

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.476 of 2015

Arising Out of PS. Case No.-265 Year-2002 Thana- AMARPUR District- Banka

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Kedar Pandit, Son of Tarni Pandit, Resident of village - Satghara, P.S.
Amarpur, District - Banka

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Mohan, Mr. Praveen Kumar, Advocate
For the Respondent/s : Mr. Bipin Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 09-04-2018

Instant appeal has been filed by the appellant Kedar Pandit against the judgment of conviction dated 21.07.2015 and order of sentence dated 22.07.2015 passed by Sixth Additional District and Sessions Judge, Banka in Sessions Trial No. 351 of 2005/Trial No. 476 of 2015 (arising out of Amarpur P.S. Case No. 265 of 2002) convicting the appellant for an offence punishable under Sections 307,353,332 of the IPC, 25(1-B)a, 26,27 of the Arms Act and directing to undergo R.I. for ten years for offence under Section 307 of the IPC, R.I. for one year for offence under Section 353 of the IPC, R.I. for 2 years for offence under Section 332 of the IPC, R.I. for two years for offence punishable under Section 25(1-B)a, of the Arms Act, to pay fine of Rs. 2,000/-, R.I. for one year for an offence punishable under Section 26 Arms Act and to pay fine of Rs. 2,000/- and R.I. for five years for offence



under Section 27 Arms Act. The appellant further has been sentenced for six months S.I. in default of payment of fine. The sentences have been ordered to run concurrently.

2. PW.4, Parsuram Prasad, S.I. Amarpur P.S., Banka, has recorded his own fardbeyan on 17.12.2002 at about 2.00 pm disclosing therein, that on the same day Awadhesh Kumar S.I., Raj Kishore Prasad S.I., Ram Prasad Pandit Constable, Surendra Marandi, Gopal Pandit, Shivaji Yadav and driver Pancha Nand Darvej came at Amarpur P.S. and disclosed that they have got confidential information with regard to assemblage of anti-social elements at the house of Kedar Pandit, and are planing to commit an offence. After sanaha entry, they all proceeded along with S.I. Jagat Kishore Prasad, Hawaldar Subodh Kumar Choudhary, Constable Rajesh Kumar Choudhary, Manoj Kumar, Amrit Kumar Rai and reached at the house of the Kedar Pandit at 4 a.m. Then, thereafter, they surrounded the house and began to search the house of Kedar Pandit in presence of two independent witnesses, Bhola Pandit and Thakur Pandit. Then, it has been asserted that Kedar Pandit began to fire from his pistol from roof at his house causing injury over the person of Chaukidar, Amrit Kumar Rai. The police party took position and further, directed Kedar Pandit to surrender as the house is surrounded by the police personnel in



order to search his house who without taking any positive response, continued to fire and then, taking benefit of darkness, he along with his Samadhi Mithu Pandit escaped from there, after throwing pistol as well as cartridges over the road. During the course of search, they have lifted the fire-arm, cartridge, for that, prepared seizure list.

3. After registration of Amarpur P.S. Case No. 265 of 2002, investigation commenced and concluded the same by way of filing charge-sheet, facilitating the trial, meeting with ultimate result, subject matter of the instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither ocular nor documentary evidence has been adduced in support thereof.

5. In order to substantiate its case prosecution had examination altogether eight Pws, namely P.W. 1 Thakur Pandit, P.W. 2 Bholu Pandit, P.W. 3 Amrit Kumar Rai, P.W. 4 Parsuram Prasad, P.W.5 Dr. Rajeev Sinha, P.W. 6 Matuknath Paswan, P.W. 7 Md. Musa Ansari, and P.W. 8 Hawaldar Subodh Kumar Chaudhary. Side by side, had also exhibited, Ext.1, series, signature of witnesses over the seizure list, Ext.2 written report, Ext.2/A endorsement over written report, Ext.3 injury report, Ext.



