

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.102 of 2003

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

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1. Surendra Yadav son of Sri Sukghu Yadav @ Suryadeo Pd. Yadav, resident of Village- Kafarpur, P.S.- Makhdumpur, District- Jehanabad.
 2. Sukhu Yadav, Son of Ruplal Yadav, Resident of village- kafarpur, P.S. Makhdumpur, District – Jehanabad.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Yadav, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 15-05-2018

Appellants, namely, Surendra Yadav and Sukhu Yadav stood convicted under Section 307, 307/149 of the IPC and Section 27 of the Arms Act and were sentenced to R.I. for seven years under Section 307 of the IPC and R.I. for four years under Section 27 of the Arms Act vide judgment of conviction dated 11.02.2003 and order of sentence dated 14.02.2003 passed by Sri Syed Jafar Hussain, 02nd Additional Sessions Judge, Jehanabad in Sessions Trial No. 222 of 2002. It further appears that other accused person, namely, Narayan Yadav was charged under Section 302 of the IPC as well as under Section 307/149 of the IPC and accused Rama Kahar was also charged under Section 307/149 of the IPC, however, they had been acquitted from the charges levelled against them.



2. Earlier a report was called for with regard to death alive status of both the appellants, which has since been received and from perusal of the said report, it appears that appellant no. 2 has died during the pendency of appeal, as such, this appeal with regard to appellant no. 2 stands abated

3. Prosecution case as per the fardbeyan of informant Manu Nonia in short is that while he was going to attend the call of nature, appellant along with other accused Sukhu Yadav, Narayan Yadav, Surendra Yadav, Rama Kahar and Ramashish Nonia armed with *bhala*, *garasa* and gun surrounded him and on the order of Ramashish Nonia, accused Narayan Yadav fired from his gun on the informant but it hit Ramashish Nonia. Then accused Sukhdeo Nonia fired from the gun, which caused injury to the informant on his chest. Accused Surendra Yadav fired from his gun, causing injury on right wrist of the informant.

4. On the basis of fardbeyan of informant Makhdumpur P.S. Case No. 34/85. Police after investigation submitted charge-sheet only against appellant. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Sri Syed Jafar Hussain, 02nd Additional Sessions Judge, Jehanabad, for trial and disposal.

5. To prove its case, prosecution examined altogether seven



witnesses. They are; P.W. 1 – Gopali Nonia, P.W. 2 – Mannu Nonia (informant), P.W. 3 - Rajnandan Sharma, I.O., P.W. 4 – Shivshankar Rai (another I.O.), P.W. 5 – Mougali Kishore Tiwari, the doctor, who treated and examined the informant Mannu Nonia, P.W. 6- Kamta Prasad, who proved post mortem report, which was in the handwriting of Dr. R.P. Singh, P.W. 7 – Rampratap Singh, a formal witness.

6. It appears that other witnesses named in the F.I.R has not been examined in this case.

7. Apart from that following documents have been brought on record and marked as Ext. 1 – Signature of Mannu Nonia on fardbeyan, Ext. 2 – Formal F.I.R., Ext. 3 - Original case diary, Ext. 4 – Injury report, Ext. 5 - Post mortem report (substituted copy), Ext. 6 - Certified copy of judgment delivered in sessions trial no. 188/98 and Ext. 7- true certified copy of deposition of Deonandan Jamadar.

8. From the side of defence also four witnesses have been examined and they are:- D.W. 1 – Ramnandan Nonia, D.W. 2 Lal Bahadur Chauhan, son of the deceased Ramashish Jamadar, D.W. 3 – Mahavir Yadav and D.W. 4 – Ramcharitra Prasad.

9. From the trend of evidence of defence witnesses as well as from the exhibits brought on record, the defence of the accused persons is of complete denial of occurrence and further defence is that they have been roped falsely in this case because of Makhdumpur P.S. Case No.



31/85, in which one Ramashish Nonia has been killed. Further defence is that no such occurrence took place and the informant received injuries at some other place and in some other manner.

10. On conclusion of trial, the Trial Court has not found the case true under Section 302, 307/149 of the IPC as well as under Section 27 of the Arms Act against accused Narayan Yadav and under Section 307/149 of the IPC against accused Rama Kahar. However, learned trial court convicted the appellant as well as Sukhu Yadav (now died) under Section 307, of the IPC and Section 27 of the Arms Act as well as under Section 307/149 of the IPC and they were sentenced to undergo R.I. for seven years under Section 307 of the IPC and R.I. for five years under Section 27 of the Arms Act. However, no separate sentence under Section 307/149 of the IPC was passed.

