

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.439 of 2003**

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

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Guddu @ Sushil Kumar Sinha sonof Rameshwar Prasad , Resident of Mohalla Nauagarhi Gayatrighat, P.S. Civil Line, District Gaya

.... .... Appellant

Versus

State of Bihar

.... .... Respondent

with

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**Criminal Appeal (SJ) No. 499 of 2003**

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

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Rajan Kumar Mishra son of Sri Binod Kumar Mishra, resident of Mohalla Tilha Mahabir Ashthan at present Maranpur, P.S. Civil Lines, District Gaya

.... .... Appellant

Versus

State of Bihar

.... .... Respondent

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**Appearance :**

(In CR. APP (SJ) No.439 of 2003)

For the Appellant : Mr. Dinu Kumar, Adv

For the Respondent : Mr. Bipin Kumar, A.P.P.

(In CR. APP (SJ) No.499 of 2003)

For the Appellant : Mr. Abhimanyu Sharma, Adv.

For the Respondent/s : Mr. Bipin Kumar, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**

CAV JUDGMENT

**Date: 31-07-2018**

Both Criminal Appeals arise out of judgment and order dated 3.9.2003 passed by Sri Prakash Chandra Gupta, 7<sup>th</sup> Addl. Sessions Judge, Gaya in Sessions Trial No.139 of 1999/58 of 1997 as such both the cases are being taken up together and disposed of by a common judgment.



2. Appellant (Guddu @ Sushil Kumar Sinha) of Criminal Appeal No.439 of 2003 has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo R.I. for five years and further convicted under Section 27 of the Arms Act and sentenced to undergo R.I. for two years and the appellant (Ranjan Kumar Mishra) of Criminal Appeal No.499 of 2003 has been convicted under Section 379 of the Indian Penal Code and sentenced to undergo R.I. for three years.

3. The prosecution case as per the statement made by the informant Ajay Kumar (P.W.4) is that on 1.2.1996 at 8.00 P.M. the informant was going to Rainbow Medical Hall which was of his friend Binod Pathak for taking some study notes. While at about 8.15 P.M. he reached near Flour Mill, Nutan Nagar, three persons surrounded him and one person pointed pistol on his head and told to give all the belongings otherwise he would shoot him. Two among them were recognized by the informant. Pistol holding person was Guddu @ Sushil Kumar Sinha and other was Rajan Kumar Mishra. Third one was not recognized, however, he could be recognized by face. The scuffle took place and all three caught hold the informant. Rajan Kumar Mishra took out Rs.500/- from the pocket of his fulpant and Citizen watch was also taken out by them. Accused persons were recognized in the street light. It is the prosecution case that when the



informant tried to flee away and raised alarm, Guddu @ Sushil Kumar Sinha fired from his pistol that hit the informant on the thigh. Thereafter he came running to his house and disclosed about the occurrence to his family members and he was taken by the family members to Magadh Medical Hospital for treatment.

4. On the basis of above fardbeyan, Civil Lines P.S. Case No.28 of 1996 was registered, after investigation charge-sheet has been submitted, accordingly, the cognizance has been taken and the case was committed to the court of sessions, which ultimately came to the Court of Sri Prakash Chandra Gupta, 7<sup>th</sup> Addl. Sessions Judge, Gaya for trial and disposal.

5. During trial four witnesses have been examined and they are P.W.1 Sharad Kumar Verma, P.W.2 Arun Kumar Sinha, P.W.3 Gopal Prasad and P.W.4 Ajay Kumar (informant). Apart from the above, following documents have been brought on record, Ext.1 formal FIR, Ext. 2 fardbeyan and Ext.3 injury report showing two lacerated penetrating wound in the upper part of thigh, one anterior and one posterior, having charred margin (wound of entry) and anterior one (wound of exit). Injury was caused by fire arm.

6. The defence of the accused persons is of total denial of the allegation and of false implication and of innocence.

7. The learned trial court on conclusion of the trial has



convicted the appellant Guddu @ Sushil Kumar Sinha under Section 207 of the IPC and sentenced to undergo R.I. for five years and further convicted under Section 27 of the Arms Act and sentenced R.I. for two years and Ranjan Kumar Mishra has been convicted under Section 379 of the IPC and sentenced to undergo R.I. for three years.

8. The learned counsel for the appellant has assailed the judgment on the ground that in this case there is no eye witness of the occurrence except P.W.4 as P.Ws. 2 and 3 are brothers and admittedly the case of the prosecution is that the informant after receiving the injury went to his house and informed them and so far P.W.1 is concerned he appears to be a chance witness and his evidence also shows that he named Guddu @ Sushil Kumar Sinha who fired and Ranjan Kumar Mishra snatched money and watch and as such conviction is based on the evidence of sole witness i.e. P.W.4 and the evidence of P.W.4 in the cross examination shows that the appellant fired from back side and in such a situation identification of Guddu @ Sushil Kumar Sinha creates doubt. Furthermore neither the I.O. nor the Doctor has been examined and the injury report was brought on record under Section 294 of the Cr.P.C., as such the defence did not get chance to test the veracity of the injury report and as the Doctor has not been examined, as such he could not be cross



examined about the nature of the injuries and the opinion of the Doctor. Furthermore the I.O. has not been examined in this case and some contradictions are taken in the evidence of P.Ws. However, the learned trial court in spite of the above infirmities and inconsistencies has convicted the appellant.

