

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.274 of 2003

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

- =====
- 1.Shambhu Sah son of late Ram Autar Sah
 - 2.Tarkeshwar Sah son of late Ram autar Sah
 3. Raghubansh Sah son of Ekbal Sah
 4. Vinod Sah son of Raghubansh Sah

All are residents of Village-Banwari Basant, P.S.- Gorkha, District-Saran.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Awadhresh Kumar Singh

For the Respondent/s : Mr. Binod Bihari Singh,A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 04-05-2018

Appellant no.1,Shambhu Sah has been convicted under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and under Section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for five years. The appellants no.2 and 4, Tarkeshwar Sah and Binod Sah have been convicted under Sections 324/109 and 324/34 of the Indian Penal Code and sentenced to undergo R.I. for one year and also convicted under Section 323 of I.P.C. and sentenced to undergo R.I. for five months and appellant no.3 Raghubansh Sah has been convicted under Section 323 of the Indian Penal Code and sentenced to undergo R.I. for five months by the Judgment and order dated 12.05.2003 passed by Sri Rukmini Kant Chaudhary-1st Additional Sessions Judge, Saran Chapra, in Garkha P.S. Case No.40 of 1995 corresponding to Sessions Trial No.430 of 1995.

2. The prosecution case, as per fard-e-beyan of Raj Kishore Pandey (P.W. 4) who is also one of the injured, in short, is that a quarrel took



place between his son and the son of Ramawatar Sah which was followed by exchange of hot words between the guardians. However, quarrel was pacified by intervention of the villagers and thereafter at 6.30 P.M. the informant was returning from easing himself and when reached near his house, appellant Shambhu Sah along with appellant Tarkeshwar Sah and Vinod Sah met him and Tarkeshwar Sah started abusing him and ordered to kill him whereupon accused appellant Shambhu Sah fired from his pistol due to which he received splinter injury on his face and he fell down and raising alarm. Appellants Tarkeshwar Sah and Vinod Sah assaulted him with fists and slaps. Then P.W.3 who happens to be the mother of the informant, Ram Kali Devi came to rescue him but she was also assaulted by Raghuvansh Sah. On hearing sound of firing villagers assembled there and then the accused persons fled away.

3. On the basis of the aforesaid fard-e-beyan of the informant, Bhagwan Bazar P.S. Case No.194 of 1995 was instituted against the appellants.. Cognizance of the offence has been taken and the case was committed to the court of Sessions, which ultimately came to the file of Shri Rukmini Kant Chaudhary, the then Ist Additional Sessions Judge, Saran, in Sessions Trial No.430 of 1995 for trial and disposal.

4. Charges were framed under Sections 323, 307/109 of the Indian Penal Code and Section 27 of the Arms Act against the appellants.

5. In order to substantiate its case prosecution has examined altogether six witnesses out of whom P.W.1 is Ram Ji Pandey and P.W.2 is Yugal Mahto both turned hostile. P.W.3 is Ram Kali Devi, the mother of the informant, who is of the injures, P.W.4, Raj Kishore Pandey, is the informant of this case, P.W.5, Braj Kishor Pandey is the full brother of the informant who claimed to be an eye witness and P.W.6, Birendra Singh is a formal witness who has proved



signature of the Police Officer on the formal F.I.R. (Ext.2).

6. The defence of the appellants is of complete innocence and false implication and denial of any such occurrence. Hence, moot question required to be examined in this case is as to whether the prosecution has been able to prove the charges against the appellants beyond all reasonable doubts.

7. From perusal of the same it appears that P.W.4 Raj Kishore Pandey (informant) and P.W.3, mother of the informant both have claimed to be an eye witness. P.W.5 Braj Kishore Pandey also claimed to be an eye witness of this case. The trial court found him eye witness of the occurrence. It also appears that neither the I.O. has been examined nor the doctor has been examined. Apart from that neither the injury report has been brought on record nor seizure list has been brought.

7. Learned trial court on conclusion has convicted the appellants under Section 324 of the Indian Penal Code as well as 323 of the Indian Penal Code and Section 27 of the Arms Act and acquitted the appellants of the charge for the offence under Section 307 of the Indian Penal Code.

8. Learned counsel appearing on behalf of the appellants assailing the impugned Judgment has submitted in this case no independent witness has been examined as P.W.4, the informant and P.W.3, the mother of the informant and P.W.5 have not been considered the eye witnesses of the occurrence and suggestion has been given to the P.Ws. 3 and 4 that a case was earlier lodged by the mother of the appellant no.1 against the mother of the informant and, as such, enmity is from before and in that back ground non-examination of independent witness creates a serious doubt about evidence of P.Ws.3 and 4. It has also been submitted that in this case neither the doctor has been examined nor the injury report has been brought on record nor the I.O.. has



been examined in this case. As such, it cannot be said that the injury caused on the person of the informant was injury caused by sharp cutting weapons and the evidence of P.W.3 clearly shows that she has not been brought for treatment and she has not received injury. It has also been submitted that there is no seizure of any splinter from the person of P.W.4 nor there is any recovery of pistol and in such situation conviction of the appellants under Section 27 of the Arms Act is also not just and proper. The learned trial court has not considered this aspect and convicted the appellants under Sections 323, 324 and Arms Act as well as other sections of the I.P.C.

9. Learned counsel for the State has submitted that the evidence of P.Ws.3 and 4 are consistent and Shambhu Sah assaulted Raj Kishore Pandey causing injury on the face and thereafter when the mother of the informant rushed to save him she was also assaulted by the appellant no.4 and the conviction of the appellants under Section 323 and other sections of the I.P.C. is just and proper which does not require interference by this Court.

10. From the contentions of the parties in the back ground of examination of the witnesses, it appears that P.W.4 has supported the prosecution about the genesis of the case due to quarrel between the parties in which appellant no.1 fired from his pistol on causing splinter injury on the person of the informant and P.Ws. 2 and 3 were also assaulted by lathi and appellant no.4 by lathi when his mother came to save her. So far the evidence of P.W.3 and P.W.5 are concerned, both have not been considered to be eye witnesses of the occurrence by the trial court.

11. Apart from that the learned counsel for the defence has given suggestion to P.Ws 2 and 3 that there a case was going on between the parties as there was enmity from before, oral evidence and suggestion have been denied by



the P.Ws 3 and 4 also. However, in this case neither the doctor has been examined nor the I.O. has been examined. In such circumstance, coming to the finding of receiving firearm injury is not possible in absence of the evidence of doctor. The I.O. has not been examined and splinter and pistol have not been recovered from the place of occurrence and so far the injury on the person of P.W.3 is concerned, she had not gone for treatment which manifest that she had not received injuries. Considering the aforesaid facts and circumstances of the case, non-examination of the doctor and the I.O. has seriously prejudiced the defence and in their absence, conviction of the appellants under Sections 323, 324 of the I.P.C. and under Section 27 of the Arms Act does not inspire confidence.

13. In view of the discussions made above, the appellants are entitled to have benefit of doubt as the prosecution has failed to prove the charges against the appellants beyond all shadow of doubt. As such, this appeal is allowed and the impugned Judgment and order is set aside. Let the appellants be discharged from the liability of their bail bonds.

(Vinod Kumar Sinha, J)

AnilKrSinha/-

AFR/NAFR	
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