

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.54 of 2009

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

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1. Md.Faiz @ Md.Kaiz , s/o Md. Shoyeb Panter

2. Md. Raja, S/o Md. Shoyeb Panter

3. Md. Sheru, S/o Md. Shoyeb Panter.

4. Md. Soyeb Panter, s/o Ali Imam

All are r/v-Karari Islamganj, P.S.- Chandauti, District-Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mr. Bhaskar Shankar
Mr. Rakesh Singh

For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-08-2018

Heard the learned counsel for the appellants as well as
the State.

2. The appellants, above named, have been convicted
for offence under Section 307/34 of the Indian Penal Code. The
Appellant No. 1, Md. Faiz @ Kaiz has also been convicted for offence
under Section 27 of the Arms Act by the judgment and order dated
19.12.2008 passed by the learned Sessions Judge, Gaya in S. Tr. No.
18/2008, arising out of Chandauti P.S. Case No. 44/2007. All the
accused persons have been sentenced to undergo R.I. for ten years for
offence under Section 307/34 of the Indian Penal Code. The appellant
no. 1, Md. Faiz has been acquitted of charge for offence under Section



27 of the Arms Act.

3. In the written report, it is alleged that on 11.04.2007 at about 7 P.M. when the informant was sitting and talking at the door of his neighbour Md. Jawed, his mother Noor Jehan Khatoon came and told that the appellants have attacked and committed assault, whereupon he along with Jawed, his father Shamim, Uncle Md. Akhtar went to the house of appellant Md. Soyeb. Md. Soyeb and his sons Md. Faiz, Md. Raza and Md. Sheru closed the door of their house and after climbing on the roof started hurling abuses and suddenly opened fire, which hit on the right shoulder of the informant. Thereafter they ran away. The aforesaid accused persons also started brick-batting from the roof. The informant was brought to hospital on motorcycle for treatment. The accused persons hurled abuses and fired upon informant with intention to kill. The motive behind the occurrence is that three days prior to this occurrence there was quarrel during play between son of Jawed, aged about 4 years and son of appellant Soyeb Painter, aged about 9 years, which was intervened by informant.

4. On the basis of aforesaid *fardbeyan*, Chandauti P.S. Case No. 44/2007 was registered for the offences punishable under Sections 324, 307/34 of the Indian Penal Code and Section 27 of the Arms Act.



5. In this case altogether nine witnesses have been examined on behalf of the prosecution.

6. P.Ws. 1 to 5 have not supported the case of prosecution. They have been declared hostile.

7. P.W. 6 is father of injured/informant. He has stated in his evidence that he did not see who had made firing. Firing was made from the house of appellant Soyeb Painter and his son sustained firearm injury over his right chest.

8. The injured Md. Azad is informant of this case, who has been examined as P.W.7. He has stated in his evidence that on the date of occurrence some altercation had taken place between the son of Md. Jawed and son of appellant Soyeb Painter. The appellants came while the informant was in his house and started throwing bricks at his house. The informant came out from the house and made protest then all the accused persons entered into house of informant. The accused persons made firing on informant after closing the door. The informant sustained firearm injury over right side of his chest. He did not see who had made firing.

9. P.W. 8, Dr. Binod Kumar Singh, has examined the injured/informant Md. Azad. He has proved the injury report, which has been marked as Ext. 2. He has opined that injury found on the person of informant is simple in nature caused by fire arms.



10. In such circumstances after going through the evidence of prosecution witnesses, this Court finds that there is no cogent evidence to substantiate the charge against the accused persons. The prosecution has not been able to substantiate the charge against the accused (appellants) for the offence under Section 307/34 beyond all reasonable doubts. All the accused persons are entitled for benefit of doubt.

11. Accordingly, the impugned judgment of conviction and order of sentence passed by the learned Sessions Judge, Gaya in Sessions Trial No. 18/2008 dated 19.12.2008 is hereby set aside.

12. The appellants are on bail. They are discharged from liability of their bail bonds.

13. This Criminal Appeal is accordingly allowed.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	18.08.2018
Transmission Date	18.08.2018

