

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.380 of 2003

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

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Raju Mahton sonof Bikho Mahton, resident of Mohalla- Bishnupur, P.S. Town,
District Begusarai.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Mr. Ranbir Singh, Amicus Curiae

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 15-03-2018

Heard the parties.

2. On repeated calls, no one appears on behalf of the appellant, as such Mr. Ranbir Singh, Advocate is appointed as Amicus Curiae to assist the Court.

3. The sole appellant stands convicted under Section 307 of the Indian Penal Code & also under Section 27 of the Arms Act and sentenced to undergo RI for seven years under Section 307 of the IPC and RI for three years under Section 27 of the Arms Act. Both the sentences were directed to run concurrently, vide judgment dated 21.5.2003 passed by Sri Ramesh Kumar Rateria, IVth Additional Sessions Judge, Begusarai in Sessions Trial No.343 of 2001.

4. The prosecution case as stands on the basis of fardbeyan of Murari Gautam recorded by A.S.I. Sri B.K. Paul of Town Police Station at Kalpana Nurshing Home where he was under treatment, in



front of Kanhaiya Kumar and Sanjeev Kumar that on 8.8.2001 one patient Reema Kumari came to his Medicine shop and she was accompanied by her mother and two persons Raju Mahto and Ramanuj Ram, accompanied her, gave a *purja* for medicine but as some persons were in line from before, he asked them to wait; on which the accused persons became annoyed and told that they are *Rangbaz* of Bishanpur and he should be given medicines first; on which he returned *purja* and both the accused persons became irritated and threatened him of dire consequences. Further case is that after taking lunch, while he had gone to betelshop for betel for having betel, Raju Mahto and Ramanuj Ram came on a Rickshwa and took out Pistol from his waist and fired on him, which hit at his thigh and he ran for taking shelter and when he reached to the Varandah of the Clinic of Munju Choudhary, second fire hit to the below of his waist on the buttock and he fell down, people assembled there and the accused persons fled away.

5. On the basis of the aforesaid fardbeyan, Town P.S.Case No.252 of 2001 was registered against the appellants Raju Mahto and Ramanuj Ram, police after investigation submitted charge-sheet, cognizance of the offence was taken and the case was committed to the court of Sri Ramesh Kumar Rateria, IVth Additional Sessions Judge, Begusarai for trial and disposal.

6. Appellant Ramanuj Ram absconded from the custody



and as such his trial was separated and trial proceeded only against Raju Mahto and both the appellants were charged under Section 307 of the IPC and Section 27 of the Arms Act.

7. The prosecution in order to substantiate his case has examined altogether 10 witnesses and they are P.W.1 Kanhaiya Kumar, who is attesting witness of the fardbeyan in the FIR, P.W.2 Mukesh Kumar Singh, who claims to be eye witness of the case, P.W.3 Sanjeev Kumar who is attesting witness of the FIR, P.W.4, Amit Ranjan, who has been declared hostile, P.W.5, Rambabu Singh declared hostile, P.W.6 Madhav Kumar declared hostile, P.W.7 Murari Gautam (injured and informant in this case), P.W.8 Dr. Ashok Kumar Sharma who has treated the injured, P.W.9 Sahdeo Rai (declared hostile by the prosecution) and P.W.10 Bivash Kumar Pal who has recorded fardbeyan and also Investigating Officer in this case.

8. On behalf of the defence, no witness has been examined and as per trend of cross examination, defence of the appellants is of false implication and of innocence.

9. The learned trial court on conclusion of the trial has convicted the appellants under Section 307 of the IPC and also under Section 27 of the Arms Act and sentenced them as stated above.

