

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.866 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- JAMUI

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Jagdish Sah, s/o Saryug Sah, r/v-Khairma, P.S.+District-Jamui.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Swaroop Prasad (Amicus Curiae)

For the Informant : Mr. Prakash Mahti

For the State : Mr. Bal Mukund Prasad Sinha, Addl. PP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 23-03-2018

Nobody appears on behalf of the appellant. Mr. Ram Swaroop Prasad has appeared as Amicus Curiae.

The appellant, Jagdish Sah, has been convicted under Sections 307, 323 of the Indian Penal Code and Section 27 of the Arms Act by the judgment dated 16.10.2009 passed by the learned Sessions Judge, Jamui in S.Tr. No. 52/2008 and has been sentenced to undergo R.I. for 10 years for the offence under Section 307 of the Indian Penal Code, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer S.I. for six months, under Section 323 of the Indian Penal Code he has been sentenced to undergo S.I. for one year and R.I. for three years under Section 27 of the Arms Act. The sentences have been ordered to run concurrently.

The prosecution case, in short, is that on the date of



occurrence, i.e. 07.01.2007, the younger son of the informant Saryug Sah came on the Boring and assaulted him with lathi on his left knee. The informant started crying and then his son (appellant) made firing with intention to kill him and fled away from there. The informant sustained firearm injury on his left cheek. The cause of the occurrence is that all the three sons are separate from the informant. The youngest son (appellant) pressurized the informant for partition of the land for which the informant was not ready during his life time and therefore, the youngest son (appellant) of the informant committed such offence.

The police after investigation submitted charge-sheet against the appellant for the offence under Sections 307, 323 of the Indian Penal Code and Section 27 of the Arms Act and charges have been framed under these sections.

The prosecution has examined altogether seven witnesses during the trial. Pappu Sah (P.W. 2) and Ramcharan Sah (P.W. 3) have not supported the prosecution case and they have been declared hostile by the prosecution.

The informant, Saryug Sah, has been examined as P.W. 5. He has stated in his evidence that on the date of occurrence his youngest son Jagdish Sah arrived at boring with *lathi* and assaulted on his left leg and thereafter fired from his pistol, which hit on his cheek and then he (appellant) fled away. He has further stated in his evidence that he became deaf after assault on the date of occurrence. The court has also



mentioned in the deposition that the informant (P.W. 5) is deaf. The informant has further stated in his evidence that the appellant is his youngest son and he has caused occurrence because he pressurized him for partition of the land. In the cross-examination, the witness has stated that there was blood stain on the sweater. He had shown the cloth to the police but the police did not seize the cloth.

Laxmi Sah (P.W.4) is an eye-witness of the occurrence. He is one of the son of the informant. He has stated that on the date of occurrence, he went near his father after hearing the sound of firing. He saw Jagdish Sah running away from the place of occurrence after causing firearm injury to his father. His father told him that Jagdish Sah had firstly assaulted him with *lathi* and thereafter caused firearm injury to him. The appellant is the younger brother of Laxmi Sah. He has stated that the appellant always used to pressurize his father for partition of the land for which he was not ready during his life time.

Geeta Devi (P.W. 6) is also an eye-witness of this case. She is daughter-in-law of the informant. She has stated in her evidence that on the date of occurrence her father-in-law was at the Boaring. She was present along with her husband in the paddy field. She stated that her brother-in-law Jagdish Sah caused firearm injury to her father-in-law near cheek on Kanpatti. She along with her husband went to her father-in-law then the appellant fled away. She brought the informant to the hospital. She stated that the appellant always used to pressurize her



father-in-law for partition of the land for which he was not ready during his life time.

P.W. 7 has examined the injured/informant Saryug Sah. He has found two injuries on the person of the informant which are (i) lacerated wound 1/8" x 1/4" mount cavity deep with charring all around with irregular margin with blackish clot in mouth on left cheek, (ii) lacerated wound with averted margin 3/4" x 1/2" with mount cavity deep below left ear in upper part blood clots all around the wound. This witness has proved the injury report which has been marked as Ext. 2. The doctor has stated that injury has been caused by projectile firearm like pistol. The doctor has however opined the injury to be simple in nature and the age of the injury within 24 hours. In the cross-examination, P.W. 7 has stated that he had not found any bullet or like article from the injured and there was no substance except blood clot in the mouth of the injured.

P.W. 1, Jeewach Chaudhary, is the I.O. of this case. He has stated that he recorded the statement of the informant. He also issued injury slip of the injured. He inspected the place of occurrence. He recorded the statement of the witnesses and collected injury report from the hospital. He submitted charge-sheet against the appellant after completing investigation for the offences under Sections 307 and 323 of the Indian Penal Code and Section 27 of the Arms Act. He obtained warrant of arrest against the appellant who was found absconding. He



did not appear during investigation and then he also obtained requisite under Section 83 of the Cr.P.C., but still the appellant was absconding. This witness has proved the charge-sheet marked as Ext. 1/1. He has also proved the formal F.I.R. which has been marked as Ext. 1/2. This witness was not cross-examined on behalf of the defence.