11. From prosecution evidence, it appears that P.W. 1 and P.W. 2 are the only eye-witness, out of which P.W. 2 is the informant in this case and they have supported the prosecution case and had stated in their evidence that appellant Surendra Yadav fired from his gun causing injury in the wrist of the informant and accused Sukhu Yadav fired from his gun causing injury to the chest of informant and their, evidence so far firing by these accused is concerned, are consistent and the aforesaid evidence has found further corroboration from the evidence of P.W. 5, the doctor, who examined the injured after



occurrence on same day and so far other witnesses are concerned, they are first I.O., second I.O. and the doctor, who conducted post mortem examination but in this case accused Narayan Yadav has already been acquitted from the charge under Section 302 of the IPC.

12. Being aggrieved, the appellants preferred the present appeal.

13. Learned counsel for the appellant has assailed the impugned judgment on the ground that the trial court has itself found that the informant and P.W. 1 both were shifting the place of occurrence one after another as per their convenience. It has also been submitted that there are contradictions between the evidence of P.W. 1 and P.W. 2., as according to P.W. 2, accused Narayan Yadav, Sukhu Yadav and Surendra Yadav were armed with gun, whereas P.W. 1 in his evidence has stated that they were armed with pistol. Further P.W. 2 in para – 1 of his evidence has stated that Rama Kahar had no weapon in his hand, whereas, P.W. 1 has stated in his evidence that accused Rama Kahar was armed with *bhala*. Further submission is that the case is based on the evidence of these two witnesses only and the trial court itself has found their evidence doubtful. Further submission is that in the case lodged by the son of Ramashish Nonia, D.W. 2 it has been stated that the occurrence took place in the house of Rama Kahar and I.O. has also found the blood stain in the Aangan of Rama Kahar. It has further been submitted it is also a fact that Lal Bahadur Chauhan



(D.W. 2), has stated that accused Mukhiya Jamadar took the gun from the hands of Rameshwar Nonia and fired twice and his father Ramashish Nonia died on spot, receiving gun shot injuries. Mukhiya Jamadar and Rameshwar Nonia are the sons of P.W. 2 (Mannu Nonia) and when the I.O. during investigation went to the village, Kafarpur, he found Mannu Nonia absconding from the place of occurrence and P.W. 1 has also admitted in his evidence in para 25 that he had seen Ramashish Nonia shot dead and blood was oozing out, which clearly goes to show that the informant had received the injuries in some other manner and at some other place and only to save his skin from the Makhdumpur P.S. Case No. 31/85, he came with the false case, implicating the appellant and others and the trial court without appreciating all these facts has convicted the appellant in this case, which is not sustainable in the eye of law.

14. On the other hand, learned counsel appearing on behalf of respondent – State has supported the finding of guilt recorded by learned Trial Court and has submitted that there are consistent evidence available on record that Sukhu Yadav fired on the informant causing injury on his chest and appellant Surendra Yadav fired on the informant causing injury on his wrist and the evidence of these two witnesses has fully been corroborated by the evidence of doctor and, therefore, there is no infirmity in the impugned judgment of trial court



and conviction of appellant is just and proper.

15. Heard both sides. From perusal of the evidence, it appears that no doubt P.W.1 and P.W. 2 were consistent on the point that Sukhu Yadav fired on the informant causing injury on his chest and appellant Surendra Yadav fired on the informant causing injury on his wrist and the doctor, who treated the informant has also found the injuries. However, it appears that the trial court itself has doubted the credibility of evidence of these two witnesses as there are contradictions in the evidence of these witnesses and they have continuously shifted the place of occurrence, as the place of occurrence stated in the Makhdumpur P.S. Case No. 31/85 appears to be more probable, which took place in the house of Rama Kahar and the I.O. has also found the blood stain in the Aangan of Said Rama Kahar and in the said occurrence, one Ramashish Nonia father of D.W. 2 has also lost his life and the trial court itself, has disbelieved the story that Narayan Yadav fired at Ramashish Nonia, causing injury to him. Further, it appears that the case is based on the evidence of two witnesses viz. P.W. 1 and P.W. 2 and there are also contradiction with respect to weapon used in the offence as according to P.W. 2, the weapon used for firing was gun, whereas, according to P.W. 1, the weapon used for firing was the pistol and their evidence does not inspire confidence specially when there is delay of three days



in lodging the F.I.R. Furthermore, P.W. 1 and P.W. 2 are also accused in Makhdumpur P.S. Case No. 31/85, in which the father of D.W. 2 had lost his life but the I.O. has not tried to take them into custody. Further the pellet used in the occurrence has also not been brought on record.

16. Considering the entire discussions as well as the infirmities and inconsistencies as stated above in the prosecution case, the appellant Surendra Yadav, is at least entitled to benefit of doubt in the present case.

17. Accordingly, this appeal is allowed. The judgment of conviction dated 11.02.2003 and order of sentence dated 14.02.2003 passed by Sri Syed Jafar Hussain, 02nd Additional Sessions Judge, Jehanabad in Sessions Trial No. 222 of 2002, is hereby set aside.

18. As the appellant is on bail, he is discharged from liability of bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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