10. Being aggrieved by the above judgment, the present Appeal has been preferred by the appellants.



11. Contention of the learned Amicus Curiae is that in this case there is no eye witness of the occurrence. P.W.7, who is informant, has himself stated in his cross examination that prior to receiving the injuries and after receiving injuries he has not seen face of the person, who has fired, which will appear from para 13 of the cross examination. It has also been submitted that P.Ws. 1 and 3 are not eye witness of the occurrence and they are hearsay witness on the basis of evidence of P.W.7 (informant) and P.W.2 claims to be eye witness of the occurrence but he is a chance witness and his presence at the place of occurrence is not free from reasonable doubt. Further submission is that identification of the accused in court by P.W.2 was not admissible in absence of any T.I.P. held earlier. Learned counsel for the appellants has further submitted that the appellants are of another village and as such witnesses have not occasion to identify them and hence, conviction of the appellants under Section 307 of the IPC and Section 27 of the Arms Act is not free from infirmities and inconsistencies as such it is not sustainable in the eye of law.

12. On the other hand learned counsel for the State has defended the judgment submitting that there is evidence of P.Ws. 1 to 3, which supports the prosecution case and furthermore P.W.2 has identified the accused persons in the court and P.W.7 has also named them in his chief and evidence of P.Ws. 1 and 2 also disclose that



they had seen them while they fleeing from the place of occurrence. No doubt P.W.7 has disclosed that prior to receiving of injuries and after receiving he did not see the face of the accused but occurrence has not been denied by him, as such conviction of the appellants under Section 307 of the IPC and Section 27 of the Arms Act is just and proper and it does not require any interference by this Court.

13. In the background of the submissions of the parties and on examination of the evidence of the prosecution case, it appears that P.W.7 is informant in this case and he has stated in his evidence that the occurrence occurred on 8.8.2001 at 02:00 P.M. while he was standing near the clinic of Manju Choudhary in the meantime two persons came from the rickshaw from the eastern side and they are named Raju Mahto and Ramanuj Ram and after coming down from the rickshaw they fired on him by pistol. His evidence further discloses that he received injuries in the thigh and while he tried to save his life and run on the verandah of the clinic of Manju Choudhary another shot was fired on him below waist at the buttock and he fall down there and thereafter the people had taken him to the hospital of Doctor Ashok Kumar Sharma. This witness has been cross examined and in his cross examination he has stated that he was hit by back side and he has stated that prior to receiving of the injuries and even after receiving of the injuries, he could not see the persons who had fired at him, as such so far this witness is



concerned, though he has supported the occurrence but his cross examination demolished the identification of the accused persons.

14. P.W.8 is the Doctor Ashok Kumar Sharma who has examined the injured (informant) Murari Gautam on 8.8.2001 at about 3.30 P.M. and he has found following injuries on the person of the injured :-

- (a) ***Injury no.1- Entry would ¼” in diameter on back with inverted margin.***
- (b) ***Injury no.2- Exit would ½” in diameter in front of the left thigh.***
- (c) ***Injury no.3 Entry would ¼” in diameter in front of left thigh 2” below injury no.2***
- (d) ***Injury no.4- Ext. would ½” X ½” on left thigh 3” away from injury no.3 with inverted margin.”***

He has also stated that the age of the injuries is within six hours and the nature of the injuries are grievous by fire arm weapon. He has proved the injury report as Ext. 4, as such considering the evidence it appears that medical evidence also supports the evidence of P.W.7, so far manner of occurrence is concerned.

15. P.W. 1 Kanhaiya Kumar has stated in his evidence that on 8.8.2001 he was at Shiva Medical Shop situated at Dakbungalow Road and at that time, his brother Murari Gautam and his friend Sanjeev Kumar were present there and a patient came along with his mother and two boys Raju Mahto and Ramanuj Ram of Kishanpur and gave a *purja* to him and the informant Murari Gautam told them



that 4-5 patients are there, he is giving them medicine, on which Raju Mahto and Ramanuj Ram told that they are *Rangbaz* of Bishunpur on which Murari Gautam returned the *purja* causing annoyance to Raju Mahto and Ramanuj Ram and they told to face the consequences of that. Further his evidence in chief shows that at about 3.00 P.M. on the same day his brother Murari Gautam had gone to betel shop near the clinic of Manju Choudhary in the meantime, he heard two sounds; on which he and Sanjeev Kumar went there and found Murari Gautam fallen on the Varandah of the clinic of Manju Choudhary having gun shot injuries and his evidence also shows that he saw Raju Mahto and Ramanuj Ram fleeing away from there having Pistols in their hands. Thereafter, his brother was taken to the clinic of Doctor Ashok Kumar Sharma. He identified the accused person in dock also. This witness has been cross examined at length but there is nothing in the cross examination to discredit his evidence.

