

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.247 of 2003

Sessions trial case no. 131/1993 arising out of Dhanarua P.S. case no.
40/1992 District- PATNA

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1. Dharmendra Kumar @ Guddu son of Sri Lalmuni Prasad
2. Jageshwar Mistry @ Kailu Mistry son of Late Sarwan Mistry
Both resident of village Nandaun Vijaypara P.S. Dhanarua Dist. Patna
..... Appellant/s

Versus

State of Bihar
..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Pd. Singh
Mrs. Meena Singh
For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT

Date: 05-02-2018

1. Heard learned counsel for the appellants as well as
learned Addl. Public Prosecutor for the State and perused the
record.

2. This criminal appeal has been preferred by the
appellants against the judgment of conviction and sentence
order dated 01.05.2003 passed by the Adhoc. District &
Sessions Judge FTC III, Patna in Sessions trial case no.
131/1993 by which and whereunder he convicted appellant
no.1 for the offences punishable under section 307 of the
Indian Penal Code and 27 of the Arms Act and sentenced him
to undergo rigorous imprisonment for five years under
section 307 IPC and to undergo rigorous imprisonment for



five years under section 27 of the Arms Act and similarly, convicted appellant no.2 for the offence punishable under section 307/34 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for five years under section 307/34 IPC but the trial court directed that both the sentences of the appellants shall run concurrently.

3. It would appear from perusal of the record that PW 6 gave written report to officer in charge of Dhanarua police station on 18.3.1992 mentioning therein that one Jugat Mistri had sold one room and his land to Jamuna Mistri (PW5). Appellants wanted to purchase the aforesaid room and land and being annoyed with the aforesaid transaction, appellants came at the door of the informant's brother and appellant no.2 ordered to appellant no.1 to shoot the informant's brother and thereafter, appellant no.1 shot fire injuring the informant's brother, namely, Upendra Mistri. The alleged occurrence took place at about 7 p.m. The injured sustained injury on his head whereas informant, too, sustained pellet injury.

4. On the basis of the aforesaid written report, Dhanarua P.S. case no. 40/1992 was registered and formal FIR was drawn up against the appellants for the offences



punishable under sections 307, 324/34, 447 of the Indian Penal Code and 27 of the Arms Act. After investigation, charge sheet was submitted. Cognizance of the offence was taken in usual course and the case was committed to the court of sessions.

5. Appellants were put on trial and accordingly, appellant no.1 stood charged for the offences punishable under section 307 of the Indian Penal Code and 27 of the Arms Act whereas appellant no.2 stood charged for the offences punishable under section 307 read with section 34 of the Indian Penal Code. Both the appellants denied the charges.

6. In course of trial, prosecution examined, altogether, eight witnesses and got exhibited some documents including injury report. The statements of the appellants were recorded under section 313 of the Code of Criminal Procedure in which again, they denied the prosecution story.

7. No evidence was adduced on behalf of the appellants in support of their defence, however, it would appear from perusal of the trends of cross-examination as well as statements made under section 313 of the Code of Criminal Procedure that defence of the appellants is total



denial of the prosecution story. The trial court, having analyzed the evidences available on record, convicted the appellants, particularly, taking into consideration the testimonies of the injured witnesses including injury reports annexure 3 series.

8. Learned counsel appearing for the appellants challenged the impugned judgment of conviction and sentence order arguing that admittedly, neither doctor nor investigating officer was examined by the trial court and the so-called injury reports were proved by an advocate's clerk who had admitted in his deposition that exhibit 3 series had not been prepared in his presence nor he had seen the concerned doctor who prepared the injury reports. He, further, submitted that, as a matter of fact, so-called injury reports have not been brought on record legally and, therefore, learned trial court committed error in relying upon the aforesaid injury reports.

9. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that the injured witnesses have supported the prosecution case and even if it assumed that there was no injury report, then also,



appellants have rightly been convicted for the offences punishable under the above stated sections.

10. Admittedly, doctor, who is said to have examined the injured persons after the alleged occurrence, was not examined in course of trial and the prosecution got proved injury reports by an advocate's clerk. It is obvious from the materials available on record that the injury reports exhibit 3 series were not prepared in presence of PW 8 who proved the aforesaid injury reports as exhibit 3 series. The learned trial court has relied upon the aforesaid exhibit 3 series but, in my view, in absence of examination of concerned doctor, learned trial court ought not to have relied upon the injury reports because the defence deprived of cross-examining the doctor about their genuiness of the injury reports as well as about finding given by the doctor regarding nature of the injury as well as weapon used in committing the so-called injuries.

11. No doubt, witnesses supported the occurrence in their deposition but, in my view, non-examination of the doctor is fatal to the prosecution case and apart from this, the prosecution also failed to produce investigating officer which has caused serious prejudice to the appellants..



12. On the basis of the aforesaid discussions, this appeal is allowed and the impugned judgment of conviction and sentence order is, hereby, set aside. Appellants are on bail. They are discharged from the liability of their bail bonds.

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
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