

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.334 of 2003

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

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1. Ramagaya Singh son of Hardeo Singh
2. Shailendra Kumar Singh, son of Shreejot Singh
Both resident of Village Ashok Nagar, P.S. Jalalpur, District Saran.
..... Appellants

Versus

State of Bihar
..... Respondent

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Appearance :

For the Appellants : Mr. Ramkishore Sigh, Adv.
Mr. Styapal Singh, Adv.

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A.V. JUDGMENT

Date: 13-07-2018

Both appellants stand convicted under Sections 307/34 of the Indian Penal Code as well as under Section 27 of the Arms Act and the appellant no.1 (Ramagya Singh) was sentenced to undergo R.I. for seven years, whereas appellant no.2 (Shailendra Kumar Singh) has been sentenced to undergo R.I. for five years and they have also been convicted under Section 27 of the Arms Act and sentenced to undergo R.I. for two years and a fine of Rs.5,000/- to appellant no.2 with default clause, vide judgment and order dated 13.6.2003 passed by Sri Baikunt Nath Shahi, 9th Addl. Sessions Judge, Saran at Chapra in Sessions Trial No.493 of 1997/17 of 2002. The sentences were directed to run concurrently.

2. During the pendency of the appeal the appellant no.1



(Ramagya Singh) died, which appears from the report received from the S.P., Saran at Chapra, as such the appeal against him stands abated, vide order dated 26.6.2018.

3. The prosecution case as per the Fardbeyan of Shri Ram Singh, father of the injured (P.W.10) in short is that in the morning on 7.2.1997 at about 8.00 A.M. he sent his son Bhushan Singh (P.W.8) to the house of the appellant Ramagya Singh in order to bring dues of Rs.30/- for irrigating his land but he paid only Rs.15/-, on which Bhushan Singh was asked by the informant to return the money and his land has been irrigated free of cost. Further case is that Bhushan Singh again went to the house of appellant Ramagya Singh and accused persons started abusing him and on being protested by P.W.8 Bhushan Singh, they started assaulting him by fists and slaps and his younger son Shashi Bhushan Singh reached there in order to save him and intervened in the matter and the informant also went behind his sons. It is also the case that the appellant Shailendra Kumar Singh reached there with short gun and fired which did not caused injury to anybody. Due to firing the injured son of the informant Bhushan Singh started running away and thereafter Ramagya Singh fired from his gun, causing fire arm injury in the back of his head and when his younger son Shashi Bhushan Singh came to save his brother, the appellant Ramagya Singh fired again, causing injury on the left



shoulder. It is also their case that on sound of firing the villagers assembled, thereafter the accused Shailendra Kumar Singh threw his short gun and fled away. It is also the case that informant lifted the gun and gave it to the police and the injured were taken to Chapra Sadar Hospital for treatment.

4. On the basis of the aforesaid Fardbeyan Chapra (Mufassil) (Jalalpur) P.S.Case no.58 of 1997 was registered under Section 307 of the IPC and other Sections of the IPC and Section 25(1-B) and Section 27 for the Arms Act. Post investigation charge-sheet has been submitted against both the appellants and cognizance of the case was taken and ultimately the case travelled to the file of Sri Baikunt Nath Shahi, 9th Addl. Sessions Judge, Saran at Chapra for trial and disposal.

5. In this case it appears that statement of Bhushan Singh and Shashi Bhushan Singh was also recorded in emergency ward by the police officer of Chapra Police Station but as the fardbeyan was earlier lodged as such it was treated as subsequent statement.

6. Charges were framed against appellants under Section 307/34 of the IPC as well as under Section 25 (1-B)(a) of the Indian Pena Code and Section 27 of the Arms Act and the prosecution in order to prove its case has examined altogether 14 witnesses, they are P.W.1 Bijendra Singh, P.W.2 Sawaliya Singh, P.W.3 Uday Rai, P.W.



