

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

**Criminal Appeal (SJ) No.33 of 2011**

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Vijay Chaudhary, S/O Late Bhageran Choudhary, R/O Village- Bhaishwan, P.S.-  
Masaurhi, Dist.- Patna.

.... .... Appellant/s

Versus

The State Of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Zeyaul Hoda, Advocate.

For the Respondent/s : Mr. Parmeshwar Mehta, APP.

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**

**ORAL JUDGMENT**

**Date: 13-03-2018**

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

2. The sole appellant has preferred the present appeal  
against the judgment and order of conviction dated 02.12.2010 and  
06.12.2010 respectively passed by learned Additional District and  
Sessions Judge, FTC-IV, Jehanabad in Sessions Trial No. 77 of 2004  
thereby holding the appellant guilty of committing offence under  
Section 307 of Indian Penal Code as well as Section 27 of the Arms  
Act, consequently sentenced him to undergo four years rigorous  
imprisonment under Section 307 of IPC and further to pay a fine of  
Rs. 2,000/- and in case of default in paying fine amount, further to  
undergo rigorous imprisonment for three months and also sentenced  
to undergo three years rigorous imprisonment and a fine of Rs. 2,000/-



for committing offence under Section 27 of the Arms Act and in default to make payment, further three months of rigorous imprisonment. However, both the sentences are directed to run concurrently.

3. The factual matrix of the prosecution case, as per Makhdumpur P.S.Case No. 72 of 1991 dated 12.05.1991, is that on the said date in the evening, informant Rajdeo Yadav (PW-4) was returning back to his village from Tehta Market along with Laxman Mahto (not examined), Pyare Yadav (PW-2) and Shyamdeo Yadav (PW-1), the co-villagers. At 6:30 P.M., when they reached ahead of village Mathia, found four persons sitting by the side of the road, out of them, one was identified as brother-in-law of Jagdish Choudhary, the present appellant, sitting there along with three unknown persons. One person made an attempt to caught hold the informant who pinned him down on the ground thereupon the appellant fired at him from back causing two fire arm injuries near right shoulder. The informant started running away then again he fired from behind but it did not hit him. Other persons, accompanying the informant, also fled away in another direction and after reaching home, he was taken to hospital for treatment. The motive for committing occurrence is some dispute with Doman Choudhary, brother-in-law of the appellant.

4. The police, on conclusion of investigation, submitted



charge sheet against the appellant under Section 307 of Indian Penal Code and Section 27 of Arms Act. Subsequently, cognizance was taken by the court and after commitment of the case, appellant was put on trial and on its conclusion convicted by the impugned judgment.

5. Learned counsel appearing on behalf of the appellant submits that all the witnesses are interested witnesses for the reason that they are related to the informant, however, he assails the impugned judgment as no motive for committing the occurrence has been established, besides this fact, there was no enmity with the appellant and he is resident of another district, only his brother-in-law is resident of the said village. He also points out that the Investigating Officer of the case has not been examined and his non-examination has prejudiced the case of the appellant. Lastly, it is submitted that witnesses have stated that the informant has filed a compromise petition and alternative argument is that it is the first offence of the appellant, now he is a Government servant and no benefit of the provision of Probation of Offenders Act or Section 360 of the Code of Criminal Procedure was given to the appellant and has remained in custody altogether for one year and five months including pre-trial and post-trial stage and this alleged offence is of the year 1991.

6. Learned counsel appearing on behalf of the State



submits that prosecution has established the charge under Section 307 of Indian Penal Code against the appellant by cogent evidence by examining five prosecution witnesses having supported the case that it was appellant who shot at the informant and that injury is also corroborated by the evidence of PW-5, the doctor, who not examined the informant.

7. Having considered rival submissions and on perusal of the record, it is apparent from the evidence brought on record that some scuffle took place in between the informant and accused persons and this appellant opened fire, which hit the back of the right side of the shoulder of the informant. Injuries caused appears as multiple small burnt injury 1/6" in diameter was found scattered over right shoulder and upper part of right chest. Even two pellets were found lodged inside the body. The X-ray showed small opaque object resembling metallic objects. This injury is proved by Dr. Srinath Prasad (Ext. 5). It is also evident that appellant again opened fired but the informant ran away and missed the target. It is submitted that appellant being a police constable is now in the Government service though at the time of alleged occurrence he was unemployed and alleged offence was committed almost 27 years back in the year 1991, therefore, the sentence of the appellant is reduced to the period already undergone with modification in the fine to deposit Rs.



50,000/- as fine, which shall be paid to the informant Rajdeo Yadav within two months and in case of default of payment of fine, he shall undergo one year of imprisonment. Learned court below will take all coercive steps to secure his appearance to undergo the imprisonment in case of non-payment of fine amount as per the punishment awarded to the appellant.

**(Arun Kumar, J)**

Sujit/-

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