

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2461 of 2018

Arising Out of PS.Case No. -276 Year- 2016 Thana -PARWATTA District- KHAGARIA

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Kare Mishra @ Pankaj Mishra, Son of Late Kapildeo Mishra, Resident of
Village- Madhavpur, Police Station- Parbatta, District- Khagaria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Dr. Rajesh Kumar Singh, Adv.

For the Respondent/s : Mr. Sri Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 13-08-2018

Heard learned counsel for the appellant, learned
Additional Public Prosecutor along with learned counsel for the
informant.

Instant appeal has been filed at the end of convict
Kare Mishra @ Pankaj Mishra against the order dated
29.05.2018 passed by learned Sessions Judge, Khagaria in Cr.
Appeal No.10/2018 whereby and whereunder, learned
appellate court had rejected the prayer of the appellant in
accordance with Section 389(1) of the Cr.P.C. Accordingly, the
present appeal (irrespective of its nomenclature) has been filed
under Section 389(2) of the Cr.P.C.

Appellant along with Angad Kumar Mishra @
Bitiya Mishra has been found guilty for an offence punishable
under Section 307/34 of the IPC and sentenced to undergo R.I.
for five years as well as to pay fine appertaining to Rs.5000/-
and in default thereof to undergo S.I. for two months
additionally, under Section 27 of the Arms Act and for that
sentenced to undergo R.I. for two years as well as to pay fine
appertaining to rupees one thousand and in default thereof to



undergo S.I. for two months, additionally, under Section 341/34 IPC and for that sentence to undergo S.I. for one months, under Section 323/34 of the IPC and sentenced to undergo R.I. for one year 342/34 IPC and sentenced to undergo R.I. for one year with a further direction to run the sentences concurrently with a further direction to set off against the period having undergone during course of trial as provided under Section 428 of the Cr.P.C. by the Assistant Sessions Judge, Ist, Civil Court, Khagaria in connection with Sessions Trial no.117/2017 arising out of Parbatta P.S. Case No.276/2016.

Informant, Vijay Kumar Mishra who happens to be father of injured Neeraj Kumar (PW.1) alleged that on 04-12-2016 at about 07:00 AM Kare Mishra @ Pankaj Mishra (Appellant) along with Angad Kumar Mishra @ Bitiya Mishra, Shasi Mishra, Rakesh Mishra @ Tukki, Laxman Mishra, Murari Mishra gone at his Bathan and shot at his son Neeraj Kumar who was mulching cow, fortunately, he escaped. Then thereafter, he was assaulted by butt of gun, back side of axe. They have also taken away the plastic pipe measuring 500 feet. They have also brick batted. The injured P.W.1 had reiterated the version as is evident from para-9 of the judgment. Injury report has been described under para-13 of the judgment.

Considering the nature of the injury inconsonance with the deposition of PW.1 coupled with the finding recorded by the learned lower court and further appellant being under custody since 02-01-2017, appellant Kare Mishra @ Pankaj



Mishra is directed to be released on bail on furnishing bail bonds of Rs.10,000/- (ten thousand) with two sureties of the like amount each, to the satisfaction of learned Asst. Sessions Judge, 1st, Khagaria in connection with Sessions Trial No.117/2017 Net Trial No.117/2017 till pendency of Cr. Appeal No.10/2018 after suspending the sentence.

Consequent thereupon, instant appeal is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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