4 Verma Singh, P.W.5 Kamala Singh, P.W.6 Bijay Singh, P.W.7 Parsuram Singh, P.W.8 Chandra Bhushan Singh @ Bhushan Singh, P.W.9 Shashi Bhushan Kumar Singh (injured), P.W.10 Shree Ram Singh (informant), P.W.11 Rajeshwar Tiwari, Technician of X-ray, P.W.12 Dr. Uma Shankar Prasad Shrivastava, P.W.13 Ram Shringar Singh (I.O.) and P.W.14 Vinda Ram is the constable who has produced country made pistol, which was marked as material Ext.I. Besides that large number of documents have also been produced by the prosecution and they have been marked as exhibits, which are as follows : 1 to 1/1, signature on Fardbeyan, Ext. 2 Fardbeyan, Ext. 3 Fardbeyan, Ext. 1/2 signature on the Fardbeyan, Ext. 1/3 signature in Fardbeyan, Ext. 4 to 4/1 X-ray plates, Ext.5 X-ray report, Ext.4/2 x-ray plates, Ext. 5/1 X-ray plates, Ext.6 injury report, Ext. 6/A supplementary injury report, Ext.6/B injury reports, Ext.6/C supplementary injury report, Ext. 7 verification report of the materials exhibits, Ext.8 FIR, Ext.9 case diary.

7. On behalf of the defence also two witnesses have been examined, they are D.W.1 Shivji Singh, Advocate Clerk, who has proved the formal fardbeyan as Ext/A and formal FIR as Ext. 'B' which is said to have been lodged by the appellant Ramagya Singh, P.W.2 is Dr. Ram Babu Singh, who is said to have examined Ramagya Singh in hospital.



8. As per Exts. A and B it appears that a case has been lodged by Ramagya Singh with respect to occurrence at 8.30 A.M. stating that when he was at his *Darwaza* P.W. 10 Shree Ram Singh, P.W.3 Uday Rai and P.W.8 Bhushan Singh came at his *Darwaza* and started demanding cost of the irrigation and when he gave Rs.15/- they insisted for taking Rs.30/- and some altercation took place, in the meantime, Bijendra Singh came and started abusing him and thereafter, they went to their house and came along with Bijay Singh (P.W.6), Uday Rai (P.W.3), Shree Ram Singh (P.W.10), Bijendra Singh (P.W.1), Bhushan Singh (P.W.8), Munki Singh, Swaliya Singh (P.W.2) and Parshuram Singh (P.W.7) armed with *Lathi*, *Bhala* and *Garasa* and started assaulting him indiscriminately and Bijendra Singh fired from his *Katta* and any how he escaped himself. Uday Rai assaulted on the head due to which he received injuries, in which he went inside house and bring out licnecee gun which was caught by Bhushan Singh and in course of scuffle, trigger was pushed and there was firing. It has also been stated that they have assaulted indiscriminately and he was taken to the hospital.

9. D.W.2 is the Doctor who is said to have examined appellant Ramagya Singh and found altogether 08 injuries on his person were found which will appear from Ext. 'C'.

10. The learned trial court on conclusion of the trial has



convicted the appellants under Section 307/34 of the IPC and under Section 27 of the Arms Act and sentenced them accordingly.

11. The learned counsel for the appellant has assailed the judgment on the ground that the learned trial court has failed to appreciate that it is the prosecution party who are aggressor and went to the house of the appellant Ramagya Singh and assaulted him indiscriminately and whatever injuries were caused to Bhushan Singh and Shashi Bhushan Singh were caused in the self-defence of Ramagya Singh but despite appreciating the same, the learned trial court has convicted the appellants disbelieving the story on the ground that no witnesses have been examined in support of the contention of the appellants though some of the witnesses have stated in the cross examination about the altercation between the parties for 10 to 15 minutes. The learned trial court has also disbelieved the injury report of the appellant Ramagya Singh only because that it was not signed by the Doctor though P.W.2 who is Doctor has stated in his evidence that the injury report is in his pen and signature. Further submission is that the learned trial court has also failed to consider that the injury report issued by the Doctor P.W.2 shows that there was charring injuries on the person of P.Ws. 8 and 9 the injured whereas as per the evidence of the prosecution, it was fired from 10-15 steps away as such injury report of P.W. 8 and 9 do not probablize the prosecution



case, rather that support the defence case that during the scuffle to snatch the gun, the trigger went on causing injury to Bhushan Singh and Shashi Bhushan Singh P.W.8 and 9 respectively, as such charring injuries were found.

