

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.641 of 2002

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Satya Deo Sao, son of late Deena Nath Sao, resident of villate- Dahrak, Police Station- Ramgarh, District-Kaimur (Bhabhua)	 Appellant/s
Versus	

The State Of Bihar	 Respondent/s
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Appearance :

For the Appellant/s	:	Mr. Kali Prasanna Dubey, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 13-01-2018

Heard learned counsel for the appellant and learned counsel appearing on behalf of the State.

2. This appeal has been preferred against the judgment and order of conviction and sentence dated 3.10.2002 passed by the Additional Sessions Judge, Fast Track Court No. 2, Kaimur at Bhabua in sessions Trial No. 587/327 of 1997/2002 whereby the learned Fast Track Court has been pleased to convict the appellant under Sections 452, 307 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for five years under Section 307 IPC, 3 years under Section 27 of the Arms Act and 2 years under Section 452 IPC. However, all the sentences were directed to run concurrently.

3. The prosecution case, in brief, is that one Jilebia Kunwar, widow of Banarsi Sao and aunt and co-villager of the appellant lodged a written report on 14.11.1996 addressed to the Officer-In-charge of the Ramgarh Police Station alleging therein inter alia that in the night of 13.11.1996 in between 11 to 12 P.M., when she was sleeping by bolting the door from inside the room she heard some noise, upon which she thought that



cat may be there, but after some time she heard the sound of opening of outdoor, then she removed the quilt and take out her face, then she saw that appellant was standing beside her bed having country made pistol (Katta) in his hand and when she enquired from the appellant, he allegedly fired upon her, which hit on her fore-head and eyes by which she fainted, thereafter the appellant started fleeing away from which she understood that one or two persons must be there to whom she could not see and upon her cries, her daughter, daughter-in-law and son namely Ashok Kumar came to her and to whom she narrated the said occurrence. The informant in her written statement given her L.T.I.

4. On the basis of the aforesaid fardebeyan formal F.I.R was registered being Ramgarh P.S. case No. 133/1996 for the offence under section 452,326,307 of the Indian Penal Code and section 27 of the Arms act. Police after investigation submitted charge sheet against the appellant and the case was committed to the Court of Session as the offence was tribal by Court of Sessions. After framing of the charge the appellants pleaded not guilty and as such he was put on trial.

5. On the behalf of the prosecution 6 witnesses have been examined and 4 documents were also placed on record as exhibits, i.e. formal F.I.R, fardebeyan ,injury report and seizure list prepared on the basis of production of live cartridges. The Trial Court on scrutiny of the evidence convicted the appellant for the offence as indicated hereinabove.



6. The incidence is dated 14.11.1996 and after 6 long years the Fast Track Court convicted the appellant on 03.02.2002. The appeal remained pending for 15 years.

7. Mr Kali Prasanna Dubey, learned counsel for the appellant submits that the Trial Court has committed error in convicting the appellant. In this case apart from the informant, the other witnesses are hearsay. The closer scrutiny of the evidence would indicate that the informant, who claims to have identified the appellant, has not explained as to how she could identify the appellant assaulting her in the dead night. There is no explanation as to how appellant entered the house and fired on the informant and how he fled away from the place of occurrence. There is no indication as to the source of light to identify the appellant in the dead night Mr. Dubey further submits that in the present case the seizure of the live cartridges is of the Rifal and there is no case that the Rifal was used by the appellant while assaulting the informant. He further submits that the injury report would further falsify the case of the prosecution. There is definite case of the prosecution that the appellant has fired and apart from the firing there is no allegation that the appellant or anyone has inflicted injury other than fire arm injury. The Doctor has referred to various injuries in his injury report which are caused by hard and blunt substance, which falsify the case of prosecution.

8. The circumstance indicated hereinabove as per the Counsel for the Appellant creates serious doubt about the prosecution version and in



the aforesaid circumstances the prosecution version cannot be taken as trustworthy. The injury caused by hard and blunt substance sustained by the informant has not been explained and as such it falsifies the case of the prosecution.

9. In this case the prosecution has made pick and choose of the witnesses. As per the prosecution case many independent witnesses have assembled at the place of occurrence but the prosecution has not examined any independent witnesses and as such Mr. Dubey submits that pick and choose of the witnesses and withholding of the independent witnesses goes against the prosecution and in view of the above, the appellant is entitled to be given the benefit of doubt.

10. Learned counsel appearing on behalf of the State has not been able to explain the injury sustained by the informant which, according to the doctor, is caused due to hard and blunt substance as that was not the case of the prosecution.

11. The manner in which the prosecution has made pick and choose of the witnesses and only family members have appeared in this case as witnesses also goes against the prosecution. In the case of interested witnesses, the law is well settled that while scrutinizing the evidence of interested witnesses the court is required to examine the deposition of such witnesses with utmost care and circumspection. The attending facts and circumstances of this case creates doubt about the manner of occurrence and unexplained injury on the informant which is caused by hard and blunt substance creates doubt about the prosecution case. In



addition thereto the prosecution definite case is that the firing was done from a very close range but the injury report rules out the firing from close range as the kind of injury found by the doctor is only possible if it is from a long distance. In addition thereto on scrutiny of the record it transpires that the statements made before the police and the deposition before the court there are contradiction.

12. Taking the totality of the fact situation when the identification of the assailant is not beyond all reasonable doubt in the dark night coupled with the fact that the injury caused to the informant is not possible from close range and the fact that the informant has sustained injury caused by hard and blunt substance runs contrary to the prosecution definite case. In the totality of the fact situation including the fact that the occurrence took place 21 years back, the appellant deserves benefit of doubt.

13. Accordingly, the appeal is allowed. The judgment and order of conviction and sentence is set aside. Since the appellant is on bail, he is discharged from the liability of the bail bond.

(Anil Kumar Upadhyay, J)

spandey/-

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