

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.642 of 2002

1. MD. ABBAS MIAN @ ABBAS MIAN, son of Sher Mian
2. Jatha Kumhar, son of Moti Prajapat
3. Sheo Pujan Paswan @ Sheopujan Dusadh, son of Late Bhagirath Paswan
4. Jangi Yadav, son of Late Mangan Yadav, all residents of village Khudwa,
P.S. Khudwa, District Aurangabad

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi (amicus curiae)
For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 02-04-2018

All the appellants have been convicted under Sections 307/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and further they have been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years vide judgment and order dated 21.11.2002 and 23.11.2002 respectively passed by Sri Brinda Pathan, the then 6th Additional Sessions Judge, Aurangabad in Sessions Trial No.166 of 1989/251 of 2001.

2. Prosecution case as per fardbeyan of PW 6 Ramakant Sharma, in short, is that on 13.10.1985 at about 8.30 P.M. while he was going along with Anil Kumar Sharma to attend the call of nature and reached near the house of Shilwant Sahay, appellant No.1 armed with rifle, appellant No.3 armed with double barrel



gun, appellant No.4 armed with country made gun and appellant No.2 armed with single barrel gun came there and on the order of appellant No.2, appellant Abbas Mian opened fire by his rifle at Anil Sharma, causing injury to his right side of Waist and he fell down and on alarm of the informant all the accused appellants fled away from the place of occurrence after making indiscriminate firing and witnesses arrived at and took the injured to the Obra Government Hospital where his statement was recorded.

3. The aforesaid fardbeyan led to the registration of FIR of Obra P.S. Case No. 130 of 1985 under Sections 324, 307/34 IPC and 27 of the Arms Act. Post investigation charge sheet has been submitted and cognizance of the offence has been taken under Sections 307/34 IPC and 27 of the Arms Act and after commitment the case traveled to the file of the learned Trial Judge for trial and disposal.

4. Charges were framed against all the appellants under Section 307 IPC and 27 of the Arms Act and further appellant Sheopujan Paswan, Jatha Kumhar and Jangi Yadav have also been charged under Sections 307/34 IPC.

5. The prosecution in order to substantiate its case has examined altogether 10 witnesses, they are PW 1 Binay Sharma alias Bijay Sharma, PW 2 Ramashish Sharma, PW 3 Patiram



Sharma, PW4 Ram deep Sharma, PW5 Ram Kewal Sharma, PW6 Ramakant Sharma (informant), PW7 Anil Kumar Sharma (injured), PW8 Ram Niwas Sharma, PW9 Arvind Sharma and PW10 Jagarnath Singh.

6. On behalf of defence neither ocular nor documentary evidence has been adduced and their defence is simply denial of the occurrence and is of false implication.

7. Learned trial court on conclusion of trial has convicted all the appellants under Sections 307/34 IPC and 27 of the Arms Act and sentenced them as stated above.

8. Since nobody appears on behalf of appellants on repeated calls, Mr. Arun Kumar Tripathi, Advocate has been appointed as amicus curiae to assist this Court.

9. On perusal of the evidence it appears that except Pws 6 and 7 all the witnesses do not claim to be eye-witnesses to the occurrence and their evidence shows that they came on hearing sound of firing and saw PW6 (informant) carrying Anil Singh, who was injured and evidence of Pws 2 to 5 shows that they have seen the accused persons fleeing from the place of occurrence.

10. Evidence of all the witnesses, including the informant and I.O. is consistent so far time of occurrence is concerned as according to their evidence the occurrence took place



at about 4 P.M. and occurrence took place at the darwaja of Shilwant Sahay. However, it appears that evidence of Pws 2, 3 and 8 disclosed that they were at the darwaja of Ramashish Sharma (PW2) and they have seen the accused persons fleeing from the place of occurrence and Ramakant Sharma (PW6) carrying Anil Singh in injured condition. However, what appears to be fatal that PW 7 is injured and PW 6 is the informant as per prosecution case and evidence, he appears to be eye-witness to the occurrence but they have been declared hostile though they have supported the prosecution case as far occurrence is concerned but they have not identified any of the accused appellant and stated that 5-6 persons came there.

11. In this case, apart from the above evidence I.O. and Doctor have not been examined. However, since all the witnesses have stated that occurrence took place at the darwaja of Shilwant Sahay and time of occurrence was 4 P.M. as such their evidence is consistent so far time and place of occurrence are concerned and reason behind the occurrence is construction of hospital on Gairmajurua land, which was objected by appellant Abbas Mian as such evidence so far genesis of occurrence is concerned, is also consistent. However, so far manner of occurrence is concerned, there is no eye-witness except Pws 6 and 7 but they have not



supported the prosecution case so far manner of occurrence is concerned and they have been declared hostile. Furthermore, the Doctor has not been examined in this case and there is no finding as to whether the injury is simple or grievous in nature and also about weapon used. However, in spite of the above inconsistencies in the evidence and even in spite of non-examination of Doctor, learned trial court has convicted the appellants under Sections 307/34 IPC and 27 of the Arms Act which does not appear to be sustainable in the eye of law.

12. Accordingly, this appeal is allowed. The impugned judgment and order are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	
Uploading Date	5.4.2018
Transmission Date	5.4.2018

