

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.241 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

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1.Upendra Rai son of Shri Ashok Rai

2. Ashok Rai son of Late Yugeshwar Rai

Both are residents of village Mirpur Bhual P.O and P.S- dighware,
Dist- Saran at Chapra

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Naresh Dikshit
Mr. Brij Bihari Tiwary
For the Respondent/s : Mr. S.C.Jha

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL JUDGMENT
Date: 02-02-2018**

1. This Criminal Appeal has been filed against the judgment of conviction and sentence order dated 03.05.2003 passed in Session trial no. 149 of 1996 by which and whereunder the appellant no. 1 namely, Upendra Rai was found guilty and convicted for the offences punishable under section 307 of the Indian Penal Code and section 27 of the Arms Act and accordingly, he was sentenced to undergo rigorous imprisonment for five years for the offence punishable under section 307 of the Indian Penal Code and to



undergo rigorous imprisonment for two years for the offence punishable under section 27 of the Arms Act. Similarly, the appellant no. 2 namely, Ashok Rai was found guilty for the offence punishable under section 307/34 of the Indian Penal Code and, accordingly, he was sentenced to undergo five years rigorous imprisonment for the aforesaid offence. The appellants were also sentenced to pay a fine of Rs. 2000/-and in default of payment of fine, they were further directed to undergo rigorous imprisonment for one year. Both the above stated sentence of appellant nos.1 and 2 were ordered to run concurrently.

2. The prosecution case lies in a very narrow compass. The prosecution came with this story that PW-6 Vishwanath Singh, the then A.S.I of Awatar Nagar Police Station on 23.06.1994 at about 6.30 p.m at Sadar hospital, Chapra recorded the fardbeyan of informant Jaleshwar Rai, who stated in his statement that his she-goat was grazing in the field of appellant Ashok Rai on the above stated date and the aforesaid she-goat was impounded by the Ashok Rai.



Having got the aforesaid information, he went to the field of Ashok Rai and got released his she-goat but the aforesaid Ashok Rai became furious and started abusing him. However, he along with his she-goat returned to his home but after 1 ½ hours of the aforesaid incident, the appellant and one F.I.R named accused Yugeshwar Rai came at his door on a motorcycle and the F.I.R named accused Yugeshwar ordered to kill the informant and, thereafter, the appellant no. 1 opened fire of his gun which hit right elbow of the informant. The informant became unconscious. The witnesses assembled there and seeing them the appellants and F.I.R named Yugeshwar Rai fled away towards Digwara. On the basis of aforesaid fardbeyan, Awatar Nagar P.S. Case No. 60 of 1994 for the offence under section 307, 447/34 of the Indian Penal Code and 25A(1-B)(a)/ 27 of the Arms Act was registered and, accordingly, formal F.I.R was drawn up against the appellants and accused Yugeshwar Rai. PW-6 took the charge of investigation and after completion of investigation, he submitted charge sheet for the offences



punishable under section 307, 326, 447 of the Indian Penal Code and 27 of the Arms Act against the appellants and F.I.R named accused Yugeshwar Rai. Cognizance was taken and the case was committed to the court of session. However, during pendency of the aforesaid case, F.I.R named accused Yugeshwar Rai died and the proceeding of the case was abetted in respect of him. The appellants stood trial and, accordingly, they were charged for the offences punishable under section 307/34 of the Indian Penal Code and 27 of the Arms Act. No separate charge for the offence under section 307 was framed against the appellant no. 1 Upendra Rai. In course of trial, prosecution examined altogether seven witnesses and also got exhibited documents including fardbeyan, formal F.I.R etc. The statement of appellants were recorded under section 313 of the Cr. P.C in which they denied the prosecution story and claimed their false implications. No evidence was adduced by the appellants in support of their defence but from perusal of trends of cross-examination as well as their statements recorded under



section 313 of the Cr.P.C, it would appear that the defence of the appellants was complete denial of the prosecution story.. The learned trial court having scrutinized the evidences available on the record convicted and sentenced the appellants in the manner as stated above.