12. Further submission of the learned counsel for the appellant is that all the witnesses are either related except one Verma Singh, which will appear from the prosecution evidence also and they were accused in the counter case also and in such a situation, the learned trial court ought not to have convicted the appellants on the evidence of related and inimical witness rather ought to have searched for corroboration by the independent witnesses especially when the place of occurrence is admittedly house of the appellant Ramagya Singh. Further submission of the learned counsel for the appellant is that the prosecution witnesses has stated about firing by the appellant Shailendra Singh by short gun but their evidence itself suggests that he has not repeated firing and that firing does not hit anybody rather one of the witnesses has stated that he fired in the air and had it been intention of the appellant Shailendra Kumar Singh to kill any body he would have repeated firing or he would fire aiming the injured and in absence of that conviction of the appellants Shailendra Kumar Singh under Section 307 of the IPC is not free from reasonable doubt and in the above background there is specific case of



the defence that the prosecution was armed with *Katta* as such possibility of that *Katta* being carried by the prosecution was produced by the prosecution can not be ruled out. The learned counsel for the appellant on the basis of the aforesaid submission has submitted that the impugned judgment and order suffers from infirmities and inconsistencies but the learned trial court has not considered the same as such the impugned judgment and order is not sustainable in the eye of law.

13. On the other hand learned counsel for the State has submitted that the prosecution evidence is consistent on the point of firing by appellant no.1 on P.Ws. 8 and 9 causing injury on the back of the head of P.W.8 and injury on the arm of the P.W.9 and the evidence of P.Ws. also shows that appellant no.2 also fired by short gun. Further submission of the State is that in that background the Doctor P.W.12 has also found injuries on the head of P.W.8 and in the arm of P.W.9 and head being vital part of the body and injury being found to be grievous in nature, as such finding of the learned trial court convicting the appellants under Section 307/34 of the IPC and Section 25 of the Arms Act does not suffer from any infirmities rather it is just and proper and it does not require any interference by this Court.

14. In the background of the submissions and on perusal of



the evidence it appears that P.W.8 and 9 are the injured in this case and they have categorically stated in their evidence that the appellant no.1 fired on P.W.8 causing injuries on head and P.W.9 went to save him and he was also fired causing injury on arms. Their evidences further disclose that appellant no.2 also fired, but that does not hit any body, there is no evidence that appellant no.2 fired again or assaulted P.W.8 or 9 or any body else.

15. P.W.10 is the informant in this case and he has also supported the prosecution evidence of P.W.8 and 9 who are injured and all the witnesses claim themselves eye witness of the occurrence and they have also supported the prosecution case. So far firing by the appellant no.1 on Bhushan Singh and Shashi Bhushan Singh is concerned, this evidence also shows that the appellant Shailendra Singh fired but that does not hit anybody.

16. P.W.12 is the Doctor and his evidence shows that he has examined P.W.8 and 9 and found following injuries on the person of P.W.9, Shashi Bhushan Singh :

Multiple lacerated wound charred margin in diameter 1/8" over the right deltoid region of right arm.

He has proved the injury of P.W.8 as Ext.6.

17. Further he has stated that on confirmation of X-ray nature of the injury of the injured was found to be simple and he has



proved the supplementary injury report as Ext. 6/A.

18. This witnesses has also examined Bhushan Sigh and found multiple lacerated wound charring margin 1/8” in occipital region of skull. Opinion reserved. X-ray report shows the injury caused by the fire arm and proved his injury report as Ext.6/B. On perusal of the X-ray report, it appears that he found the injuries as grievous and the supplementary report has been proved as Ext.6/C. In his cross examination, he has also stated that charring marks are found when the firing is made from very close range may be 3 ft.

19. It further appears from perusal of the evidence that the P.W.1 has stated in his chief that when he had gone there he had seen altercation going on between Ramagya Singh, Shailendra Kumar Singh and Bhushan Singh and he has also admitted that Ramagya Singh had lodged a case against Parshuram Singh, Shree Ram Singh, Sawaliya Singh, Vijay Singh, Uday Rai, Bhushan Singh, Shashi Bhushan Singh and Munki Singh. It also appears from his evidence that the informant and this witness is living in one house. His evidence in cross examination in Para 14 also disclosed that the scuffle was going on between both the parties for 10-15 minutes but he has stated that during that period nobody received injuries. Evidence of P.W.2 in para 5 of the cross examination also discloses that the witnesses are from one family. His evidence in his cross



examination in para 19 also shows that during the demand of dues there was altercation for 10 -15 minutes, however, he has stated that there was no scuffle.