9. On the other hand the learned counsel for the State has submitted that the informant has categorically stated that it is Guddu @ Sushil Kumar Sinha who fired on him and Ranjan Kumar Mishra Snatched Rs.500/- from him and though the Doctor and the I.O. have not been examined but the injury report has been brought on record that shows the fire arm injury on the person of the appellant, as such conviction of the appellant appears to be just and proper and it does not require any interference.

10. In the background of the above submissions of the rival parties and on perusal of the evidence, it appears that P.W.4 is the injured and he is the sole witness of the occurrence and his evidence discloses that on the day of occurrence, while he came to Nutan Nagar, three persons caught hold of him, one person on the point of pistol demanded articles from him, he identified them as Guddu @ Sushil Kumar Sinha who was having pistol and Ranjan Kumar Mishra has taken away money from him and Guddu @ Sushil Kumar Sinha fired through pistol causing injury on his thigh and Ranjan



Kumar Mishra has taken Rs.500/-. His evidence further discloses that he fled away from there and came to his house where he disclosed about the occurrence and he was taken to the hospital for treatment. This witness has been cross examined at length and he has stated in his cross examination that the accused persons are of his mohalla and the house of Ranjan Kumar Mishra is near Mahavirsthan. His evidence also discloses that father of Guddu @ Sushil Kumar Sinha was *Kativ* and he denied a suggestion given by the prosecution that his grand father had purchased stamp from the father of appellant Guddu @ Sushil Kumar Sinha and he did not pay money but that suggestion has been denied by P.W.1 . His cross examination further discloses that accused persons demanded articles from him and when he did not give the money was snatched from his pocket. P.Ws.1 to 3 are not eye witness of the occurrence but they had seen P.W.4 in the injured condition. As such, evidence clearly discloses that P.W.4 received injury in that occurrence and Guddu @ Sushil Kumar Sinha appellant fired on him. However, in this case neither the doctor nor the I.O. have been examined and the injury report has been brought on the record under Section 294 of the Cr.P.C. Section 294 Cr.P.C. provides as follows :

***“294. No formal proof of certain documents.***

***(1) Where any document is filed before any Court by the prosecution or the accused, the particulars***



***of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.***

***(2) The list of documents shall be in such form as may be prescribed by the State Government.***

***(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion, require such signature to be proved.”***

11. However, though the injury report shows that the injury caused by the fire arm is simple in nature but as the Doctor has not been examined in this case, the defence did not get chance to cross examine him on the nature of the injury and weapon used in this case.

12. Moreover submission of the learned counsel for the appellant is that the injury is on the thigh as such it is not on the vital part of the body and the injury is simple in nature even though caused by the fire arm and in such a situation conviction under Section 307 of the IPC is not just and proper and at best it makes out a case under Section 324 of the IPC, I find force in the argument of the learned counsel for the appellants as the injury is simple in nature, there is no repetition of firing, the injury is on the thigh and moreover it appears



that in course of the scuffle the firing was made, in such a situation, conviction of the appellant Guddu @ Sushil Kumar Sinha under Section 307 of the IPC does not appear to be sustainable in the eye of law and evidence discloses at best a case under Section 324 of the IPC as well as under Section 27 of the Arms Act. So far appellant Ranjan Kumar Mishra is concerned there is consistent evidence of P.W.4 that appellant snatched Rs.500/- and evidence of P.W.4 remains intact even in spite of the cross examination and as such conviction of Ranjan Kumar Mishra does not require any interference of this Court.

13. In view of the discussions made above, conviction of the appellant Guddu @ Sushil Kumar Sinha is modified to conviction under Section 324 of the IPC and conviction under Section 27 of the Arms Act is affirmed. Conviction of the appellant Ranjan Kumar Mishra under Section 379 of the IPC is affirmed.

14. Submission of the learned counsel for Guddu @ Sushil Kumar Sinha is that he has remained in custody for one year and five months and he has been sentenced to undergo R.I. for five years under Section 307 of the IPC and two years under Section 27 of the Arms Act, as such his sentence may be reduced to the period already undergone. Similarly submission of the learned counsel for Ranjan Kumar Mishra is that he has remained in custody for three months,



the occurrence is quite old, in such a situation his sentence be reduced to the period already undergone in custody.

15. Considering the facts and circumstances and submission of the learned counsel for the appellant and also fact that the occurrence is quite old of the year, 1996, almost 24 years prior, as such taking lenient view in the matter, the sentence of the appellant Guddu @ Sushil Kumar Sinha is reduced to a period of two years under Section 324 of the IPC and sentence of two years under Section 27 of the Arms Act is affirmed. He shall be entitled for benefit of doubt for the period already undergone in custody in accordance with law.

16. Similarly, sentence of appellant Ranjan Kumar Mishra is reduced to a period already undergone in custody.

17. With the aforesaid modification in conviction and sentence, these appeals are disposed of.

**(Vinod Kumar Sinha, J)**

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| AFR/NAFR          | AFR        |
| CAV DATE          | 27.07.2017 |
| Uploading Date    | 01/08/2018 |
| Transmission Date | 01/08/2018 |

