

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.275 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

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Ram Pravesh Mistri, son of Chandeshwar Mistri, resident of village Manara, P.S.
Noorsarai, District Nalanda

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rabindra Prasad Singh, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 22-03-2018

Sole appellant stands convicted under Section 326 of the Indian Penal Code and 27 of the Arms Act and sentenced to undergo rigorous imprisonment for four years under Section 326 IPC and two years under Section 27 of the Arms Act vide judgment and order dated 30.4.2003 passed by Sri Awadhesh Kishor Prasad Singh, the then Presiding Officer, Additional Court No.1, Nalanda in Sessions Trial No. 492 of 1990/32 of 2001.

2. Prosecution case, which has been initiated on the basis of fardbeyan of informant Brihaspat Chaudhary (PW 6), in short, is that while the informant along with his son Krishna Chaudhary (PW 5) at about 6.30 A.M. in the morning on 23.2.1990 was going to collect toddy from date tree at village Sibanpar, P.S. Noorsarai, Nalanda and reached near the electric pole situated at a distance of 200 yards from the village, account appellant Ram Pravesh Mistri, armed with pistol,



Sunil Prasad, Deo Kumar Prasad and Sanjay Kumar, all were armed with rifles, came out from maize field, on seeing them the informant and his son concealed themselves, and surrounded the informant and started firing. Son of the informant due to fear fled away. Accused appellant Ram Pravesh Mistri fired his pistol which hit the informant on the left side his abdomen, as a result of which he sustained injury and fell down. Further prosecution case is that on hearing sound of firing the witnesses Krishna Chaudhary, Dedar Mahto and Nagina Chaudhary rushed to the place of occurrence and injured informant was taken to Sadar Hospital, Biharsharif and at about 9.45 A.M. his statement was recorded by S.I. of Bihar Police Station and from Sadar Hospital, Biharsharif he was referred to PMCH for proper treatment. The reason behind the occurrence is said to be the money for taking toddy was due with the accused persons and when he demanded they refused to pay and, as such, the present occurrence took place.

3. On the basis of aforesaid fardbeyan Noorsarai P.S. Case No. 26 of 1990 was registered under Sections 307/34, 341, 326 IPC and 27 of the Arms Act. Post investigation charge sheet has been submitted against all the accused persons, including the appellant, cognizance of the offence has been taken and case has been committed to the court of sessions, which ultimately traveled to the file of the learned trial judge for trial and disposal.

4. During trial charge has been framed against the appellant



under Section 307 IPC and 27 of the Arms Act and against remaining accused persons under Sections 307/34 IPC and 27 of the Arms Act.

5. The prosecution in order to substantiate its case has examined altogether seven witnesses, they are PW 1 Kedar Mahto, who has been declared hostile, PW 2 Raj Kumar Chaudhary, who has also been declared hostile, PW 3 Kusum Devi, who is wife of informant (PW 6), PW 4 Dr. A.K. Kasyap, who has examined the injured informant, PW 5 Krishna Chaudhary, who is son of the informant, PW 6 Brihaspat Chaudhary, who is informant and injured and PW 7 Nagina Chaudhary.

6. Apart from that, prosecution has adduced injury report of informant (PW 6) as Ext.1.

7. On behalf of defence no evidence either ocular or documentary has been adduced.

8. Learned trial court after conclusion of trial has convicted the appellant under Section 326 IPC and 27 of the Arms Act and sentenced him as stated above and also convicted the other accused persons, namely, Deo Kumar Prasad, Sunil Prasad and Sanjay Kumar under Sections 324/34 IPC and not finding guilty under Section 27 of the Arms Act they have been sentenced to a fine of Rs.2000/- each and in default to undergo R.I. for six months under Sections 324/34 IPC.

9. Against the impugned judgment the appellant has



preferred this appeal.

10. Contention of learned counsel for the appellant is that PW 6 is the informant in this case, who claims to be injured, and there is no eye-witness to the occurrence. Evidence of PW 6 show that he has not received the injury in the manner as stated by him rather submission is that he received injury in a dacoity and appellant has falsely been implicated. Further submission of learned counsel is that in this case there is no finding of Doctor that injury was grievous and, in such a situation, conviction of appellant under Section 326 IPC is not maintainable. So far conviction under Section 27 of the Arms Act is concerned, submission of learned counsel for the appellant is that neither pellet nor pistol was recovered from the place of occurrence and FIR shows that all the accused persons fired and in such a situation only singling out this accused appellant for causing injury to the informant is against the materials available on record, hence the conviction of the appellant under Section 27 of the Arms Act is not sustainable in the eye of law.

11. On the other hand, learned counsel for the State has contended that the informant (PW 6) has specifically named this appellant stating that he shot fire at him, causing injury and Doctor, who has examined the informant, has found injury on his person caused by fire arm. No doubt, finding regarding nature of injury whether grievous or simple has not come and a second Doctor has



examined him and injury report has been brought on record showing the injury on abdomen, which is vital part of body and, as such, the conviction of the appellant under Section 326 IPC and Section 27 of the Arms Act appears to be just and proper, which does not require any interference by this Court.

