

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.562 of 2015**

Arising Out of PS.Case No. -21 Year- 2004 Thana -BARHARA District- BHOJPUR

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Sanjay Singh, son of Parasnath Singh, resident of village- Bishunpura, Police Station- Koilwar, District- Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Anant Kumar Pandey-Advocate

Mr. Ashok Kumar Singh-Advocate

For the Respondent/s : Mr. Z. Hoda-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 10-08-2018

Appellant Sanjay Singh has been found guilty for an offence punishable under Section 307 of the I.P.C. and sentenced to undergo S.I. for ten years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for four months, under Section 27 of the Arms Act and sentenced to undergo S.I. for three years as well as to pay fine appertaining to Rs.2,500/- and in default thereof, to undergo S.I. for one month, additionally, with a further direction to run the sentences concurrently vide judgment of conviction dated 05.08.2015 and order of sentence dated 07.08.2015 passed by the 4th Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No.406 of 2004.

2. Chanda Kumari (PW-8) while was admitted at Sadar



Hospital, Ara in an injured condition gave her fard-bayan on 19.02.2004, alleging inter alia that about ten days ago his cousin maternal uncle Sanjay Singh had come to her house inebriated condition, whereupon he was scolded and further, was directed not to revisit the place. Today at about 2.30 p.m., while she along with her mother, sister was gossiping in her courtyard, all of a sudden, Sanjay Singh arrived, took out pistol and fired causing injury over her right hand near elbow, waist right side as a result of which, she fell down. Villagers, after hearing sound of firing rushed, during midst thereof, Sanjay Singh managed to escape therefrom. Then thereafter, she was lifted to Sadar Hospital where she is being treated.

3. After registration of Barhara (Krishnagarh Sinha O.P.) P. S. Case No.21 of 2004, investigation commenced and after concluding the same, chargesheet was submitted followed with trial meeting with the result, subject matter of instant appeal.

4. 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. Furthermore, it has been suggested that victim had sustained self-inflicted injury at the hands of her family members from a firearm. However, nothing has been adduced in defence.

5. In order to substantiate its case, prosecution had



examined altogether eight PWs, who are PW-1, Rajiv Kumar Singh, PW-2, Rukmini Kumari, PW-3, Sumitra Devi, PW-4, Sudhir Singh, PW-5, Chinta Devi, PW-6, Smt. Hewanti Devi, PW-7, Sanjiv Kumar Singh @ Munna Singh and PW-8, Chanda Devi. Side by side, had also exhibited signature of the informant over fard-bayan as Exhibit-1. As stated above, nothing has been adduced in defence.

6. Learned counsel for the appellant while assailing the judgment of conviction and sentence has submitted that finding recorded by the learned lower Court is not at all maintainable, because of the fact that neither I.O. nor doctor has been examined. Due to their non-examination, the interest of appellant is found seriously prejudiced. Apart from this, it has also been submitted that irrespective of oral evidence, for want of examination of the doctor, the nature of the injury that means to say, injury having been caused by firearm could not surface in legal manner and so, it could not be said that injured (PW-8) had sustained firearm injury. Furthermore, it has also been submitted that whoever been examined in this case, are the mother and sisters of the informant and so, they are interested enemical. From the fard-bayan itself, it is evident that appellant was not liked by them and in the aforesaid background, appellant has been named purposely, intentionally, malafidely, in the background of prevailing strained relationship with her uncle.



7. Drawing attention with regard to improbability of the case, it has been submitted at the end of the learned counsel for the appellant that there happens to be evidence at the end of the witnesses that soon after firing, appellant escaped, which PW-1 as well as PW-4 have corroborated by stating that they have seen the appellant running away having firearm. However, manner whereunder they have spoken happens to be unreliable as PW-1, PW-4 had stated that he had seen the appellant moving having firearm in his hand, then in that circumstance, there was no occasion left for the villagers to have apprehension of the appellant at the spot itself in the background of the fact that they have heard sound of firing. Admittedly, appellant is not co-villager and so, he was not to be spared. In the aforesaid facts and circumstances of the case, the allegation whatever been attributed against the appellant is not at all found convincing, whereupon the finding recorded by the learned lower Court happens to be non-maintainable. Apart from this, it has also been submitted that there happens to be no criminal antecedent of the appellant and further, no repetition of firing has been made and so, considering the age of the appellant and further, considering the fact that the injuries have been caused over right hand near elbow as well as waist right side not a vital part of body, the conviction and sentence recorded under Section 307 of the I.P.C. be modified and in terms thereof, sentence be



reduced as already undergone.

8. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has submitted that there happens to be consistent evidence of the prosecution witnesses with regard to proper identification of the appellant being the author of the injury caused by the firearm as well as properly fixing the place of occurrence to be the inner courtyard of the house. Apart from this, it has also been submitted that non-examination of doctor as well as I.O. has not cause prejudice to the appellant in the background of the fact that appellant had not controverted the nature of the injury sustained by the injured (PW-8) and in likewise manner, there happens to be no discrepancies, inconsistency development in the evidence of the PWS much less regarding place of occurrence, manner of occurrence. Apart from this, it has also been submitted that firearm, a deadly weapon, was used knowing full-well that its use may cause death. Hence, the finding recorded by the learned lower Court is fit to be confirmed.

9. It is an admitted fact that I.O. as well as doctor has not been examined. With regard to non-examination of the I.O., it has been conclusively held by the different judicial pronouncement that mere non-examination of the I.O. will not cause any kind of dent in the prosecution case unless and until, it is shown that on account of



non-examination of the I.O., right of the accused has been prejudiced.

More recently in ***Baldev Singh vs. State of Haryana reported in 2016***

(1) CRI.L.J. 154, it has been held:-

“16. Contention at the hands of the learned Senior Counsel for the appellant is that non-examination of Chander Singh-SI who prepared rukka and who investigated the case raises serious doubts about the prosecution case. Material on record would show that Chander Singh-SI who investigated the case was not examined by the prosecution in spite of several opportunities. No doubt, it is always desirable that prosecution has to examine the investigating officer/police officer who prepared the rukka. Mere non-examination of investigating officer does not in every case cause prejudice to the accused or affects the credibility of the prosecution case. Whether or not any prejudice has been caused to the accused is a question of fact to be determined in each case. Since Ram Singh-PW-1 was a part of the police party and PW-1 has signed in all recovery memos, non-examination of Chander Singh-SI could not have caused any prejudice to the accused in this case nor does it affect the credibility of the prosecution version.”

10. Now, coming to non-examination of the doctor, it is to be considered as a deficiency in the prosecution case. Had there



been examination of doctor, then in that circumstance, apart from nature of injury, the opinion with regard to injury, capable to cause death would have exposed. By such activity, the intention of assailant would have been shown whether firing was made with an intention to cause death, or with knowledge that the injury might lead to death of the injured. That being so, non-examination of doctor, the situation remained unresolved.

11. So far facts of instant case is concerned, it depict otherwise, as appellant during course of cross-examination of witnesses had accepted presence of firearm injury over injured PW-8, but in different manner as under Para-5 of PW-2, sister of the victim, it has been submitted that Chanda Devi had sustained firearm injury on account of firing made by her brother, but on account of animosity with her aunt, Sanjay Singh, her brother has been implicated while PW-3, it has been suggested under Para-3 that the aforesaid Katta belonged to her husband, which got accidentally fired causing injury to Chanda Devi and only to save her husband, this case has been instituted. PW-5 at Para-5 has been suggested that it is false to say that Chanda Devi had sustained firearm injury at the end of Sanjay Singh rather she had sustained firearm injury on account of firing made by her insane father and in order to save him, this case has been instituted putting false and frivolous allegation. PW-7 was suggested



in Para-5 of his cross-examination that it is false to say that Sanjay Singh had not shot Chanda Devi rather her father Shailendra Singh on account of insanity, had fired causing firearm injury upon her and only to save the father, this case has been instituted. However, PW-8, the injured had not been suggested on that very score, save and except blatantly denied. That means to say, presence of firearm injury over the person of PW-8, goes out of controversy as it tentamounts to admission by way of suggestion. The non-examination of the doctor had, put the nature of the injury under controversy which in the facts and circumstances of the case, would be seen in its right perspective.

12. Two sets of evidences are available on the record, the first one the family members, which includes even the brother-in-law as well as sister of the appellant and the second nature of the evidence happens to be with regard to the witnesses, who arrived at the P.O. after hearing sound of firing and during midst thereof, they have seen the appellant running there from having pistol in his hand. PW-1, PW-7 are the witnesses on that very score.

