

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.18 of 2004

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RAJESH KUMAR GUPTA S/O SRI MUNNILAL GUPTA RESIDENT OF
VILLAGE HASANPURA, P.S. M.H. NAGAR, DISTRICT SIWAN.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. JITENDRA PANDEY

For the Respondent/s : Mr. PP.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 13-01-2018

Heard learned counsel for the parties.

2. This criminal appeal is directed against the judgement and order of conviction dated 23.12.2003 passed by Additional Sessions Judge, 6th, Siwan in Sessions Case No. 401 of 1997, by which appellant has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years.

3. The prosecution story as per FIR is that informant was going to Hasanpura Chatti bazar on 04.11.1996 at about 7:00 pm, and as soon as he reached on Kachchi Sadak near boundary of Jhagru Mian, he saw Rajesh Gupta and Santosh Kumar coming from bazar and on instigation of Santosh Kumar,



Rajesh Gupta fired with pistol which hit the left side of chest of Iliyas Hussain. On hulla being raised by the informant, the mother of injured, Jhagru Mian, Rangraz Mian, Bhola Mian and Sirajuddin Mian reached there and thereafter he was taken to Sadar Hospital. The reasons for the occurrence has been stated to be previous enmity between the parties. After completion of investigation, police submitted chargesheet against the appellant-Rajesh Gupta under Section 307 read with 34 of the Indian Penal Code and Section 27 of the Arms Act and the case was committed to the court of Sessions. The charges were framed against the appellant-Rajesh Kumar Gupta under Sections 307/34 of the Indian Penal Code and Section 27 of the Arms Act. The appellant denied the charges and claimed to be tried. In support of prosecution case, seven witnesses have been examined in which PW-1 Jhagru Mian, PW-2 Nisha Khatoon PW-3 Bhola Mian, PW-4 Iliyas (Injured/informant) PW-5 Sheikh Nabi Mohammad, PW-6 Dr. Suresh Prasad Shah and PW-7 is Jagdish Singh (I.O).

4. Exhibit-1 is the signature of informant on fardbeyan, Exhibit-2 is the injury report, Exhibit 2/1 is the supplementary injury report, Exhibit-3 is the medicine prescription, Exhibit-4 is the FIR, Exhibit-5 is the endorsement of Officer-in-charge,



Exhibit 5/1 is the signature of the I.O. on fardbeyan and Exhibit-6 is the police case diary.

5. No defence witness has been examined on behalf of the appellant.

6. PW-1 is Jhagru Mian, who in his deposition had stated that at the relevant time he was in his house near the boundary wall and appellant Rajesh fired upon informant Iliyas at the instigation of Santosh which hit him on the left side of stomach and on alarm being raised by Iliyas, Bhola Mian, PW-3 Samsuddin Mian and mother of Iliyas PW-2 came there and in his cross-examination he said that injured Iliyas PW-4 was taken to Siwan Sadar Hospital, which was nearest to the place of occurrence . Iliyas had moved 20 steps when he was shot at and he fell down.

7. PW-2 is Nisha Khatoon, who is the mother of injured- Iliyas and she stated in her deposition that at about 7 O' clock, the witness Sirajuddin, Bhola Mian and Jhagru Mian were at her door. Appellant Rajesh Kumar along with his brother Santosh Kumar and one more brother of whose name she is not aware hid themselves behind the boundary wall of Jakir Hussain and when his son moved towards market at the instigation of Santosh, appellant Rajesh fired on him which hit his stomach,



they all went there and saw appellant-Rajesh Kumar firing.

In her cross-examination, she stated that by that time it was evening and lamps were being lighted and at the time of sound of firing she was sitting at her door from where the place of occurrence was 10 feet away. She had seen Santosh and Rajesh prior to firing and hole was made in the shirt of his son, which was taken away by the police and blood was also spread at the place of occurrence. No one came from Hasanpura Bazar after hearing the sound of firing. My son was conscious. Police Station is about 100 steps from there. My son went to Police Station and thereafter went to Hospital. All had gone by the Jeep of Sirajuddin. She had also gone to the Police Station and remain there for ten minutes and during this period police had recorded her statement and her son and other witnesses accompanying them. They had put their thumb impression on their statement. One day prior due to cycle accident, some altercation took place between appellant-Rajesh and her son.

