

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 235 of 2003

Arising Out of PS.Case No. -63 Year- 1993 Thana -SAHAR District- BHOJPUR

- =====
1. Shri Bhagwan Mahto @ Shri Bhagwan Singh
 2. Sheojee Mahto

Both are sons of late Ghamar Mahto. Both are resident of village-
Bantola, P.S. Sahar, at present P.S. Azimabad District Bhojpur.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants	:	Mr. Rajesh Kr. Singh, Adv. Mr. Satya Narayan Singh, Adv. Mr. Rana Pratap Singh, Adv. Mr. Dharmendra Kr. Singh, Adv. Mr. Manish Kr. Singh, Adv.
For the State	:	Mr. Syed Ashfaque Ahmad, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL JUDGMENT
Date: 01-02-2018**

1. Heard learned counsel for the appellants as well as
learned Additional Public Prosecutor for the State.

2. This criminal appeal has been preferred against the
judgment of conviction and sentence order dated 28.04.2003 passed
by learned Sessions Judge 1st, Fast Track Court, Ara in Sessions Trial
No. 143 of 1995 by which and where under the learned trial judge
convicted the appellants for the offence punishable under Section 307
of the Indian Penal Code and Section 27 of the Arms Act and by the



same impugned judgment, acquitted the other accused. The learned trial judge sentenced the appellants to undergo five years rigorous imprisonment for the offence punishable under Section 307 of the Indian Penal Code. No separate sentence was passed for the offence punishable under Section 27 of the Arms Act.

3. PW-7, namely, Krishna Mahto gave his ferdbeyan to S.I. of Ara Town police station on 25.07.1993 at about 04:15 P.M. in injured condition at Sadar Hospital, Ara to this effect that she-buffalo of appellant Bhagwan Mahto was grazing field of one Narendra Mahto and he drove away she-buffalo which caused annoyance to the appellant Bhagwan Mahto, who threatened him and on the same day, in evening, the appellants along with others came at his house and appellant Bhagwan Mahto opened fire of his double barrel gun causing injury to him at his several parts of the body and similarly, the appellant Sheojee Mahto opened fire of his single barrel gun as a result whereof, his younger brother, namely, Lal Babu Mahto (PW-6) too sustained firearm injury at several places of his body. However, the other accused made attempt to cause injury to him by throwing bhala but, anyhow, he saved himself and furthermore, the other accused chased his father who hidden himself inside the house. The occurrence is said to be witnessed by several persons and after the occurrence, the injured were brought to the hospital where they were



examined by the doctor and their statement was recorded.

4. In course of trial, both injured as well as some other witnesses were examined on behalf of the prosecution and apart from this, prosecution got examined injury reports as Exhibit-3 series as well as other documents. The learned court below having relied upon Exhibit-3 series as well as testimonies of prosecution witnesses convicted and sentenced the appellants in the manner as stated above.

5. Learned counsel appearing for the appellants assailed the impugned judgment of conviction and sentence order arguing that the prosecution could not succeed to prove the nature of injuries and court below failed to take note of this fact that prior to the institution of the present case, one rape case had been lodged against the informant and others and the aforesaid rape case was lodged by one Maracho Devi, who happened to be wife of Bandhu Singh, co-accused of the present case and as a matter of fact, the present case was lodged by the prosecution party to put pressure upon the co-accused Bandhu Singh so that his wife could withdraw the aforesaid rape case.

6. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that both the injured have stated that it were appellants, who caused firearm injury to them by opening fire of their



respective guns and the Exhibit-3 series completely establish the injury sustained by PW-6 and PW-7 and, therefore, the learned trial court rightly convicted and sentenced the appellants.

7. Admittedly, PW-6 and PW-7 have been examined in this case and they have supported the manner of occurrence as well as injury caused to them by the appellants. PW-8 is doctor, who has proved injury report as Exhibit-3 series and stated that injuries found on the person of both the injured were caused by firearm. PW-8 has admitted in his cross examination that he had based his opinion regarding the nature of injury as well as weapon used in causing the aforesaid injury on the basis of X-ray plates and X-ray reports. He also admitted that circular wound might be caused by circular pointed substance and lacerated wound might also be caused by hard and blunt substance. PW-8 also admitted in his cross examination that X-ray plates and X-ray reports were produced before him by the patients. Admittedly, the X-ray plates and X-ray reports were not brought in evidence by the prosecution and, therefore, the defence could not get any opportunity to test the veracity and genuineness of the X-ray plates and X-ray reports by cross examining the prosecution witnesses and therefore, in my view, non production of X-ray plate and X-ray report in evidence is fatal to the prosecution case because non production of X-ray plate and X-ray report creates doubt about the



nature of injury as well as weapon used in causing the aforesaid injury.

8. It is not in dispute that to convict a person for the offence under Section 307 of the Indian Penal Code, it is not necessary that there must be a injury but in the present case when it is specific case of the prosecution that the appellants had opened fire on the injured persons who sustained firearm injury, then it was the duty of the prosecution to prove that firearm had been used in causing the injury to the injured persons but in the present case due to non production of X-ray plate and X-ray report, in my view, the prosecution failed to prove beyond all shadow of reasonable doubt that the injured had sustained firearm injury. Therefore, in my view, the learned trial judge has committed error in convicting the appellants for the offence punishable under Section 307 of the Indian Penal Code and Section 27 of the Arms Act and, at best, the appellants could have been convicted for the offence punishable under Section 323 of the Indian Penal Code.

9. It is also an admitted position that alleged occurrence took place in the year 1993 and the appellants were convicted by the trial court in the year 2003. Now near about 25 years have already been passed and, therefore, in my view, it would be proper to sentence the appellants to the period already undergone by



them for the offence punishable under Section 323 of the Indian Penal Code.

10. In view of the aforesaid discussions, this criminal appeal stands partly allowed and the impugned judgment of conviction and sentence order dated 28.04.2003 stands modified to the above stated extent.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

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