

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.676 of 2015

Arising Out of PS.Case No. -58 Year- 2004 Thana -LAKHISARAI District- LAKHISARAI

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1. Indrajeet Dhadhi @ Indrajeet Dhadi son of Prakash Dhadhi, Resident of Behind R. Lal College, Police Station and District- Lakhisarai.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 750 of 2015

Arising Out of PS.Case No. -58 Year- 2004 Thana -LAKHISARAI District- LAKHISARAI

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1. Amarjeet Dhadhi Son of Prakash Dhadhi, Resident of Behind R. Lal College, Police Station and District - Lakhisarai.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.676 + 750 of 2015)

For the Appellant/s : Mr. Pankaj Kumar Sinha, Adv.
Mr. Rabi Bhushan, Adv.
Mrs. Rakhi Kumar, Adv.

For the Respondent/s : Mr. Bipin Kumar

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 18-07-2018

Cr. Appeal (SJ) No. 676 of 2015 wherein Indrajeet Dhadhi @ Indrajeet Dhadi is the appellant and Cr. Appeal (SJ) No. 750 of 2015 where in Amarjeet Dhadhi is the appellant arise out of conjoint judgment of conviction dated 30.09.2015 and order of sentence dated 05.10.2015 passed by 1st Additional Sessions Judge, Lakhisarai in Sessions Trial No. 419/2004 whereby and whereunder the appellant, Indrajeet Dhadhi @ Indrajeet Dhadi has been found guilty for an offence punishable under Section 307 IPC and sentenced



to under RI for 7 years as well as slapped with fine of Rs. 2000/- in default thereof, to undergo SI for one month, additionally, while Amarjeet Dhadhi has been found guilty for an offence punishable under Section 307/34 IPC and sentenced to undergo RI for 5 years as well as to pay fine of 2000/- in default thereof, to undergo SI for one month additionally, they both have been found guilty for under offence punishable under Section 504 IPC and each one has been sentenced to undergo RI for one year, Under Section 27 of the Arms Act, and each one has been sentenced to undergo RI for three years with a fine of Rs. 2000/- in default thereof, sentenced to undergo SI for 1 month additionally with a further direction to run the sentences concurrently, with a further direction that the period having been undergone during course of trial will be set off in accordance with Section 428 of the CrPC.

2. Manoj Kumar (PW 4) filed a written report on 01.03.2004 disclosing therein that on the same day at about 3 PM while he along with Sunil Sao (PW 6) and Hira Sao (PW 5) was coming to his house from Kiul Basti Musahri and as soon as reached near culvert near Neem Tree at village- Musahri, Amarjeet, Pappu and Indrajeet who were coming from western side, began to abuse and during course thereof, Amarjeet took out pistol and fired three rounds in order to kill them. Anyhow, they escaped the assault keeping



themselves protected under Neem Tree. They raised alarm whereupon the accused persons escaped towards western direction with a threatening that they will be murdered. It has further been disclosed that the aforesaid occurrence has been committed at their end under wrong notion that we were responsible for getting them apprehended by the police.

3. After registration of Lakhisarai PS Case No. 58 of 2004, investigation commenced and concluded by way of submission of charge-sheet at two different stages. However, at the stage of framing of charge, both the trials were amalgamated and as is evident during course of trial Pappu was found to be juvenile whereupon his trial was separated vide order dated 24.06.2015. After concluding the same, appellants have been found guilty in a manner as indicated above, hence these appeals.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. However, nothing has been adduced in defence.

5. Learned counsel for the appellant has submitted that there happens to be no legal evidence available on the record to justify the finding in the background of the fact that PWs-1, 2 and 3 did not know the appellants since before whereupon declined to



identify in dock while PWs-5 and 6, regarding whom, it has been disclosed right from the written report that they had accompanied the informant, have not claimed identification of these appellants, whereupon they were declared hostile. So the sole testimony of informant (PW-4) remained which after proper scrutiny did not inspire confidence. Also submitted that on account of non examination of the Investigating Officer. The defence has been deprived of an opportunity to test the veracity of truthfulness of the evidence of PW-4, informant and in likewise manner, also failed to bring on record consistency, more particularly, relating to the place of occurrence. That being so, the findings of conviction and sentence recorded by the learned lower court is found not at all based upon proper appreciation of the materials available on the record, hence is fit to be set aside.

