

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.87 of 2004

Sessions trial no. 114/1999 arising Out of Dumraon P.S. case no. 209/1997
District- BUXAR

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1. Anirudh Singh Son of Radha Mohan Singh
2. Amrendra Singh Son of Radha Mohan Singh
Both resident of Village Nenuaon P.S. Dumraon Dist Buxar

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Damodar Pd. Tiwary

For the Respondent/s : Mr. Sujit Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT

Date: 09-03-2018

1. Heard learned counsel for the appellants as well as learned Addl. Public Prosecutor for the State.

2. This criminal appeal has been preferred against the judgment of conviction dated 30.1.2004 and sentence order dated 3.2.2004 passed by the learned Sessions Judge, Buxar in Sessions trial no. 114/1999 by which and whereunder he convicted the appellants for the offence punishable under section 307/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for four years for the offence punishable under section 307/34 of the Indian Penal Code. Furthermore, appellant no.2 was



separately convicted for the offence punishable under section 27 of the Arms Act and was sentenced to undergo rigorous imprisonment for one year for the above stated offence though the minimum punishment under section 27 of the Arms Act is three years. However, trial court acquitted co-accused Sunil Singh by the impugned judgment.

3. PW3, Dayanand Singh on 20.12.1997 gave written report to the officer-in-charge of Dumraon police station stating therein that on the same day at about 11 a.m. he was passing through village Kudaria and when reached between village Nenua and Kudaria, agnates of his mother-in-law namely, Radha Mohan Singh, Amrendra Singh, Anirudh Singh and Sunil Singh being armed with farsa, country made gun and bhala came there and Radha Mohan Singh exhorted others to kill him and thereafter, Anirudh Singh (appellant no.1) gave farsa blow causing injury on his head and thereafter, he tried to flee but appellant no.2 opened fire of his country made gun as a result of which he sustained injury on his back and fell down on the ground. He, further, stated that when he fell down on the ground, Sunil Singh started assaulting him by means of lathi. He raised alarm which attracted Gopalji Tiwari (PW1) and Sitaram (PW2) and



others. He, further, stated that his mother-in-law had transferred her land to Bindu Devi which had caused annoyance to the appellants and other accused and that was the reason, they committed the alleged occurrence.

4. On the basis of the aforesaid written report, Dumraon P.S. case no. 209/1997 for the offences punishable under sections 341, 323, 324, 307/34 of the Indian Penal Code was registered and formal FIR was drawn up against the appellants and others for the above stated offences. The case was investigated by PW5 and after completion of investigation, charge sheet was submitted. The cognizance was taken and appellants and co-accused Sunil Singh were put on trial after commitment of the case. The appellants along with FIR named accused Sunil Singh stood charged for the offence punishable under section 307/34 of the Indian Penal Code whereas appellant no.2 was separately charged for the offence punishable under section 27 of the Arms Act.

5. In course of trial, altogether, five prosecution witnesses were examined and apart from this, prosecution proved written report as exhibit 1, injury reports as exhibit 2 series, formal FIR as exhibit 3 and requisition issued by the police regarding injury of PW3 as exhibit 4. Defence also got



exhibited exhibit A in support of his defence.

6. The statements of the appellants and co-accused were recorded under section 313 of the Code of Criminal Procedure in which they denied the prosecution story and claimed their false implication on account of land dispute. Learned court below, having placed the reliance upon the testimonies of the prosecution witnesses, convicted and sentenced the appellants in the manner as I have already stated above.

7. Learned counsel appearing for the appellants assailed the impugned judgment of conviction and sentence order arguing that learned court below completely failed to take note of this fact that PW3 had sustained simple injury and there was no repetition of blow. He, further, submitted that in the aforesaid facts, no case under section 307 IPC was made out but even then the learned court below convicted and sentenced the appellants for the offence punishable under section 307/34 of the Indian Penal Code. He, further, submitted that learned trial court also failed to take note of this fact that witnesses made contradictory statements and PW3 in course of the trial, developed his statement in respect of manner of occurrence which is not in consonance with the



written report. He, further, submitted that admittedly, appellants are agnates of mother-in-law of PW3 and there was land dispute between the parties. He, further, submitted that x-ray report of PW3 was not brought on record by the prosecution and similarly, neither so-called seized bullet nor any gun was produced before trial court and, therefore, the aforesaid circumstance goes to show that the prosecution failed to prove this fact that PW3 had sustained fire arm injury and the firearm had been used in the present case. He, further, submitted that in the aforesaid circumstances, appellants ought to have been acquitted giving the benefit of doubt but learned trial court convicted and sentenced them.

8. He, further, submitted that according to the prosecution case itself, alleged occurrence took place in the year 1997 on account of land dispute and moreover, appellant no.1 remained in jail custody for near about ten months and appellant no.2 remained in jail custody for near about one year ten months and, therefore, even if appellants are found guilty of commission of the present occurrence, then also, they deserve leniency and their sentence should be reduced.

9. Learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction



and sentence order arguing that PW3 (injured) and the informant of the present case, specifically, stated that it were the appellants who caused injury to him and the statement of PW3 has been corroborated by the testimonies of PW1, PW2 and PW4. He, further, submitted that PW5 Investigating officer has proved the place of occurrence and, therefore, only on account of minor discrepancy and also on account of laches of investigating officer and prosecuting agency, appellants could not escape unpunished.

10. Having heard the rival contentions of both parties, we went through the record and find that PW1 and PW2 claimed themselves to be eye-witnesses of the alleged occurrence. The aforesaid prosecution witnesses, specifically, stated that it were the appellants who caused injury to PW3 by means of farsa and firearm. PW3 is injured of the present case and he, too, stated that it were the appellants who caused farsa and firearm injuries. The testimonies of the aforesaid witnesses go to show that there is no variance in the testimonies of the aforesaid prosecution witnesses on the point of manner of occurrence and all the above stated witnesses have stated the manner of occurrence in which occurrence took place.



11. PW 5 has proved the place of occurrence and stated that he had issued requisition for examination of the injury of PW3. This witness has proved requisition as exhibit 4. PW4 is the doctor who had examined PW3 and this witness proved injury report of PW3. Therefore, it can easily be said that the prosecution proved his case beyond all shadow of reasonable doubts and, therefore, there is no scope to interfere into the impugned judgment of conviction.

12. So far as sentence order is concerned, in my view, learned counsel appearing for appellants rightly submitted that appellants deserve leniency because alleged occurrence had taken place on account of land and **pattidari** dispute and moreover, alleged occurrence took place in the year 1997 and during course of trial as well as during the pendency of this appeal, appellants remained in jail custody for a considerable period i.e. ten months by appellant no.1 and one year ten months by appellant no.2. Therefore, in my view, ends of justice would meet, if appellants are sentenced to the period already undergone by them.

13. On the basis of the aforesaid discussions, this criminal appeal stands dismissed with modification order in the sentence directing that the appellants be sentenced to the



period already undergone by them.

(Hemant Kumar Srivastava, J)

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