

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.463 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

- =====
1. Ram Ekbal Rai, son of Late Dukhit Rai
 2. Munna Rai
 3. Tun Tun Rai, both sons of Ram Ekbal Rai, all residents of village Dhane Chapra, P.S. Derni, District Saran, Chapra

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ravi Bhardwaj, amicus curiae

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 09-08-2018

All the appellants stand convicted under Sections 307/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and further appellant Munna Rai has been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and both the sentences were directed to run concurrently vide judgment and order dated 11.9.2003 passed by Sri Prabhat Kumar Jha, the then 6th Additional Sessions Judge, Saran, Chapra in Sessions Trial No. 458 of 2001.

2. Since nobody appears for the appellants to argue this appeal on repeated calls, Mr. Ravi Bhardwaj, Advocate has been appointed as amicus curiae to assist this Court.

3. Prosecution case as per the fardbeyan of Ram Naresh Rai (since dead), in short, is that while he was coming out of the toilet,



appellant Munna Rai came and objected to the use of toilet by him and after some altercation he fired twice at the informant but that does not hit anyone and thereafter appellants Runtun Rai and Ram Ekbal Rai came armed with bomb and spear respectively and they exploded bomb, which does not hit anyone. Thereafter appellant Ram Ekbal Rai threw Bhala on the informant but that does not hit him. Further prosecution case is that thereafter Bhola Rai, Uchit Rai, Bharosa Rai and others came at the place of occurrence and the accused appellants fled away.

4. On the basis of the aforesaid fardbeyan, Derani P.S. Case No. 31 of 1999 was registered. Police after investigation submitted charge sheet, cognizance was taken and after commitment the case ultimately traveled to the file of Sri Prabhat Kumar Jha, the then 6th Additional Sessions Judge, Saran, Chapra for trial and disposal.

5. Charges were framed in this case against the appellants under Sections 307/34 IPC and separate charge has been framed against appellant Munna Rai under Section 27 of the Arms Act.

6. In order to substantiate its case, the prosecution has examined altogether six witnesses, they are PW 1 Bhola Rai, PW 2 Bharosa Rai, PW 3 Prabhunath Rai, PW 4 Shashi Kant Sinha, I.O., PW 5 Janardan Pandey, I.O. and PW 6 Rup Narain Singh, Advocate Clerk, who has proved Ext.3. In this case the informant Ram Naresh Rai could not be examined as he was killed later on in some other



occurrence.

7. Apart from the aforesaid ocular evidence, prosecution has brought on record some document as exhibits, they are Ext.1-formal FIR, Ext.2- writing of Officer-in-Charge on fardbeyan and Ext.3-fardbeyan.

8. Defence of the accused is of total denial of the occurrence and of false implication.

9. Learned trial court on conclusion of trial has convicted the appellants under Sections 307/34 IPC and further convicted appellant Munna Rai under Section 27 of the Arms Act and sentenced them as stated above.

10. Learned amicus curiae has challenged the impugned judgment on the ground that in this case there is absolutely no evidence in support of prosecution case as PWs 1 and 2 have not supported the prosecution case and so far PW 3 is concerned, though he claims to be an eye-witness with respect to allegation of firing and explosion of bomb but the evidence of witnesses is contradictory from their earlier statement made before police and I.O. has confronted with the aforesaid contradiction, as such the evidence of PW 3 is impeachable in character and cannot be relied upon. Apart from that, I.O. has not found any incriminating material like substance of bomb or empty cartridge from the place of occurrence, as such there is absolutely no material available on record but in spite of that learned



trial court has convicted the appellants under Sections 307/34 IPC and 27 of the Arms Act, which is not sustainable in the eye of law.

11. On the other hand, learned counsel for the State has argued that learned trial court has rightly convicted the appellants as evidence disclosed that appellant Munna Rai fired at the informant and thereafter appellant Tuntun Rai exploded bomb and appellant Ram Ekbal Rai threw Bhala on the informant. No doubt, informant has not received any injury but their action disclosed that their intention was to kill the informant. As such, the impugned judgment is quite sustainable in the eye of law which does not require any interference by this Court.

12. In the background of rival submission of both the parties on perusal of the record it appears that Ram Naresh Rai, who is informant of this case was killed in another case during the pendency of the trial and so far PWs 1 and 2 are concerned, they are charge sheeted witnesses, but their evidence discloses that they came at the place of occurrence after hearing sound of firing and they have not seen the occurrence and not named any of the appellants in their evidence. PW 3 though claims to be an eye-witness to the occurrence but he has stated in his evidence that Munna Rai fired from his pistol, that does not hit anyone and Tuntun Rai exploded bomb and Ram Ekbal Rai threw Bhala on the informant but informant did not receive any injury. However, contradiction in his evidence has been taken



from his earlier statement made before police that though he has stated before police in which he has stated that on 13.6.1999 at 7 A.M. he was in his Dalan and thereafter some altercation took place between Munna Rai and Ram Naresh Rai and Munna Rai fired from his pistol but that does not hit anyone and Tuntun Rai exploded bomb and Ram Ekbal Rai threw Bhala on the informant. However, PW 4, I.O. has confronted the aforesaid evidence of PW 3 and I.O. has stated in his evidence that there is no mentioning in the case diary that PW 3 Prabhunath Rai has stated before him that on 13.6.1999 at 7 A.M. he was at his Dalan and there was altercation between Munna Rai and informant Ram Naresh Rai and thereafter Munna Rai fired from his pistol and that does not hit anyone and Tuntun Rai exploded bomb and Ram Ekbal Rai threw Bhala, as such the above evidence of I.O. (PW 4) made the evidence of PW 3 not free from embellishment. PW 5 is another I.O. in this case, who has submitted charge sheet and PW 6 is Advocate Clerk, who has proved the fardbeyan (Ext.3) and a formal witness. Evidence of PW 4 further disclosed that he has not found any incriminating article from the place of occurrence though there is allegation of firing and explosion of bomb. In absence of sanction, the accused appellants has not been tried for the allegation of explosion of bomb but so far other allegations are concerned, there is no evidence except PW 3 who claims to be an eye-witness to the occurrence but his evidence creates doubt about the prosecution case



as there is contradiction in his evidence from the earlier statement made before police so far manner of occurrence and allegation of assault are concerned, as such that suffers from embellishment. However, learned trial court in spite of above infirmities in prosecution evidence, has convicted the appellants under Section 307 IPC as well as under Section 27 of the Arms Act.

13. In view of the aforesaid discussions made above, the impugned judgment suffers from the aforesaid infirmities and inconsistencies and the same is not sustainable in the eye of law. Hence, the appeal is allowed.

15. Accordingly, 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)

spa/-

AFR/NAFR	
CAV DATE	
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