13. PW-4 is the brother-in-law (Bahnoi) of the appellant, who though had not claimed to be an eye witness to occurrence, but deposed that when he came back from the field, he came to know that Sanjay Singh has shot at Chanda Devi. He had seen injury over the person of Chanda Devi. From his cross-



examination at Para-4, he had stated that when he came inside the courtyard after the occurrence, he had seen wound of Chanda Devi, wherefrom blood was oozing. He is not remembering whether blood had spread over her cloth as well as ground. He had further stated that Shailendra Singh is suffering from mental disorder and for that, he is being treated. At the time of occurrence, he was under going treatment. Then had denied the suggestion that Sanjay Singh had not shot at Chanda Devi.

14. PW-6 is Hewanti Devi, wife of PW-4 and own sister of appellant. She, during her examination-in-chief, had stated that now, she is not remembering the occurrence. Accused Sanjay Singh is his full-brother. She is not remembering the time when he had shot at Chanda Devi. Then had stated that she was not present at her house, whereupon declared hostile.

15. PW-1 had stated that after hearing sound of firing, he came to house of Shailendra Singh where he had seen Chanda Devi, his daughter in an injured condition due to firearm injury. He had also seen Sanjay Singh running away with firearm during midst of way. On query, Chanda Devi had disclosed that Sanjay Singh had shot at. During cross-examination, he had stated that he had not seen the occurrence. Whatever been narrated by him is based upon the information given by the injured.



16. PW-7 had disclosed that after hearing sound of firing, he rushed to the place of Sudhir Singh and during course thereof, he had seen Sanjay Singh running there from having pistol in his hand. When he gone inside the house, had seen Chanda Devi lying in the courtyard having firearm injury. On query, she had disclosed that Sanjay Singh had shot at her. During course of cross-examination at Para-2, he had admitted presence of Rajiv Kumar Singh (PW-1), Ravindra Singh since before his arrival at the place of occurrence. In Para-3, he had stated that he had seen accused fleeing near chowk, which lies 25-30 yards from the P.O. coming from the place of Sudhir Singh. In Para-4, he had stated that he had seen blood oozing from the injury, it had spread over ground. He had not tried to apprehend the accused. In Para-5, he had stated that although hospital is there (in the village), but the doctor, nurse, compounder were not there. So, she was taken to Ara.

17. PW-2 is the sister of the informant/ injured. She had deposed that on the alleged date and time of occurrence, she along with Chinta Devi, Sumitra Devi, Hewanti Devi and Chanda Devi were sitting in the courtyard and were gossiping. At that very moment, her cousin maternal uncle Sanjay Singh came and shot at Chanda Devi as a result of which, Chanda Devi sustained injury and fell down. Sanjay escaped there from. During cross-examination at Para-3, she had



stated that Sanjay Singh just intruded inside her house, shot at and fled away covering approximately two minutes time. There was no strained relationship amongst Sanjay Singh and Chanda Devi since before. Her family as well as family of her uncle is separate. Sometime, they indulge in quarrel. Villagers including her father, brother arrived within five minutes and then thereafter, she was taken away. They arrived on hue and cry raised by them. They have not tried to apprehend Sanjay Singh.

18. PW-3 is the mother. During, her examination-in-chief, she had reiterated the version whatever been stated by PW-2. During cross-examination at Para-2, she had stated that at the time when Sanjay Singh fired, all the family members were sitting at one place. Sanjay Singh aimed Chanda Devi from a distance of 5-6 hands. They have not sustained injury. Sanjay Singh used to visit her place in the background of relationship. At the time of occurrence, no male members were present in the house. In Para-3, she had stated that Sanjay Singh intruded inside her house, shot at and fled away. They began to shout, Chanda Devi fell down, Rajiv Singh and Sanjiv Singh came. They have not attempted to apprehend Sanjay Singh as till then, he had escaped there from. They rushed to hospital. Then there happens to be cross-examination relating to posting of doctor at the hospital lying in her village.



