

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.105 of 2009

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PANKAJ KUMAR SINGH @ PANKAJ SINGH, SON OF SRI BIRJESH SINGH,
RESIDENT OF VILLAGE-AFFAUR, P.S.-KHAIRA, DISTRICT-SARAN AT
CHAPRA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Arun Kumar Tripathi, Amicus Curiae

For the Respondent/s : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 09-10-2018

As the learned counsel for the appellant failed to appear on account thereof, Mr. Arun Kumar Tripathi, learned advocate has been requested to assist the court as an Amicus Curiae.

2. Appellant, Pankaj Kumar Singh @ Pankaj Singh has been found guilty for an offence punishable under Section 307/34 of the IPC and sentenced to undergo R.I. for five years vide judgment of conviction and order of sentence dated 02.02.2009 passed by F.T.C., IV, Saran at Chapra in Sessions Trial No.613 of 1993/103 of 2003.

3. While admitted at Sadar Hospital Chapra on 22.05.1989 at about 05:30 PM informant Ram Shankar Singh @ Baccha Singh gave his fardebeyan before the police officials of Bhagwan Bazar P.S. alleging *inter alia* that on the same day at about 03:00 PM while he was sleeping at his Bathan and his wife was engaged in feeding the cattle, during midst thereof, his one of



the full brother namely Jaduveer Singh came and began to abuse his wife over which, he woke up and forbidden him not to abuse. He further disclosed that firstly he committed dishonesty during course of partition as, is not giving proper share and further, is abusing on demand is not proper whereupon he called his son Shailesh Singh and said that he be murdered. Shailesh Singh armed with double barrel gun, Pankaj Singh empty hand came and on an order, Shailesh Singh fired causing injury over his left thigh. His wife rushed whereupon Shailesh Singh assaulted her with fist and slap and then thereafter, snatched golden chain. On hue and cry so many persons including Prabhunath Singh, Harinath Singh, Bhola Singh and his son Ravi Shankar Singh came who have witnessed the occurrence. Then thereafter, he along with his wife has been lifted to Sadar Hospital where they are being treated. The motive for the occurrence has been shown as, partition.

4. After registration of Chapra Muffasil (Khaira) P.S. Case No.189/1989 investigation commenced, proceeded and concluded by way of submission of charge sheet against three accused persons, namely, Shailesh Singh, Jadubir Singh and the appellant Pankaj Singh. It is evident that Jadubir Singh and Shailesh Singh died during course of trial whereupon, trial was dropped against them and proceeded only against the appellant, concluded in a manner, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial.



6. From the evidence available on the record, it is apparent that whatever allegation of firing has been made that was against Shailesh Singh, since deceased and the order giver Jadubir Singh, is also dead. Appellant is the grand son of Jadubir Singh. It is further evident that Investigating Officer has not been examined whereupon the relevant documents have been exhibited at the end of PW.5 as well as PW.6, formal in nature. It is further evident that PW.7 Satendra Singh, PW.8 Harindra Singh, PW.9-Prabhu Nath Singh and PW.10 Rajendra Singh have not supported the case of the prosecution, whereupon declared hostile. Now the evidence remains that of PW.1 Ravi Shankar son of the informant, PW.2 Smt. Singaro Devi wife of the informant and PW.3 Rama Shankar Singh informant along with DW.4 Dr. D.K. Ojha. Side by side, also prosecution had exhibited following documentary evidence, Ext.1 – signature of the informant over fardbeyan, Ext.2 injury report, Ext.3-Formal FIR and Ext.4 fardbeyan. Nothing has been adduced at the end of the defence.

7. From the fardbeyan, though presence of Pankaj, appellant has been shown but with empty hand without any activity. From perusal of the fardbeyan, it is evident that only Shailesh Singh was called upon by the Jadubir Singh but his presence has also been shown. PW.1-Ravi Shankar Singh, during his examination-in-chief had shown the presence of Pankaj Singh who followed Shailesh Singh and had further stated that after firing made by the Shailesh Singh on account of which his father sustained injuries over waist left side, he along with his mother



rushed in rescue and during course thereof, he was very specific that Pankaj Singh had assaulted his mother with fist and slap while Shailesh Singh snatched away chain from his mother. At para-15 of his cross-examination he had stated that during course of occurrence Pankaj Singh was aged about 16-17 years. At para-23 he had stated that his mother had sustained injury over her head right side, hand right side, thigh right side and knee left side. Then he was assaulted with fist and slap. He was assaulted by Shailesh Singh and Pankaj Singh. In para-27 he had stated that while Shailesh Singh was assaulting him at that very time, he was not armed with gun. Where gun has gone, he had not seen.

8. PW.2 is the mother of PW.1 and wife of PW.3 she had stated that on an altercation, Jadubir Singh called his son Shailesh Singh and grand son Pankaj Singh whereupon Shailesh Singh came armed with double barrel gun while Pankaj Singh was empty hand. On an order of Jadubir Singh, Shailesh Singh fired causing injury over person of his husband. When she rushed to rescue him, she was assaulted by Shailesh Singh and Pankaj Singh but, Shailesh Singh assaulted him bitterly and during course thereof, Shailesh Singh snatched away golden chain. During cross-examination on that very score there happens to be contradiction as is evident from para-20 as well as 22. On account of non-examination of the Investigating Officer the same could not legally be brought up on the record.

9. PW.3 had twisted the story from his earlier version by stating that while he was sleeping at his *Bathan* and his wife and



sons were present there, Shailesh Singh, Jadubir Singh and Pankaj Singh along with others came whereupon he woke up, came out from Palani and at that very moment was shot at causing injury over his person. His wife was assaulted with fist and slap. During cross-examination at para-7 he had stated that his wife was assaulted by Shailesh Singh and Pankaj Singh with fist and slap. At that very time they were empty hand. At para-8 he had stated that when he protested over assault being made to his wife then, from the road accused had fired.

10. PW.4 is the doctor who had examined the victim PW.3 and found the following:

Multiple small indrawn wound ranging from 1/6"x1/8" diameter on the left side of thigh and abdomen. Age of injury within seven years nature of injury simple caused by firearm.

11. From the evidence of the PW.1 and PW.2, it is evident that the appellant Pankaj Singh along with Shailesh Singh had assaulted them with some variance as PW.2 had not disclosed regarding assault over PW.1. They have further deposed that they were assaulted after firing made over informant PW.3. However, PW.3 changed the version by stating that firstly PW.2 was assaulted and when he protested was shot at from the road. In the aforesaid background now it has to be seen whether appellant was carrying common intention in order to justify his conviction under Section 307/34 IPC.

12. As discussed herein above, first of all presence of appellant aged about 16-17 years came empty hand. Furthermore,



there happens to be inconsistent version against the PW.8 with regard to part played by the appellant. PW.3, the informant divulged with regard to the activity of appellant before firing and further firing, though made thereafter from the road where presence of appellant has not been shown. That being so, at least something more was warranted at the end of prosecution to justify the finding depicting sharing of common intention by the appellant during commission of occurrence. Consequent thereupon, the finding recorded at the end of the learned lower court attributing him to be guilty for an offence punishable under Section 307/34 of the IPC is not at all found duly substantiated as such, the same is set aside. Appeal is allowed. Appellant is on bail hence is discharged from its liability. First and last page of judgment be handed over to the learned amicus curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	

