

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.615 of 2002

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

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1. Shatrughan Prasad, son of Sri Ram Chandra Mahto
 2. Parshuram Prasad, son of Sri Ram Chandra Mahto
 3. Ram Brichha Prasad, son of Late Pyare Mahto
 4. Yadu Prasad, son of Late Pyare Mahto
 5. Dasrath Prasad, son of Late Isri Mahto
 6. Bindu Prasad, son of Sri Yadu Prasad
 7. Janardhan Prasad, son of Sri Deena Nath Prasad
 8. Birendra Prasad, son of Sri Basudeo Prasad
 9. Laxmi Mahto, son of Late Gurdayal Mahto (since dead)
 10. Shishupal Mahto, son of Sri Basudeo Prasad
 11. Ram Chandra Mahto, son of Late Gurdayal Mahto, (since dead), all residents of village Chainpur, P.S. Chandi, P.O. Jaitpur, District Nalanda at Biharsharif.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Aaruni Singh, Advocate
For the Respondent/s : Mr. Bipin Kumar APP
For the Informant : M/S Dinu Kumar, Ritika Rani, Neha
Kumari, Advocates

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 20-04-2018

Appellants Nos. 1 and 3 have been convicted under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and they have further been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years. Rest appellants have been convicted under Sections 307/149 IPC and sentenced to undergo R.I. for three years and all the appellants have further been convicted under Section 427 IPC and sentenced to undergo R.I. for two years. No separate



sentence has been awarded to all the appellants under Section 144 IPC. However, all the sentences were directed to run concurrently vide judgment and order dated 9.10.2002 passed by Sri Jitendra Kumar Sinha, the then Additional Sessions Judge-I, Hilsa in Sessions Trial No. 224 of 1993.

2. During pendency of this appeal a report was called for from which it appears that appellants Nos. 9 and 11, namely, Laxmi Mahto and Ram Chandra Mahto, have died during the pendency of the appeal. As such appeal against them stands abated.

3. Prosecution case, in short, is that the informant Balo Prasad (PW 4) has got 25 decimals of land in Plot No. 1430, Khata No. 356 in the village Chainpur in the District of Nalanda and possession of the land was delivered to the informant by the Circle Officer and the land was demarcated by pillars from four sides. Further prosecution case is that on 1.8.1992 at 3 P.M. all the accused appellants came armed with various weapons at the said land and appellant No.11 Ram Chandra Mahto (since dead) started to uproot the pillars from the eastern and southern sides of the land and also cut the ridge, upon which informant protested and then appellants Nos. 1 and 3 fired their guns upon the informant which did not hit him and thereafter informant fled away. It is alleged that accused persons forcibly want to grab the land.



4. On the basis of aforesaid written report Chandi P.S. Case No. 291 of 1992 dated 2.8.1992 was registered and post investigation charge sheet has been submitted, cognizance of the offences has been taken and after commitment the case ultimately traveled to the file of the learned Trial Judge for trial and disposal.

5. During trial altogether eight witnesses have been examined on behalf of prosecution, they are PW 1 Mahendra Prasad, who is a formal witness and has proved formal FIR (Ext.1), PW 2 Upendra Prasad, son of informant and claims to be eye-witness to the occurrence, PW 3 Yogendra Prasad, son of informant and claims to be eye-witness to the occurrence, PW 4 Balo Prasad, informant, PW 5 Sahdeo Mahto, FIR named witness and has been declared hostile by the prosecution, PW 6 Baso Mahto, FIR named witness and has been declared hostile by the prosecution, PW 7 Shyam Narayan Paswan, declared hostile and PW 8 Mahesh Ram, declared hostile. I.O. has not been examined in this case.

6. It appears that PWs 5 and 6 are FIR named witnesses, whereas PWs 5 to 8 all have been declared hostile and PWs 2, 3 and 4 are the material witnesses.

7. On behalf of defence, DW 1 Shatrughan Prasad has been examined, who has proved Exts. A, B and B/1 which are original sale deeds and Ext.C is certified copy of judgment in Sessions Trial No.



223 of 1993. The aforesaid sale deeds have been produced to show that appellants had purchased 2-1/2 decimals of land under aforesaid khata and plot numbers and certified copy of judgment shows that earlier a case was lodged by Sudhir Prasad in which the informant of the present case and others were acquitted.

8. Learned trial court after conclusion of trial has convicted the appellants under Sections 307, 307/149 IPC and 27 of the Arms Act (appellants Nos. 1 and 3) and sentenced them as stated above.

9. Learned counsel for the appellants has assailed the impugned judgment on the ground that in this case no independent witness has been examined and PW 1 is formal witness, PWs 2 and 3 are sons of the informant, PW 4 is informant himself and so far other witnesses are concerned they have been declared hostile by the prosecution. It has further been submitted in the background of the fact that there was land dispute between the parties and non-examination of independent witness will certainly cause prejudice to the defence. Further submission is that as per FIR place of occurrence is 25 decimals of land of the informant. However, evidence of PWs 2 to 4 shows that place of occurrence is 2.5 decimals of land which was purchased by the appellants, which creates doubt about the place of occurrence and in such a situation, non-examination of I.O. is also caused serious doubt about the prosecution case and has caused



prejudice to the defence. Further submission is that even if evidence is believed, no case is made out under Section 307 IPC as the evidence itself disclosed that firing did not hit anybody and thereafter there was no repetition of firing and there was no allegation of assault and in such a situation the conviction under Section 307 as well as 307/149 IPC and 27 of the Arms Act is not sustainable in the eye of law.

10. On the other hand, learned counsel for the State and informant defended the impugned judgment and submitted that there is no infirmity in the impugned judgment and conviction of the appellants under various sections of the Indian Penal Code and Arms Act is just and proper and does not require any interference by this Court.

11. In the background of submission of the parties on perusal of the evidence it appears that PWs. 2 to 4 are the material witnesses and other witnesses have been declared hostile and PW 1 is a formal witness. It further appears that land dispute is admitted between the parties and it is well settled that conviction can be based on the evidence of related and inimical witnesses, if their evidence, on close scrutiny found free from inconsistencies but in this case there is land dispute between the parties from before and both the parties claim over the land and in such a situation, non-examination of independent witness certainly creates serious doubt about the prosecution case,



specially on the facts and circumstances that the place of occurrence itself is doubtful as the written statement disclosed the place of occurrence is 25 decimals of land of the informant under Khata No. 1430 and witnesses have also admitted that the appellants have also land in the said Khata and evidence shows that occurrence took place on the 2.5 decimals of purchased land of the appellants and in such a situation non-examination of I.O. certainly caused serious prejudice to the defence. Further evidence is that there is allegation that 11 persons came there armed with variously arms and there is no specific allegation of assault against the appellants except appellants Nos. 1 and 3 that they have fired but that did not hit anybody and there is no seizure of any pellet or cartridge from the place of occurrence and even seizure list has not been brought on the record. It further appears that there is evidence of uprooting the pillars and damaged the ridge but as the I.O. has not been examined he could not confront with the material finding about the place of occurrence and in such a situation the evidence that they have uprooted the pillars and damaged the ridge is also not free from reasonable doubt.

12. From the discussions made above, the evidence itself is inconsistent and in such a situation the appellants were at least entitled to the benefit of doubt.

13. Accordingly, this appeal is allowed. The impugned



judgment and order are set aside. As the appellants are on bail, they are (except appellants Nos. 9 and 11, who are reported to have died) directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.4.2018
Transmission Date	24.4.2018