20. Evidence of P.W.3 shows that when he went there he saw that the injuries on the person of Shashi Bhsuhan Singh and Bhushan Singh and after he reached there Sawaliya Singh, Parsuram Singh, Vijay Singh, Bijendra Singh and Dhananjay Singh reached there. His evidence also shows that after the occurrence Shailendra Kumar Singh fled away but Ramagya Singh remained there with his gun on his Verandah and if this part of his evidence is believed, it appears that this witness or the other witnesses P.W.1 to 3 and 6 are not witness of the occurrence. Evidence of P.W.4 also discloses that he is relative of P.W.10 informant and it appears that he is habitual witness , which appears from Para 13 of his evidence. P.W.4 also claims himself to be eye witness but it appears that he has admitted that he was in *Baghar* and evidenced of P.W.5 shows that *Baghar* is 700 to 800 yards away from the place of occurrence and in such a situation, it appears that he may not be the eye witness of the occurrence. However, P.Ws. 8 and 9 are injured witnesses and they have supported the prosecution case.

21. There is contradiction in the evidence of P.W.5 from the earlier statement made before the police, however, the I.O. has not



been confronted with the aforesaid evidence, as such it can not be said that P.Ws. have deposed falsely. P.W.7 is also cousin brother of the informant. P.W.13 is Technician proved X-ray plates and X-ray reports are Exts.4 to 4/2 and Ext.5 & 5/1. However, the doctor who has submitted X-ray report has not been examined by prosecution.

22. Considering the entire prosecution evidence as discussed above, no doubt the allegation against appellant no.1 is that he fired from his gun causing injury on the back of the head of the injured P.W.8 and in the arm of P.W.9, injuries were on vital part of the body on the person of P.W.8 and said to be grievous and injuries on the person of P.W.9 is simple, but appellant no.1 has died and appeal against him is abated.

23. However, those injuries were charring on the person as per evidence of the Doctor P.W.12 whereas, prosecution evidence disclose that while P.W.8 was fleeing he was shot and when P.W.9 came to save him, he was shot and witnesses have stated that the firing was made from 10 to 15 steps whereas evidence of the Doctor suggests that such type of injuries is possible from firing from 3 ft. In the above background the defence story is that there was scuffle between the parties and the prosecution party came with arm variously and with *Katta* assaulted the appellant Ramagya Singh and in the scuffle trigger went on causing injury to P.Ws 8 & 9 and



presence of charring injuries support the above defence version. Further defence case is that the appellant no.1 has assaulted but the learned trial court has not considered the same as the injury report does not bear the signature of the Doctor but the evidence of the Doctor shows that it is in his pen. All these create shade of doubt about the prosecution case and it appears that the prosecution has not come with a clean hand and they are suppressing the fact. So far appellant no.2 is concerned, prosecution evidence is that appellant no.2 has fired from the *Katta* but there is no allegation that he repeatedly fired and there is no evidence that it hit anybody rather there is evidence that he threw *Katta* and fled away. In such a situation, it can not be said that the appellant no.2 was carrying common intention with appellant no.1 to cause such injuries to anybody that if anybody dies they would have guilt under Section 307 of the IPC. The I.O. has stated that the *Katta* was produced by Bijay Soren, ASI but that ASI has not been examined and there is no cogent evidence that as to who has produced *Katta* and on the other hand there is different story that the accused person came armed with *Katta* and other arms and in such a situation, *katta* carried by prosecution party being produced can not be ruled out and appellant no.2 being nephew has been implicated in this case. It is well settled that defence does not have to prove its case and if defence is



succeeded in creating a shade of doubt about the prosecution version benefit will go in favour of the defence.

24. In such background of the case there appears some doubt about the fact that Shailendra Kumar Singh fired from his *Katta* and threw his *Katta* and fled away. As such, so far appellant no.2 (Shailendra Kumar Singh) is concerned, there appears some reasonable doubt about the prosecution evidence, hence, he is entitled for benefit of doubt in the present case. Accordingly appeal against appellant no.2 is allowed and his conviction under Sections 307/34 of the IPC and Section 27 of the Arms Act are set aside and as he is on bail, he be discharged from all the liabilities of the bail bonds.

(Vinod Kumar Sinha, J)

chn/-

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