

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No. 3408 of 2017

Arising Out of PS. Case No.-113 Year-2003 Thana- BIHARSHARIF District- Nalanda

Yogi Yadav @ Yogendra Yadav, Son of Ram Balak Yadav, resident of
Village Gauragarh, P.S. Bihar, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant : Mr. Md.Imteyaz Ahmad, Advocate.

For the Respondent : Mr. Sujit Kumar Singh, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 28-08-2018

Heard learned counsel for the appellant and
learned APP for the State.

2. The appellant has been convicted under Section 307 of the Indian Penal Code and Section 27 of the Arms Act vide judgment dated 22.11.2017 passed by the learned Fast Track Court No. I, Nalanda at Biharsharif in Sessions Trial No. 622 of 2006, arising out of Bihar P.S. Case No. 113 of 2003 and by order dated 25.11.2017, he has been sentenced to undergo R.I. for a period of five years, to pay a fine of Rs. 5000/- and in default of payment of fine to further suffer R.I. for a period of one year for the offence under Section 307 of the Indian Penal Code and R.I. for a period of three years under Section 27 of the Arms Act, to pay a fine of Rs. 1000/- and in default of payment of fine to further suffer R.I. for a period of two



months. The sentences have been directed to run concurrently.

3. The case of the prosecution is based on the *fardbeyan* of Dhroov Yadav who has been examined as P.W. 4. He has alleged that on 24.03.2003, while he was sleeping on his roof-top, he heard noise coming from the ground floor. He came down stairs and found that his brother Rudal Gope (P.W. 3) and Sadhu Yadav were being assaulted by the appellant and two others. When the informant/P.W. 4 protested, then the appellant is alleged to have fired from his pistol aiming at Sadhu Yadav but the shot hit the son of the informant viz. Shailendra Yadav in his cheek. The occurrence is stated to have taken place at about 09:00 O' Clock. The other two accused persons viz. Dipu Yadav and Arvind Yadav also fled away from the place of occurrence firing from their weapons.

4. The cause of occurrence is old enmity. It has also been stated in the FIR that earlier also, a criminal case was contested between the parties. The occurrence was stated to have been witnessed by many persons of the village. The son of the informant was brought to Sadar Hospital, Biharsharif for treatment.

5. On the basis of the aforesaid *fardbeyan* statement Bihar P.S. Case No. 113 of 2003 was instituted for investigation for offences under Sections 341, 343,



307 and 34 of the Indian Penal Code and Section 27 of the Arms Act.

6. The police after investigation submitted charge sheet whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

7. The trial court, after examining nine witnesses on behalf of the prosecution and one on behalf of the defence, convicted and sentenced the appellant as aforesaid but acquitted the other two accused persons viz. Dipu Yadav and Arvind Yadav of all charges.

8. While assailing the judgment and order of conviction, learned counsel for the appellant has submitted that the judgment and order of conviction has been recorded without there being any cogent evidence. It has further been submitted that the principles of appreciating the evidence have been given a total go-by and the judgment of guilt arrived at is against the weight of overwhelming evidence.

9. In support of the aforesaid contention, it has been submitted that Sadhu Yadav, who was fired at but was not hit, has not been examined at the trial and no explanation has been offered for his non-examination. Apart from this, the victim's statement was never recorded by the police and it was for the first time that he deposed before the trial court as P.W. 7.



10. The investigating officer of the case viz. Prem Chandra Malviaya who has been examined as P.W. 9 has, in his cross-examination, stated that while investigating the case, he had come to learn that P.W. 7/Shailendra Yadav (victim) was hit by somebody else and because of enmity, the appellant and two others were made accused. He has further admitted in his cross-examination that while he was at the police station, he received information from the Sadar Hospital that a person by the name of Shailendra Yadav has received gun shot injuries. The aforesaid information was reduced into writing in the station diary, whereafter, P.W. 9 proceeded to the Sadar Hospital where the FIR was registered at about 09:00 o' Clock in the night. He has also deposed before the trial court that before he could formulate and conclude his investigation, he was transferred and the charge of investigation was given to another officer.

11. Lastly, it has been submitted that the investigating officer did not examine the Doctor in the Hospital who had afforded treatment to the victim.

12. It was, therefore, urged that the judgment and order of conviction and sentence is much too presumptuous and the trial court has not considered and appreciated the deposition of the informant, the victim and the investigating officer in proper perspective. On the



contrary, it has been urged that the absence of the appellant from the place of occurrence at the time when it is said to have been committed stood established by the deposition of the defence witness.

13. Bhola Prasad Chauhan who has been examined as P.W. 1 is a formal witness who has proved the formal FIR (Ext. 1).

14. Urmila Devi (P.W. 2), wife of Sadhu Sharan Yadav, though has supported the prosecution version in her examination-in-chief but was confronted by the defence and attention was drawn to her statement made before the police that she had not spoken, during the investigation, that the appellant had fired aiming at her husband but the shot hit Shailendra Yadav. The investigating officer viz. Prem Chandra Malviaya (P.W. 9) has also confirmed the fact that P.W. 2 did not state before him that the appellant had fired from his weapon. In view of the aforesaid fact, the deposition of P.W. 2 does not appear to be without any blemish.

15. Rudal Gope and the informant who have been examined as P.Ws. 3 and 4 respectively, have supported the prosecution version. P.W. 4 has denied that the shot which hit his son was fired by Ranjit Yadav but the case was lodged against the appellant and two others because of old enmity. The deposition of P.Ws. 3 and 4 do not



appear to be correct as P.W. 9 has clearly stated that after registering the FIR, he visited the house of the informant and the victim and did not find any evidence of any squabble or firing. There was no empty cartridge available at the place of occurrence nor could he find any sign of blood. The statement of the victim was not recorded and the victim was never produced before him even later for recording his statement. P.W. 9 has categorically stated that on 24.04.2003, he received information from the Hospital that one Shailendra Yadav had come in an injured condition.

16. Had the allegation levelled against the appellant and two others been true, the information must have been provided in the first instance that the victim was hit because of gun shot resorted to by the appellant and two others. The Doctor's opinion is also not specific with respect to the nature of the injury and how the aforesaid injury was caused. The deposition of P.W. 9 clearly casts a doubt on accusation on the appellant. Objective investigation led him to believe that the firing was resorted to by somebody else and not the appellant. However, P.W. 9 could not reach to a conclusive finding as he was transferred before submitting his report under Section 173 of the Code of Criminal Procedure.



17. The victim in his statement before the court has also stated that as long as he was in the P.M.C.H., he had not given his statement before the police. He was also not asked by anyone of his relatives viz. father or uncles to give his statement before the police. Even when he had resumed talking, no effort was made to give his statement before the police.

18. From the deposition of witnesses even the place, where the firing was resorted to, could not be established. From the narration of events in the FIR and from the deposition of witnesses, it appears that the occurrence had taken place on the ground floor of the house of the informant but the place of occurrence has been stated to be a brick road.

19. For the accusation/allegation against the other accused persons not being substantiated, they were acquitted by the trial court.

20. Thus, it appears that the deposition of witnesses is not consistent and a serious doubt is cast on the correctness of the prosecution version.

21. For the aforesaid facts, benefit of doubt has to be given to the appellant.

22. The judgment and order of conviction dated 22.11.2017 passed in Sessions Trial No. 622 of 2006 and



order of sentence dated 25.11.2017 is, therefore, set aside.

23. The appellant is in custody. He is directed to be released forthwith, if not wanted in any other case.

24. A copy of the judgment be communicated to the Superintendent of Police of the concerned jail for information and record.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NA
CAV DATE	NA
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