8. PW-3 is Bhola Mian, who deposed that at the relevant time he was going to Hasanpura Bazar from his house and Iliyas was walking 10 steps ahead of him. He saw Rajesh and Santosh and on instigation of Santosh, Rajesh fired from pistol which hit Iliyas on back and he fell down. Thereafter, Navin, Jhagru and



his mother took him on the Jeep. He had further stated that Jeep had come from Hasanpura and police did not make any investigation in his presence nor his statement was recorded.

9. PW-4 is Iliyas (informant/injured), who had deposed that it was 7 O' Clock in the evening when he reached near the house of Jakir Hussain, when he saw Santosh calling Rajesh that Iliyas has come and shoot him. Rajesh fired upon him which hit below on left side of his chest. Navin, Sirajuddin his mother, Jhagru Mian, Bhola took him to Sadar Hospital, Siwan, where he was treated by the Doctor and thereafter police came. He was treated for 17-18 days. On his fardbeyan he has put his signature.

In his cross-examination he has stated that when he saw Rajesh for the first time, pistol was in his hand. He was 4-5 steps away from him and he tried to flee away but before he could turn, Rajesh fired upon him. On sustaining fire arm injury he shouted and accused fled away towards West. At that time, Jhagru Mian was sitting 10-12 steps ahead of him. The road is 10-12 feet broad facing East-West. His house is 10-12 feet away from the place of occurrence. On the day of incident, he was in Siwan Registry till 12 O' Clock and thereafter he came to his house on motorcycle. Blood was spread on the place of



occurrence. Police Station is about 100 feet from the place of occurrence and he, his mother and other witnesses had gone to Police Station after the occurrence, at that time Officer in charge was not there and only munshi was there. He and other witnesses had disclosed the names of assailants to the Munshi, it took 1 hour to reach Siwan from the place of occurrence. He reached at about 8:00 pm. Police reached the Hospital after half an hour and after which he was operated and he was told by the Doctor that there is bullet injury and same is still in his stomach.

10. PW-5 is Sheikh Nabi Mohammad, who had deposed that at 5:45 pm in the evening, he was repairing his Tractor near Chuda Mill, when Santosh Kumar Gupta instigated Rajesh Kumar Gupta to fire upon Iliyas upon which Rajesh Kumar Gupta fired which hit him on the left side of stomach. He, Bhola Mian, Jhagru Mian and mother of Iliyas took him to Siwan.

In his cross-examination he has stated that he did not disclose to the investigation officer that he had said Iliyas has come and on the instigation of Santosh Kumar, appellant Rajesh Kumar fired upon him. The investigation officer had recorded his statement at the place of occurrence. Chuda Mill is 10 steps away from the place of occurrence and his house is 400 Gaj from there. They had not entered the Hasanpura Police Station



but remained outside for few minutes. They reached the Siwan Sadar Hospital at 7 O' Clock. Jeep had come probably from the taxi stand.

11. PW-6 is Dr. Suresh Prasad Shah, who had treated Iliyas on 04.11.1996 and he has stated that he was posted as Medical Officer in Sadar Hospital and at 7:00 pm, he had examined Iliyas and found lacerated wound 1/3' cavity deep charring was found and he had advised X-ray and prepared supplementary injury report on 06.11.1996 and on receipt of X-ray report he could find that injury is grievous in nature and is caused by fire arm.

In his cross-examination he has stated that there is no exit wound or pellet inside the body or any fracture found.

12. PW-7 is Jagdish Singh (Investigation Officer) who had stated that he had recorded the fardbeyan of informant-Iliyas in the Sadar Hospital, Siwan. Place of occurrence is south to the boundary wall of Jakir Hussain on a Kachi (non-metal) road and he had reached at the place of occurrence at 10:30 pm in the night and had recorded the statement of Jhagru Mian and Sirajuddin and arrested accused Santosh Kumar from his house. In the case diary information of rumor has been recorded. He did not prepare any report with regard to injury, other than the



witnesses named in the FIR he did not record statement of other witnesses. The distance of Police Station is 1000-1200 Gaj. He found stains of blood but did not seize the blood stained soil. The injured neither showed nor handed over the cloth worn by him. It is wrong to say that at the Police Station, the statement of mother of injured was recorded and she had put her signature. Injured had come to the Police Station along with others and he orally told them to get him treated. The cloth worn by the injured was neither shown nor handed over. It is wrong to say that the statement of the mother of the injured was recorded at the Police Station and her signature was taken over it at the Police Station. The injured came at the Police Station along with other people and I orally directed him to go to the Hospital for his treatment. When the injured came at the Police Station, he neither examined the body of the injured nor prepared injury report or recorded his statement. He also came to know that the injured was in Hasanpura and did not went out from Hasanpura. He also stated that witness Nabi Mohammad did not gave his statement before him that Santosh Kumar said that Iliyas had came and shot him. I took the statement of Bhola Mian. It is wrong to say that the statement of the injured that when he reached the Police Station only Munshi was there and the



injured had told the name of the assailants who had shot him. He stated that Siwan is at the distance of 8-10 Kilometers.