16. P.W.2 Mukesh Kumar Singh claims to be eye witness of the occurrence and stated in his evidence that on 8.8.2001 he came at the shop for taking medicine and two persons came there and Murari Gautam was standing near the betel shop and a person fired by pistol on Murari Gautam, which hit at his left thigh then he fled away towards the clinic of Manju Choudhary, in the meantime, another boy fired on Murari Gautam, which hit on his buttock. He



has also identified the accused persons in dock stating that he has fired first and he has identified second person as Ramanuj Ram. This witness has also been cross examined in order to prove his presence at the place of occurrence. There is nothing in the evidence to doubt his credibility or his presence at the place of occurrence rather he has stated in para 40 of his cross examination that Murari Gautam was fired from front.

17. P.W.3 is Sanjeev Kumar and he has stated in his evidence that he was sitting in the medicine shop of Murari Gautam along with Kanhaiya Kumar that Raju Mahto and Ramanuj Ram along with a lady came for taking medicines and give a *purja* but Murari Gautam told to wait as 4-5 persons are there, thereafter he will give medicines to him, on which Raju Mahto and Ramanuj Ram became annoyed and said they are *Rangbaz* and threatened him of dire consequences. His evidence further discloses that at 3.00 P.M. on the same day, Murari Gautam had gone to a betel shop and thereafter he heard sound of two shots and he along with Kanhaiya Kumar went towards that place and saw Murari Gautam fell in the injured condition at the Verandah of Doctor Manju Choudhary and seen Raju Mahto and Ramajun Ram fleeing hurling pistols and thereafter Murari Gautam was taken to the hospital. This witness has also been examined at length but there is nothing in his evidence to doubt his creditability. Both P.Ws. 1 and 3 are also attesting witness



of the FIR also and as such their presence was shown in the FIR also. It further appears that as per the prosecution case the occurrence took place at 3.00 P.M. and fardbayan was recorded at 4.15 P.M., just after the occurrence and injured was treated at 3.30 P.M. All these facts also show that the FIR has been lodged and he was treated immediately after occurrence as such there is no chance of any manipulation in the case. No doubt the other witnesses have been declared hostile in this case and P.W.7 has also stated that he has not seen the faces even before firing or after firing on him but supported the occurrence and medical evidence also supports the manner of occurrence. Further P.W.2 has not only identified the accused persons in court but supported the manner of occurrence. No doubt he is a chance witness but there is nothing in his evidence to discredit his testimony and his evidence has found corroboration from the evidence of P.Ws. 1 and 3 as they had stated that they had seen the accused persons fleeing from the place of occurrence just after the occurrence hurling Pistols and that is also the circumstances, which goes against the appellant. It is also settled principle that on evidence of chance witness, conviction can be based, if it is found free from any infirmities and inconsistencies. On the other hand, in the present case, his evidence found corroboration from the evidence of P.Ws.1 and 3 and injuries on abdomen are grievous in nature.

18. Considering the facts and circumstances as discussed



above, so far conviction of the appellants under Sections 307 of the IPC and Section 27 of the Arms Act is concerned, it appears to be just and proper and does not suffers from any infirmities.

19. Submissions of the learned Amicus Curiae is that they have remained in custody for more than three months and the occurrence is of the year, 2001 as such 16 long years have passed, as such lenient view may be taken on the point of sentence.

20. Having considered submissions, no doubt it is the old case, however, as conviction is under Section 307 of the IPC and Section 27 of the Arms Act as such, sentence is reduced to R.I. for five years under Section 307 of the IPC and R.I. for three years under Section 27 of the Arms Act.

21. With the aforesaid modification in sentence, this Appeal is dismissed.

(Vinod Kumar Sinha, J)

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