

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.346 of 2003

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Verma Yadav, Son of Late Sita Ram Gope, Resident of Mohalla – Prithwipur – 2,
Chiraiyatn, P.S. – Kankarbagh, Town and District – Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar Sharma, Amicus Curiae

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-03-2018

In spite of repeated calls, none has appeared on behalf of the appellant and the case appears to be of the year 2003, as such, I deem it appropriate to appoint Mr. Rajesh Kumar Sharma, learned Advocate as *Amicus Curiae* to assist the Court.

2. This appeal is directed against the judgment of conviction and order of sentence dated 27.06.2003, passed by Sri Chandra Shekhar Sharma, the then Presiding Officer Additional Court No. 1, Patna Adhoc Sessions Judge, Fast Track Court No. 1, Patna, in Sessions Trial No. 107 of 1991/159 of 2001, by which the appellant above named, stood convicted under Section 307/34 and 341/34 of the Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo R.I. for five years under Section 307/34 of the IPC and S.I. for one month under Section 341/34 of the IPC. Both the sentences were directed to run concurrently.



3. Prosecution case as per the written information of Amrendra Kumar Verma dated 23.05.1990, addressed to Senior Superintendent of Police, in short is that on 23.05.1990 at about 8. A.M. while he along with his brothers, namely, Satyendra Kumar Verma and Dharmendra Kumar Verma were going to Civil Court, Patna and when they in the middle portion of Chiraiyatand Bridge, accused Ghinawan Gope, Ramesh, Amerika Yadav, Verma Yadav and four to five other unknown persons intercepted them and tried to snatch the papers from the informant, which were kept in a bag and in course of that Accused Amerika Yadav fired from his pistol and it was not known to the informant that firing caused any injury to anyone or not. However, informant and his brothers anyhow managed to save themselves and they reached in the office of Senior Superintendent of Police on rickshaw. It is alleged that informant and his brothers were going to Civil Court to oppose the bail of Lerha Gope and Butan Gope, who were accused in Jakkanpur P.S. Case No. 44/90. The said Lehra Gope is the grand – son of accused Ghinawan Gope. It has also been alleged that due to the said occurrence, they could not reach to the court. It has further been alleged that earlier brother of informant, namely, Harendra Kumar Verma was also shot on 16.05.90 by the group of Lerha Gope and others, who died in P.M.C.H. on 21.05.90, for which Kankarbagh P.S. Case No. 358/90 was registered.

4. On the basis of the aforesaid written Statement of the



informant, Kotwali P.S. Case No. 252/90 was registered.

5. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Sri Chandra Shekhar Sharma, the then Presiding Officer Additional Court No. 1, Patna Adhoc Sessions Judge, Fast Track Court No. 1, Patna, for trial and disposal.

6. Charges were framed under Section 341/34 and 307/34 of the IPC against the accused persons including appellant.

7. In order to prove the charges, prosecution examined altogether three witnesses, they are; P.W. 1 – Amarendra Kumar Verma (informant), P.W. 2 – Dharmendra Kumar Verma brother of informant and P.W. 3 –Satyendra Kumar Verma brother of informant. I.O. has not been examined.

8. On perusal of the evidence of prosecution witnesses, it appears that P.W. 1, the informant has supported the prosecution case and has stated in his evidence that while he and his two brothers were going to oppose the bail application of Lehra Gope and Bhutan Gope, accused persons intercepted them and accused Ghinawan Gope tried to snatch the papers from him and in that course accused Amerika Yadav resorted to firing, which does not hit anybody and in spite of cross-examination of this witness, there is nothing to doubt on testimony of this witness. P.W. 2 and P.W. 3 are the brothers of informant and



they have also supported the prosecution case. It further appears from the record that earlier they have lodged a case against Lehra Gope and Bhutan Gope for murder of their brother Harendra Kumar Verma, for which Kankarbagh P.S. Case No. 358/90 was instituted. The above fact clearly goes to show that there was admitted enmity between the parties.

9. Considering the evidence available on record and also the submission of parties, it appears that appellant and other accused persons on the alleged date of occurrence, intercepted the informant and other witnesses and the evidence of witnesses show that they accused persons tried to snatch the papers from the informant and in course of that accused Amerika Yadav fired at them but that does not hit anybody. Had it been the intention of the accused persons to kill the informant, they would have fired again but evidence of witnesses suggests that accused persons had come only with a purpose to snatch the papers and prevent the informant and others to oppose the bail application of Lehra Gope and Bhutan Gope. Besides that there is no allegation attributed against the appellant Verma Yadav even of touching the informant and others and, therefore, no case under Section 307/34 of the IPC is made out. However, learned Trial Court, while convicting the appellant has not considered the above aspect of the matter and convicted the appellant under Section 307/34 of the IPC, which does not appear to be probable and the same is hereby set



aside.

10. So far conviction of appellant under Section 341/34 of IPC is concerned, there are evidence that appellant along with other accused person intercepted the informant and others with a view to snatch the papers as such, I find no infirmity in the conviction of appellant under Section 341/34 of the IPC and the same is hereby affirmed. It appears that the appellant was sentenced to undergo R.I. for 341/34 of the IPC for simple imprisonment of one month and record shows that he has remained in judicial custody, as such, the trial court is directed to verify the same and if it is true, he shall discharge the appellant, who is on bail, from the liability of bail bond.

11. Accordingly, this appeal is disposed of in the manner aforesaid.

(Vinod Kumar Sinha, J)

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