4 subsequent injury report. Also produced material exhibit (i) pistol, (ii) live cartridge, (iii) empty cartridge. As indicated above, defence had not produced oral as well as documentary evidence.

6. Now coming to categories of the witnesses, it is evident that P.W.1 and P.W. 2 happen to be seizure list witnesses. P.W. 3, Amrit Kumar Rai, Chaukidar, who is alleged to have sustained injury during course of firing. P.W. 4, is the informant, P.W. 5 is the doctor who had examined P.W.3, P.W.6, is the Chaukidar, formal in nature who had produced the material exhibit in court. P.W. 7, also formal in nature who had exhibited the sanction order granted by the then District Magistrate. P.W. 8, is the Hawaldar, one of the member of raiding party.

7. So far, nature of the evidence is concerned, P.W.1 and P.W. 2, though had admitted their presence over the seizure list, denied factum of search and seizure, whereupon, they were declared hostile at the end of the prosecution. P.W. 3, is the Chaukidar, who during course of his evidence had asserted that he was one of the member of the raiding party, who had gone to the house of appellant Kedar Pandit, in order to conduct search and seizure after receiving confidential information regarding presence of anti-social elements at his house had also asserted that during course of search and seizure appellant had fired causing



injury over his neck. But, he failed to identify the appellant in dock and so, his evidence gone worthless on the score of aforesaid activity, wherein, he declined to identify the appellant to be author of the injury.

8. P.W. 6 and P.W. 7, are formal in nature and so, their evidence in detail are not at all found worthy. The evidence of P.W. 5 doctor will be discussed at the fag end of the judgment and so, let the evidence of remaining witnesses be taken.

9. P.W. 4, is the informant, who had stated that on 17.12.2002, while he was posted at Amarpur Police Station, received an information regarding presence of anti-social elements at the house of Kedar Pandit of village Satghara, over which after entering into the station diary he along with Ram Prasad Pandit, Awadhesh Kumar, Surendra Marandi, Gopal Pandit, Shivaji Yadav, Panchanand Darvej, Amrit Kumar Rai, proceeded from the Amarpur Police Station. They reached at Satghara village at about 4,00 a.m. and then, surrounded the house of the Kedar Pandit. In presence of independent witnesses, Thakur Pandit and Bhola Pandit, they began to search the house of Kedar Pandit. During course thereof, Kedar Pandit and Mithu Pandit began to fire. They repeatedly informed that they happens to be police personnel, so they (accused) should surrender, but both of them did not pay heed



to it and continued to fire, as a result of which, Chaukidar Amrit Kumar Rai sustained fire-arm injury. Furthermore, deposed that Kedar Pandit and Mithu Pandit succeeded in their escape after throwing pistol as well as cartridge and for that, search-cum-seizure list was prepared in presence of the witnesses. He had exhibited his own statement, search-cum-seizure list prepared by him, endorsement over the written report, issuance of injury report for examination of Chaukidar Amrit Kumar Rai, claimed identification of the accused. I.O. had taken his statement during course of investigation.

10. During cross-examination at paragraph 7, he had stated that for the first time he had seen Kedar Pandit fleeing from his house. He had not seen the house of Kedar Pandit since before. In paragraph 8, he had stated that Chaukidar of Halka no. 2 had shown the house of Kedar Pandit when they have reached at the place of Kedar Pandit, people have already got up, however, it was winter season, then had stated that it was 4 a.m., it was not dark. Moreover, there was electric light in the house of Kedar Pandit, his house happens to be pukka. Then had stated that after opening the door, they have gone inside the house of Kedar Pandit. As soon as they entered, Kedar Pandit, who was hiding at his roof, began to fire. Then had stated that direction, wherein accused ran away was



also cordoned by the police personnel. He was unaware with regard to direction in which Mithu Pandit had escaped. They have not chased both the accused to apprehended. Then had stated that they have seen Kedar Pandit fleeing from a distance of 10 metres. They have not fired upon them. They have gone to the cow shed of the Bhola Pandit and recovered the fire-arm and ammunition. They have stated that nothing was found from the house of the Kedar Pandit. In paragraph 9, he had stated that he had not seen anybody during the course of firing.