6. On the other hand, learned APP strongly defended the judgment impugned and submitted that the findings having been recorded by the learned lower court is based upon proper appreciation of the evidence, therefore, did not justify interference.

7. From the record, it is evident that Investigating Officer has not been examined. Its repercussion would be subject to scrutiny after taking into account the evidence as merely non-examination of Investigating Officer will cause dent in the



prosecution case. It is further apparent that PWs-1, 2 and 3 are the witnesses who had seen the informant along with Hira Sao in a perplexed condition when they came out after hearing sound of firing. On query, informant had disclosed that appellant had fired though failed to identify the appellants. There happens to be no evidence at the end of prosecution to the effect that they were knowing the appellants since before the occurrence. It is also evident from their evidence that no parentage has been disclosed and so, on account of non identification of the appellant in dock could not be sufficient to infer that whatever been disclosed at the end of the informant was with regard to appellants only.

8. PWs-5 and 6 are the persons regarding whom informant had claimed to have accompanied him. They have also supported the prosecution version so far occurrence is concerned but, failed to identify the appellants to be the persons responsible for firing. In the aforesaid background they both were declared hostile. Even then, prosecution could not be able to procure anything substantial adverse to the appellants. Now remains the sole evidence of the informant. During course of his examination-in-chief, he had stated that while he was returning from Kiul and as soon as reached near Neem Tree, west to Village-Musahri had seen Amarjeet, Pappu and Indrajeet who began to abuse and then Amarjeet fired three



rounds. He along with Hira and Sunil had gone behind the tree in order to protect themselves and began to raise alarm whereupon Dinesh Sao (PW 3) and Binod Sao (PW 2) rushed. Then the accused persons directed to pay Rs. 5,000/- otherwise they will be murdered. After their arrival, accused persons fled away. Then he along with Hira and Sunil had gone to police station where he submitted his written report (exhibited). Identified the accused. During cross-examination at para-3, he had stated that he had seen the accused persons for the first time at the time of occurrence itself. He was not knowing their names since before. Then again disclosed that he was knowing Amarjeet two months prior to the occurrence while names of rest two was disclosed by Hira and Dinesh. He had also disclosed that accused came at an earlier occasion and had demanded money. In para-4, he had stated that he had shown the tree wherein cartridges had embedded. One cartridge remained inside the tree while two passed through. Empty cartridges were seized in his presence. In para-5, he had stated that accused persons began to abuse at the distance of 10 hands. After firing, all of them ran away towards western direction having so many houses. Remaining two fled away while he took shelter behind the Neem Tree. About 10-12 persons arrived there. Till arrival of the persons firing was being made. On chase, accused persons fled away. In para-6, he had stated that people of Mohalla



informed the town police station, whereupon police came. He is unable to disclose who had informed the town police station. Police came within ten minutes. O/C, Ragahv Dayal had come. Police had recorded his statement at the place of occurrence itself. Police had gone in search of accused but could not traced.

9. After having scrutiny of the evidence of PWs, it is evident that PWs-1, 2 and 3 are not over the occurrence. PWs-5 and 6 are over the occurrence. The only deficiency having in their evidence is that they have not identified the appellants in dock. When the evidence of PWs-5 and 6 is taken together with the evidence of PW-4, informant, it is evident that activity whatever been stated by the informant during course of occurrence has not been supported by the PWs-5 and 6. Furthermore, on account of non examination of Investigating Officer, actually, place of occurrence could not be ascertained, more particularly, with regard to the objective finding relating to place of occurrence in the background of discloser having been made at the end of PW-4, informant that one cartridge had embedded inside the Neem Tree while two cartridges passed through. So, there would have been a positive sign with regard to firing which could have been on the record only by way of examination of Investigating Officer. Due to non examination of Investigating Officer, defence could not be able to procure his evidence, more



particularly, with regard to objective finding relating to the place of occurrence and that being so, cumulative effect did not justify the finding recorded by the learned lower court.

10. Accordingly, judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed.

11. Since appellants are on bail, they are discharged from the liability of the bail bonds.

(Aditya Kumar Trivedi, J)

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