13. After going through the prosecution evidence, there is no dispute or doubt as far as place of occurrence and time of occurrence is concerned, however, as far as presence of prosecution witness at the time of occurrence, there are contradictions in oral evidences as deposed by prosecution witnesses. PW-1 has stated that he was in his house when Iliyas was shot and on his raising alarm, other witnesses came there. Whereas PW-2 stated that Sirajuddin, Bhola Mian, Jhagru and Nabi were at her door and she was lighting the lamps and on instigation by Santosh they ran towards Iliyas and saw Rajesh firing. She further stated that at the time of firing she was sitting near her door. PW-3 stated that he was going to Hasanpura Bazar and was 10 steps behind Iliyas when he saw Rajesh and Santosh and on instigation of Santosh, Rajesh fired which hit Iliyas on his back and thereafter other prosecution witnesses came there. PW-4 Iliyas informant and victim stated that at the instigation of Santosh, Rajesh fired upon him which hit him below his chest and thereafter he was carried to Siwan Hospital by prosecution witnesses. He raised alarm on being shot and Jhagru Mian PW-1, was sitting near his door. PW-5 Sheikh Nabi Mohammad had



said that he had not disclosed the name of appellant-Rajesh Gupta before the police. His statement was recorded by the I.O. at the place of occurrence. The accused have been identified by the prosecution witnesses on the basis of call made by Santosh Kumar and the trial court has disbelieved presence of Santosh Kumar at the place of occurrence. During trial attempt has been made to implicate even one more brother of appellant-Rajesh Kumar in this case. From the evidence adduced by the prosecution witnesses, it is doubtful that witnesses claimed to be the eye witness were present at the time of occurrence but rushed to the place of occurrence soon after alarm being raised by the injured-Iliyas.

14. PW-4 Iliyas, was treated in the Siwan Hospital by PW-6 Dr. Suresh Prasad Shah and he has stated that he found cut injury of 1/3" diameter cavity deep and found charring and advised X-ray and after receipt of X-ray report, he found injury to be of grievous in nature and firearm injury. However, in his cross-examination he stated that he did not found any exit wound nor he found pellet inside the body or any fracture. PW-4 stated in his deposition that he was fired upon by appellant when he was 4-5 feet away from him and in such cases there cannot be any charring. The Doctor had also not found any entry



wound injury or exit wound injury and pellet was also not found and there was no fracture and it has been stated by the informant PW-4 that after occurrence he along with other witnesses reached police station and remained there for more than 10 minutes which also suggest that the injury was not of grievous nature. It has been stated that police had seized the shirt of victim on which there was hole caused by pellet but the same was not produced as material exhibit. The I.O. had stated in his deposition that he found blood spread over the place of occurrence but did not seize the blood stained soil or send it to Forensic Laboratory for examination, which makes the case of prosecution doubtful. The injury suffered by PW-4 was a firearm injury becomes doubtful as no entry wound or exit wound was found nor pellet was recovered from the body of the victim.

15. There is major contradiction between the evidence of prosecution witnesses and I.O. PW-2 mother of the victim had stated that she along with other witnesses went to police station where police officer was present and he recorded her statement upon which she put her thumb impression but the informant PW-4 has said that no police officer was present in the police station and only Munshi was present and he disclosed



the name of appellant to the Munshi. However, the I.O. PW-7 had stated that he was present in the police station when the injured and other witnesses had arrived in the police station and he asked them to take the injured to the Hospital and no statement of any witness was recorded there.

16. There are vital contradiction and discrepancies in the evidence of prosecution witnesses which makes the prosecution case doubtful and it has failed to prove the charges against the appellant beyond all reasonable doubt and as such appellant is entitled for benefit of doubt.

17. The criminal appeal is allowed and the appellant-Rajesh Kumar Gupta is acquitted from the charge and since he is on bail he is discharged from the liability of his bail bonds.

(S. Kumar, J)

ranjan/-

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