12. In the background of rival submission of both sides, on perusal of evidence of informant (PW 6) it appears that at about 6.30 A.M. in the morning he along with his son Krishna Chaudhary (PW 5) had gone for collecting toddy of “khajur” (date tree) and when they reached near electric pole near the field of Sia Chaudhary the accused persons, including the appellant came armed with pistol and others were armed with rifles and caught hold of him and appellant Ram Pravesh Mistri fired shot at him which caused injury to his left “panjra” (scapular region) and thereafter witnesses came and saw the appellant. He has also stated that money for taking toddy was due with the accused persons and on demand they refused to pay and he has further stated that he was taken to hospital and Darogaji has recorded his statement. He has been cross examined in order to show that the tree from which he had gone to collect toddy does not belong to him, rather of the accused persons but he has stated that the “khajur” tree was his tree which he purchased on registering. He has also been cross examined at length but in spite of that there is nothing in his evidence to doubt his testimony. His evidence further shows in



cross examination that accused fired at him from close range and interior part of abdomen came out.

13. PW 3 is wife of the informant and claims to be eye-witness to the occurrence and her evidence discloses that her son came and disclosed to her that his father was surrounded by four persons and then she came out and saw that all the four persons surrounded her husband (informant) and appellant Ram Pravesh Mistri fired shot at him which caused injury to him. She has also stated that she had seen the occurrence from a distance of 2-3 bamboos.

14. PW 5 is the son of the informant and according to FIR he was accompanying the informant and his evidence shows that he was going along with his father (informant) for collecting toddy and in the meantime accused persons fired and came running towards him and he fled towards his house and his father was surrounded and they fired at his father. His evidence also discloses that when he came back his father disclosed that Ram Pravesh has fired shot at him.

15. Evidence of PW 7 Nagina Chaudhary discloses that on hulla he went to the place of occurrence and saw Brihaspat Chaudhary in injured condition and he received injury on his “panjra” and Brihaspat Chaudhary disclosed him that Ram Pravesh Mistri and other accused persons surrounded him and Ram Pravesh Mistri shot fire at him causing injury.



16. Considering the above evidence it appears that evidence of PW 6 in spite of cross examination has remained unrebutted and disclosed that it is the appellant who fired shot at him causing injury on his scapular region and his evidence has further found corroborated by the evidence of PW 3, PW 5 and PW 7, though they do not appear to be eye-witnesses to the occurrence but they have stated that they saw the informant in injured condition and injured disclosed that Ram Pravesh Mistri fired shot at him. Doctor (PW 4), who has examined the injured Brihaspat Chaudhary, in his evidence has stated that he examined Brihaspat Chaudhary on 23.2.1990 at Sadar Hospital, Biharsharif at 1.40 P.M. and found the following injuries :

“Lacerated wound $\frac{3}{4}$ ” x abdominal cavity deep on left side of abdomen, gut protracting out from injury. This was wound of entry. The patient was referred to P.M.C.H. for treatment. Weapon used fire arm. Regarding nature of injury opinion may be taken from P.M.C.H. Age within six hours.”

Hence, his evidence is found corroborated by the evidence of PWs 3, 5, 6 and 7. However, I.O. has not been examined but evidence of witnesses is consistent so far place of occurrence is concerned and there is no contradiction from their earliest statement and in view of above consistent evidence non-examination of I.O. has caused no prejudice to the defence.

17. However, it appears from perusal of the record that in this case Doctor (PW 4) has not given any opinion on the injury and



he has stated that opinion would be given after receiving the report from P.M.C.H. Neither injury report of P.M.C.H. was brought on record nor Doctor of P.M.C.H. was examined by prosecution, in such a situation, there is no finding of Doctor to show that the injury was grievous in nature but in spite of that fact learned trial court though not found case true under Section 307 IPC but convicted the appellant under Section 326 IPC considering the fact that though there was no finding on the injury available on record but on the ground that injury was on the vital part of body and which was dangerous to life, though there is no finding that the injury was dangerous to life. As such, so far conviction of the appellant under Section 326 IPC is concerned, that does not appear to be sustainable in the eye of law. However, in view of evidence available on record the conviction under Section 326 IPC is modified to a conviction under Section 324 IPC. Appellant has also been convicted under Section 27 of the Arms Act and there is consistent evidence available on record that appellant fired at the informant causing firearm injury to him which supports the medical evidence and, in such a situation, the conviction of appellant under Section 27 of the Arms Act is just and proper, does not require any interference and is affirmed. So far sentence is concerned, learned trial court has passed sentence to undergo RI for two years and failed to consider that after amendment in 1988 amendment in Arms Act, the minimum sentence prescribed is three years and he ought to have



passed sentence of R.I. for three years.

18. However, as occurrence is of the year 1990 and the appeal was pending for 15 years, as such, this Court is not inclined to interfere with the sentence of R.I. for two years under Section 27 of the Arms Act, which is affirmed. So far conviction under Section 324 IPC is concerned, appellant is sentenced to undergo R.I. for two years. Both the sentences are directed to run concurrently. The appellant shall be entitled to set off the period already undergone by him in accordance with law.

19. With the aforesaid modification in conviction and sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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