3. The learned counsel appearing on behalf of the appellants assailed the impugned judgment of conviction and sentence order arguing that the learned court below failed to appreciate the evidences available on the record in its right perspective and as a matter of fact, PW-1, for the first time, got recorded his statement before the court and he had not made any statement before PW-6, in course of investigation but the learned trial court committed error in relying upon the testimony of PW-1. He further submitted that except PW-3, there is no any other witness, who claimed himself to be an eye witness of the alleged occurrence. He further submitted that moreover, PW-6 has admitted in Para-2 of his examination-in-chief that information regarding the alleged occurrence was given to him by PW-7 and, after that, he



went to Sadar Hospital Chapra, where he recorded the statement of informant of the present case but the prosecution did not bring the information given by PW-7. He further submitted that PW-7 has also admitted that he came to know about the alleged occurrence in the evening but name of assailant was not discharged.

4. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that PW-1 and PW-3 have very clearly stated that it were appellants, who committed the alleged crime and moreover, blood stained clothes have been seized in the presence of PW-2 and furthermore, PW-5 found injuries on the person of the informant and proved the injury report. Learned Additional Public Prosecutor also submitted that in course of trial, the informant/ injured could not be produced before the trial court as he died during pendency of the trial and, therefore, it is obvious that the prosecution proved its case beyond all shadow of reasonable doubts.

5. Admittedly, PW-4 has been declared hostile and



he has not supported the prosecution case and further I find that PW-1 claimed himself to be an eye witness of the alleged occurrence but at Para-10 of his cross-examination, he has admitted that he had not made statement before the police and for the first time, he was making his statement before the court. Therefore, in my view, the learned counsel appearing for the appellants rightly submitted that no reliance can safely be placed upon deposition of PW-2. PW-2 is a witness of seizure list and has only stated that blood stained clothes had been seized in his presence and he put signature on the seizure list.

6. PW-5 is Doctor, who had examined the informant/ injured. This witness stated that he found lacerated wound 6''x 3'' muscle and bone deep with fracture of bone of elbow joint region on right side. He opined that the aforesaid injury had been caused by firearm and he also opined that the aforesaid injury was grievous in nature. He further deposed that one non metallic foreign body had been taken out from wound but fairly admitted that no bullet or



any other metallic foreign body was found by him in the wound of injured. He further admitted that the fracture might be possible even by non metallic object.

7. The deposition of this witnesses goes to show that he has not mentioned the ground on the basis of which he came to the conclusion that the injury was found on the person of informant had been caused by firearm. Moreover, it is only established by the deposition of PW-5 that one lacerated wound had been found on the right elbow of the informant.

8. On the point of occurrence, there is only one witness i.e PW-3 Bhawsagar Rai, who happens to be full brother of the informant of the present case . This witness supported the prosecution case and stated that the informant sustained firearm injury on his right elbow due to firing of licensee gun made by the appellant no. 1 Upendar Rai.

9. No doubt, this witness has supported the prosecution case but there is nothing in the deposition of PW-6 that in course of investigation, he made any attempt to seize



the licensee gun of Upendar Rai and sent the said gun for forensic examination. PW-6 fairly admitted at Para-2 of his examination-in-chief that it was PW-7, who, gave, information regarding the occurrence prior to recording the statement of informant, he having made Sanha entry of the aforesaid information and went to the hospital and recorded the statement of injured. PW-7 stated that he came to know about the alleged occurrence from villagers but no one had disclosed the name of assailants. Therefore, it is obvious that first information report regarding the present occurrence was given by PW-7 to PW-6 and in the aforesaid information, the name of appellants had not been disclosed and, therefore, the aforesaid circumstance creates doubt about the genuineness of the prosecution story. Moreover, I do agree with the submission of learned counsel appearing for the appellants that only on the evidence of sole prosecution witness, it was unsafe to convict and sentence the appellants. Therefore, in my view, the impugned judgment of conviction and sentence order cannot sustain in the eye of law.



10. On the basis of aforesaid discussion, this criminal appeal is allowed and the impugned judgment of conviction and sentence order, is hereby, set aside. Accordingly, appellants are acquitted of the charges giving benefit of doubt. The appellants are on bail. They are discharged from liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	12.02.2018
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