11. P.W. 8 is the Hawaldar, who had stated that on the alleged date and time of occurrence, he had accompanied police officials to the place of Kedar Pandit at village Satghara, where they have gone after a tip of information regarding presence of criminals. Then had stated that about 3.00 p.m. they have proceeded from the police station and reached at Satghara at about 4.00 p.m. Then in presence of two independent witnesses, house was searched during course of search, Kedar Pandit began firing as a result of which, Amrit Kuamr Rai sustained injury. Then had stated that there was darkness and taking benefit thereof, Kedar Pandit managed to escape after throwing pistol and cartridge over the road which was seized and for that, seizure list was prepared at paragraph 2, he had stated that they proceeded from police station



at about 3.00 p.m. They directly came to Satghara, they were not knowing since before with regard to the house of Kedar Pandit. Same was disclosed by the Chaukidar. He had further stated that when they have reached, darkness, house was closed. In paragraph 3, he had stated that pistol and cartridge were over road which happens to be the only source of outgress and ingress of the villagers. In paragraph 4, he had stated that they have seen accused persons fleeing from a distance of 100-150 yards. Chaukidar had disclosed that the persons who was fleeing was Kedar Pandit. Darogaji, had lifted the fire-arm and cartridge from the road and for that, document was prepared.

12. P.W. 5, who is the doctor, had examined Amrit Kumar Rai P.W. 3, on 17.12.2002, at about 2.10 p.m. and found the injury on his person, one rounded wound on right lateral aspect of neck measuring 1/2"x1/2" with darkening of the overlying skin base of the wound, was pinkish in colour. Age of injury within 18 to 24 hours. The weapon used in causing injury might be warm metallic rounded object may be cartridge. Nature of injury is simple. During course of cross-examination, he had admitted that injury being superficial could be manufactured by the hot iron rod.

13. From the record, it is evident that I.O had not been examined consequent, thereupon, the controversy persisting



amongst the witness with regard to proper timing at which hour raid was conducted, could not be resolved. From the evidence of P.W. 4 as well as P.W. 8, it is apparent that they were not knowing appellant since before and for that, P.W. 4 had stated that Chaukidar of Halka No. 2 was responsible to disclose the same. P.W. 3 Amrit Kumar Rai had not claimed identification, nor disclosed that he was the person who had identified the accused as well as his house. So, there happens to be wreckage in the prosecution version on that very score. It is also apparent from the record that ballistic expert had not been examined that means to say, whether, the weapon so recovered and produced happen to be effective or non-effective, whether the material articles which has been produced in court really happens to be fire-arm ammunition could not be substantiated properly and so it could not satisfy the definition as prescribed under Section 3 of the Arms Act, when the evidence of P.W. 3, P.W. 4, P.W. 8 have been minutely gone through, it is apparent that P.W. 3 had not claimed identification of appellant in court while, P.W. 4, P.W. 8 had claimed identification, but the same happens to be suspicious one in the background of the fact that-

(a). They both are in-consistent over time of conduction of raid.



(b). They have not claimed identification during course of firing, rather while fleeing, as disclosed was Chaukidar who has not been named nor examined.

(c). There was darkness. Though P.W. 4 had disclosed presence of bulb but not corroborated by P.W. 3 as well as P.W. 8.

(d). While P.W. 4 had stated that he had seen the accused from 10-15 steps, while P.W. 8 had stated that they seen from the distance of 100-150 yards. The cumulative effect thereof, did not justify the finding recorded by the lower court record.

14. Consequent, thereupon, the judgment of conviction and sentence recorded by the learned lower court is hereby set aside. Appeal is allowed. Appellant is on bail hence he is discharged from his liability.

(Aditya Kumar Trivedi, J)

khushbu/-

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