

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.376 of 2003

UMESH MAHTO son of Kihaniya Mahto resident of Mohalla-Mahendiganj,
P.S. Khajkala (at present Mahendiganj), District-Patna.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shaishav Kumar, Advocate
For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 24-02-2018

This criminal appeal has been filed by the sole appellant against the judgment and order of conviction and sentence dated 15.7.2003 passed by the learned Presiding Officer (Ad hoc Sessions Judge), Additional court No. 2, Patna, in Sessions Trial Case No. 690 of 1987/520 of 2001 by which the sole appellant has been convicted under Section 307 of the Indian Penal Code and 27 of the Arms Act and sentenced to undergo rigorous imprisonment for five years and three years rigorous imprisonment under Section 27 of the Arms Act.



Informant Ram Das Paswan has filed a written complaint before the Officer Incharge of Police Station Khagaul, District-Patna, alleging therein that on 26.3.1986 at about 6 P.M. informant was in his house when he was informed that an altercation was going on between his son Naku Paswan and appellant Umesh Mahto near the shop of one Shakti and on getting such information he went to that place and saw that Brijlal Yadav ordered to assault and appellant Umesh fired from his country made pistol on his son Naku Paswan and he sustained injury on his abdomen and thereafter he was taken to PMCH for his treatment and on the same day at 9 P.M. the fardbeyan was recorded in the emergency ward of PMCH and on the basis of that fardbeyan formal FIR was drawn. The police investigated the case and after completing investigation submitted chargesheet against appellant and other accused persons. Appellant pleaded not guilty to the charges and claimed to be tried.

Prosecution has examined in all four witnesses including the victim Naku Paswan. P.W.1 is Ganga Paswan, P.W. 2 is Naku Paswan, P.W. 3 is Ramasis Yadav and P.W. 4 is Ram Das Paswan.

P.W. 1 Ganga Paswan has deposed that on 26.3.1986 at about 6-30 P.M. he was in his house and learnt that his nephew Naku Paswan was shot at and further learnt that Umesh Mahto fired the



shot. He has further stated that he took the injured Naku Paswan to hospital. He firstly took him to Girja Hospital and then to PMCH where he was treated. But in his cross-examination he has stated he reached PMCH at 7 P.M. and he had found the injured on bed and was unconscious.

P.W.2 is Naku Paswan, the injured himself. He has stated in his deposition that on 26.3.1986, which was the day of Holi festival, at 6 P.M. he was returning to his house after celebrating Holi and he became thirsty and went to the house of Thakur Mistry and enquired about his brother Jawahar Mistry, who was not there. Thakur Mistry came out and said that there was no drinking water. He further told that Thakur Mistry did not give him water to drink and also asked him to go away and some altercation took place between them and meanwhile Umesh Mahto came and fired on him from his pistol and he received injury on his abdomen. He has further stated that he tried to run away when Thakur Mistry asked Umesh to fire again and he hide himself behind Ramasis Yadav and Ramasis Yadav told them not to fire and thereafter he became unconscious and fell down and was taken to PMCH. He denied of having any quarrel with the accused before the assault. He has further stated that he regained his consciousness at 10/11 A. M. on



27.3.1986 at PMCH and on that date he gave his statement before the police.

P.W.3 Ramasis Yadav has been declared hostile and P.W. 4 Ram Das Paswan is the informant. Informant has deposed that on 26.3.1986 at 6 P.M. he was in his house when appellant Umesh Mahto and accused Thakur Mistry were quarreling with his son Naku Paswan at the Chauraha of Shanti Deviji. When he went there he saw that accused Thakur Mistry ordered and appellant Umesh fired on his son with pistol and his son received injury on the right side of the abdomen and both had fled away. He took his son to PMCH and he gave his statement before the police.

Learned counsel for the appellant has submitted that there is vital contradiction in the statement made by the prosecution witnesses and from the deposition of witnesses even the place of occurrence has become doubtful because in the FIR. Informant(P.W.4) has stated that the place of occurrence to be near the shop of Shakti whereas in his deposition he has stated that the place of occurrence was in front of the house of Thakur Mistry. In the FIR P.W. 4 has stated that Brijlal Yadav had ordered to assault appellant Umesh Mahto and upon which appellant Umesh fired upon Naku Paswan but in his deposition he has stated that on the order of Thakur Mistry appellant had fired upon Naku Paswan.



The investigating officer has not been examined by the prosecution and the place of occurrence itself has become doubtful. It has further been submitted that no blood-stained clothes and materials have been produced before the trial court as material exhibits to give credence and support to the prosecution story. In this case, the injury report has not been exhibited either on behalf of the prosecution or defence. However, in this case same has been enclosed as Annexure-3 by the appellant and doctor has opined that Naku Paswan has not suffered any fire arm injury and injury complained of is superficial and simple in nature and same could be on account of hard and blunt substance. No bleeding was found, as such no dressing was required. Moreover, same has not been exhibited in court below or has been taken as additional evidence as such same cannot be considered as evidence.

After going through the evidence and materials available on record, this Court finds that prosecution has failed to establish the charges and there are vital contradictions in deposition of all the witnesses and place of occurrence itself becomes doubtful and non-examination of the investigating officer and doctor as well as injury report the prosecution has miserably failed to establish the charges against the appellant, as such, the judgment and order of conviction and sentence dated 15.7.2003 passed in Sessions Trial



Case No. 690 of 1987/520 of 2001 by learned Presiding Officer
(ad hoc Sessions Judge) Additional court No. 2, Patna, is set aside.
This criminal appeal is allowed. The appellant is discharged from
liability of his bail bond.

(S. Kumar, J)

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Uploading Date	
Transmission Date	

