer of the case has identified the formal FIR which has been marked as Exhibit-4 and he has stated in his evidence that he had recovered five empty cartridges from the place situated near the house of Rajo Mochi and the seizure list was prepared which has been marked as Exhibit-5 and the same was signed by two independent witnesses namely Girdhari Jaiswal (P.W. 1), who has turned hostile and Ram Eqbal Singh (P.W. 2). In paragraph no. 7 of his cross-examination, P.W. 6 has stated that he had failed to recover any arms from which the firing was made and he had also not sent the empty cartridges, recovered from the said place, for examination and the said cartridges were also not before him at that moment of time. P.W. 6 has also stated that he had not put any sign on the said cartridges for the purposes of identification.

9. Having considered the submission of learned counsel for the parties as also going through the materials on record, I find that as far as P.Ws. 1 and 3 are concerned, they have turned hostile, P.W. 5 is a hearsay witness, hence the evidence of the said witness is of not much evidentiary value, P.W. 2 is a seizure list witness, who has stated that the empty



cartridges were recovered from near the house of one Rajo Mochi whereas the informant has stated that the occurrence had taken place near the house of Bhagwan Dhari. Now, coming to the only witness left i.e P.W. 6, who is Investigating Officer of the present case, it is clear from his evidence that he has himself admitted that neither the arms used in the alleged firing were recovered nor the empty cartridges were sent for examination nor the said empty cartridges were marked by the Investigating Officer, so as to identify the same in future. Therefore, on going through the entire evidence adduced / collected during the course of the trial, it is apparent that the same does not inspire any confidence so as to convict the appellants herein.

10. Now, coming to the issue that though the allegation is regarding firing however, no charges have been framed under Section 27 of the Arms Act, hence the allegation under Section 307/34 is liable to fail. Taking into consideration the totality the facts and circumstances of the case, it is clear that when no charges have been leveled under section 27 of the Arms Act and when there is no allegation of any sort of overt act except gun shot firing, no offence can be said to have been made out under Sections 307/34 of the Indian Penal Code.

11. Having regard to the facts and circumstances of



the case and upon consideration of the entire evidence, I find that apart from the fact that the allegations leveled against the appellants have not been proved beyond all reasonable doubts, the appellants are also liable to be acquitted on the ground that in absence of the charges having been framed under Section 27 of the Arms Act, in a case where the only allegation is regarding gun shot firing, no offence can be said to have been made out under Section 307/34 of the Indian Penal Code, specially in view of the fact that no inference can be drawn regarding any attempt to kill when no charge has been framed for illegal use of arms and ammunition.

12. After going through the materials on record and the evidences, I am of the opinion that the prosecution has miserably failed to prove the case beyond all reasonable doubt as well as in absence of framing of charge under Section 27 of the Arms Act and in absence of any injury upon the victim, it cannot be said that the appellants herein had made any attempt to kill the informant when the incident had taken place. Therefore, none of the ingredients essential for constituting an offence under Section 307/34 of the Indian Penal Code have been proved and as such the appellants of the present appeal deserve to be acquitted.



13. Accordingly, the judgment of conviction and sentence dated 13.12.2012 passed by the learned Ad hoc Additional Sessions Judge-I, Nalanda at Bihar Sharif in Sessions Trial No. 277 of 2004, arising out of Bind Asthawan P.S Case No. 27 of 2003 is hereby set aside. The appellants of the present appeal, were granted bail vide order dated 13.12.2012. Considering the fact that the appellants have been acquitted, they are hereby discharged from their liability of bail bonds.

14. The appeal stands allowed.

S.Sb/-

(Mohit Kumar Shah, J)

AFR/NAFR	
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