Three witnesses have been examined on behalf of the defence. D.W. 1 is Raj Kr. Sah, who is one of the son of the informant. This defence witness has stated that his brother Laxmi Sah resides with his father. The father used to sell the ancestral land. He had transferred the rest part of the land to Laxmi Sah. He also used to hand over the sale proceeds to Laxmi Sah. Jagdish Sah (appellant) raised objection for sale of land by his father. D.W. 2 is Lali Devi @ Lalita Devi, who is the wife of D.W. 1 and daughter-in-law of the informant. This witness has stated that her father-in-law has instituted this case at the instigation of Laxmi Sah. She has also stated that her father-in-law lives with Laxmi Sah. The partition has not taken place. Her father-in-law used to sell the land at the instance of Laxmi Sah which was objected by the appellant and thereafter this case has been filed. D.W. 3 is Kamla Devi. The informant is Phupha Sasur of this witness. She has stated that the informant had not provided anything to his eldest and youngest sons except one room. The informant has been selling the lands at the instigation of the second son. He does not pay heed towards his eldest and youngest sons. Saryug Sah has falsely lodged this case.



In this manner, from perusal of the evidence of the prosecution witnesses, it appears that the informant has supported the case of firearm injury caused to him by the appellant with intention to kill him. The doctor has found two injuries on the person of the informant which are (i) lacerated wound 1/8" x 1/4" mount cavity deep with charring all around with irregular margin with blackish clot in mouth on left cheek, (ii) lacerated wound with averted margin 3/4" x 1/2" with mount cavity deep below left ear in upper part blood clots all around the wound. The doctor has stated that injury has been caused by projectile firearm like pistol. Therefore, the evidence of the informant gets full corroboration with the evidence of the doctor with regard to the injury, which has been proved by the doctor.

The eye witnesses, namely, Laxmi Sah (P.W. 4) and Geeta devi (P.W.6) have also supported the case of the informant.

Defence of the accused is that the informant is living with his son Laxmi Sah (P.W. 4). He used to hand over the sale proceeds to Laxmi Sah. He was not ready to partition the land and give share to his youngest son (appellant).

From perusal of the evidence of the defence witnesses, it appears that they have not been able to explain the injury suffered by the informant. D.W. 1 has admitted in his examination-in-chief that his father is suffering from deafness. The informant has stated that he became deaf on account of assault on the date of occurrence.



To justify the conviction under Section 307 of the Indian Penal Code, it is not essential that bodily injury capable of causing death should have been inflicted. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this Section. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

During pendency of this appeal, Interlocutory Application has been filed on behalf of the informant on 15.12.2017 stating therein that during pendency of this appeal after being released on bail vide order dated 20.11.2009, the appellant started torturing and assaulting the informant as well as his son Laxmi Sah (P.W. 4) who has given evidence in favour of his father in the Sessions Trial. The informant has been ousted from the house by the appellant. It has also been mentioned in the I.A. petition that the appellant has opened fire on Laxmi Sah (P.W. 4) on 29.04.2013 causing grievous injury to him for which Jamui P.S. Case No. 90/2013 has been registered for the offence under Sections 307 and 341 of the Indian Penal Code on the fardbeyan of the wife of Laxmi Sah, namely, Geeta Devi. The appellant has been absconding in that case instituted on 05.06.2013. He is giving threat to kill the informant and Laxmi Sah (P.W. 4). The process under Section 82 of the Cr.P.C. has also been issued against the appellant dated 11.11.2014 by the court below.



In this manner, from such conduct of the appellant, it appears that after being enlarged on bail during pendency of this appeal, he has again committed serious offence causing grievous injury to one of the witness of the case for which separate case vide Jamui P.S. Case No. 90/2013 has been registered. He is also giving threat of dire consequences to the informant. He is also absconding in that case.

Therefore, on the basis of the evidence adduced on behalf of the prosecution in the instant case as discussed above in detail and also such conduct of the appellant as mentioned in the I.A. petition filed on behalf of the informant, which has been mentioned in this judgment, this Court is of the view that no interference is required in judgment of conviction and sentence passed against the appellant, by the court below. Therefore, the judgment of conviction and sentence dated 16.10.2009 passed by the court below is affirmed.

The instant Criminal Appeal is dismissed.

The court below is directed to take appropriate step in accordance with law for arrest of the appellant to undergo the sentences as awarded by the court below and also for realization of the fine as imposed by the court below.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	03.04.2018
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