

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.191 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

=====

Pal Bihari Mahto son of Tunni Mahto, resident of village- Peshaur, P.S. Rahui,
District Nalanda

.... Appellant

Versus

State of Bihar

.... Respondent

=====

Appearance :

For the Appellant : Mr. Nawal Kishore Singh, Adv.
Mr. Sanjeeb Kumar Sanju, Adv.

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

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 08-02-2018

1. The sole appellant stands convicted under Section 324 of the Indian Penal Code as well as Section 27 of the Arms Act and sentenced to undergo R.I. for two years under each count. Both the sentences shall run concurrently.

2. The prosecution case in short is that on 6.8.1987 at 07:00 P.M. while Deonath Paswan (P.W.7) returning to his house situated at village Pasaur from the house of one Prakash Mahto of his village, after taking his wages, on the way Jaddu Mahto met him as both of them were going ahead and when they reached near the house of Ram Pravesh Mahto, accused appellant Pal Bihari Mahto caught hold him and asked him as to why he used to work under Prakash Mahto and when he became not ready, Pal Bihari Mahto took out Pistol and fired with pistol, which hit joint of the fingers of



his left hand thereafter the neighbours came and he fled away. On the basis of that Rahui P.S.Case No.77 of 1987 was registered and post investigation, the charge-sheet has been submitted, cognizance of the case has been taken and the case has been committed to the court of Sessions which travels to the file of Sri Awadhesh Kishore Prasad Singh, Presiding Officer, Addl. Court No.I, Nalanda.

3. In course of the trial, following witnesses have been examined, they are – P.W.1 Ripu Bhanjan Kumar, formal witness, P.W.2, Jadu Mahto claims to be eye witness, P.W.3 Ram Prakash Singh , hearsay witness, P.W.4 Prakash Mahto hearsay and chance witness, P.W.5 Sarjug Ram eye witness, P.W.6 Shambhu Narayan hearsay witness and P.W.7 Deonath Paswan injured and informant in the case.

4. On behalf of the prosecution, some documents have also been brought on record. Defence of the accused/appellant as per trend of the cross examination and also from the statement under Section 313 of Cr.P.C. it appears that the allegation is of false implication and no such occurrence has taken place.

5. The learned trial court after conclusion of the trial considering the evidence available on the record has convicted the appellant under Section 324 of the IPC and under Section 27 of the Arms Act and sentenced him as stated above.



6. Submission of the learned counsel for the appellant is that the learned trial court has not applied judicial mind of law while admitting the case diary as Ext. 1 in this case and relying on the injury report mentioned in the case diary has convicted the appellant under Section 324 of the IPC and in that connection he relied upon a decision in the case of *Shri Ram Narayan Mishra. Vrs. The State of Bihar* reported in *PLJR 2015 (3) 424*. Further submission of the learned counsel for the appellant is that as the injury report has not been medically brought on record, conviction of the appellant under Section 324 of the IPC is not sustainable in the eye of law.

7. Contention of the learned counsel for the appellant is that though it is alleged that the appellant fired and injured P.W.7 has received gun shot injuries. There is no evidence of the Doctor to show that the injuries is caused by the gun shot injury, hence, conviction under Section 27 of the Arms Act is also not sustainable in the eye of law.

8. On the other hand, contention of the learned counsel for the State is that the evidence is consistent. So far injury of P.W.7 is caused by fire arm and it is also stated that it is the appellant who fired on the informant. In such a situation, conviction of the appellant under Section 324 of the IPC and 27 of the Arms Act appears to be just and proper and not require interference by this Court.



9. Considering the rival contention and on perusal of the evidence, it appears that P.W.7 has stated that Tunni Mahto caught hold of him and thereafter appellant fired on him causing him injury. There is nothing to doubt his testimony. The other witnesses, who are P.Ws. 2 and 5 have also corroborated the aforesaid evidence of P.W.7, as such oral evidence is there on the point of fire firing by the appellant to the informant, however, it appears that neither the Doctor has been examined in this case nor the injury report has been brought on record rather the case diary has been brought on record, which is not admissible. It is well settled principle that the case diary can not be used as the substantive piece of evidence rather they can be used for refreshing the memory and that too for the I.O. and injury report can be used for corroboration and that when it has legally been brought on record and proved by competent person. However, in the present case, the Doctor who has issued injury report has not been examined nor injury report was proved by him or any other Doctor in his absence or any other competent witness, as such, injury report is not admissible in the eye of law.

10. In such view of the matter, it appears that there is no medical evidence or injury report available on the record and contention of the learned counsel for the appellant is that conviction under Section 324 of the IPC is not sustainable in the eye of law and



in that connection he has referred two decisions of this Court of Single Judge – 1. One reported in 2014 PLJR (2) 286 and another reported in 2014 Criminal Law Journal 246 of this Court.

11. From perusal of the Single Judge decision reported in 2014 PLJR (2) 286 in the case of Chandu appellants and other State of Bihar reported in 2014 it appears in para 8 and 9 that the learned Single Judge has held as follows :-

“8. Here in the present case, undisputedly, the doctor was not examined. There was non-production of the medical report. As such, there was no evidence on record that there was any injury either on the person of the informant or on the person of his father and again, there was absence of the evidence that if there was any injury, it had been caused by use of a particular weapon. Thus, the necessary ingredient of Section 324 of the Indian Penal Code that the injuries to the informant or his father might have been caused by employing the means, i.e., the weapon a Talwar or a Sword was absent. As such, is the inherent absence of the evidence that the injury had really been caused by any such instrument which is spoken of by Section 324 of the Indian Penal Code.

9. In the above view of the evidence, this Court is of the view that conviction of Chandradeep Sao and Bhim Prasad under Section 324 of the Indian Penal Code was completely erroneous and against the very provisions of the Indian Penal Code as no offence under that particular provision was constituted.”

12. In such view of the matter so far conviction of the appellant under Section 324 of the IPC is concerned, it does not appear to be sustainable in the eye of law and the appellant has also



been convicted under Section 27 of the Arms Act. There is consistent materials available on the record that appellant has fired on the informant and all the witnesses have stated so but there is no corroboration by the medical evidence and in such a situation, it can not be said with certainty that the injury was of the gun shot injury. Hence, the appellant is at least entitled for benefit of doubt as prosecution has failed to establish the case under Section 324 IPC and Section 27 of the Arms Act beyond all shades of reasonable doubts. The learned trial court has not considered the aforesaid aspect of the matter and convicted the appellant under Section 324 of the IPC and Section 27 of the Arms Act and sentenced therender.

13. Accordingly, this appeal is allowed and the impugned judgment and order are set aside. As the appellant is on bail, he is discharged from the liabilities of the bail bond.

(Vinod Kumar Sinha, J)

chn/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15/2/2018
Transmission Date	15/2/2018