19. PW-5 is Chinta Devi, elder sister of the injured, who also reiterated the version whatever been stated by the PW-2, PW-3. During cross-examination at Para-3, she had stated that they were sitting over a cot. They include, she herself, her mother, her aunt and two sisters including the injured. Sanjay Singh came inside the courtyard, shot at and then, escaped. He was barefoot, he fired only one round. None had sustained injury except Chanda. Blood had oozen from her injury. Within five minutes, she was shifted to hospital. In Para-4, she had stated that police was informed after 20-25 minutes. Police had come, police had seen the P.O. She had further disclosed that they have got no animosity with Sanjay Singh since before. Then she disclosed that her father was suffering from vertigo and for the last 20-22 years, he happens to be on medicine. He is not suffering from any kind of mental disorder.

20. PW-8 is the injured, who had deposed that on the alleged date and time of occurrence, she was in her courtyard along with Sumitra Devi, Hewanti Devi, Chinta Devi, Rukmani and were gossiping. Sanjay Singh armed with Katta came and shot at her. She sustained injury over her right hand, waist right side and then, Sanjay Singh escaped there from. She was taken to village hospital, but as doctor was not present, therefore she was taken to Sadar Hospital where she was treated. Police had come, recorded her fard-bayan



whereupon she had put his signature (exhibited). During cross-examination at Para-4, she had stated that eight days after the occurrence, she was married. In the morning, Sanjay Singh was not invited. Sanjay used to visit her place at an earlier occasion as he happens to be brother of her aunt Hewanti Devi. She had further stated that Sanjay Singh shot at without any rhyme and reason. He escaped before coming of persons, hence no effort was taken to apprehend him. After occurrence, so many villagers including Sanjay Singh, Rajiv Singh came. In Para-5, she had stated that all of them were sitting over cot. After sustaining injury, she fell down. None of the family members tried to apprehend Sanjay Singh. She was shot at from a distance of 1-1 ½ step away. Firing was not made from front side. At that very moment, Sanjay Singh was at right side, she became unconscious after sustaining injury. During midst of way, while she was taking to hospital, she regained sense, Sanjay Singh escaped on barefoot. As she became unconscious, so she was unable to say whether blood was spread over ground or not. At Para-6, she had disclosed as while sitting right side over cot, Sanjay Singh came having loaded firearm. In Para-7, she had stated that she was taken to village hospital, but on account of absence of doctor, she was taken to Sadar Hospital over truck as no other vehicle was available. It was truck of Rajiv Singh. Her fard-bayan was recorded at the hospital



itself.

21. After giving anxious consideration to the evidences available on the record, it is apparent that sustaining of firearm injury at the end of PW-8, Chanda Devi is not at all under controversy apart from the fact that witnesses including injured had substantiated the same. It is also evident that P.O. is found properly fixed being the courtyard of the informant. Furthermore, there happens to be consistency amongst the witnesses including PW-8, identifying the appellant to be the author of the injury. Now, coming to other aspect, it is evident that all of them have stated that Sanjay Singh shot at without any rhyme and reason. Defence could not be able to suggest anything, otherwise irrespective of relationship amongst the parties, which caused annoyance to the appellant as the marriage of PW-8 was going to be solemnized just eight days after the occurrence. In the aforesaid background, proper identification of appellant to be assailant is found conclusively proved. Moreover, there happens to be disclosure as stated above, without any rhyme and reason, single shot was made causing injury over right hand, right side of waist. That is indicative of the fact that neither the delicate part of body was aimed at nor there was an attempt at the end of the appellant to aim at the delicate part of body or to attempt for second round. In the aforesaid background, it looks difficult to perceive that appellant had fired with



an intention or knowledge that the injuries, which he caused by means of firearm will ultimately cost the life of the injured. Apart from this, on account of non-examination of the doctor, the nature of the injury could not be properly surfaced on the record whether it was simple, grievous or dangerous to life. That being so, the finding recorded by the learned lower Court with regard to Section 307 of the I.P.C. needs interference and is accordingly, modified as under Section 324 of the I.P.C. under guise of Section 222 Cr.P.C., attracting the fine along with default clause retaining the other part of finding that is with regard to Section 27 of the Arms Act. That being so, the sentence so inflicted by the learned lower Court is reduced to R.I. for three years retaining the fine as well as the default clause with a further direction to run the sentences concurrently.

22. Accordingly, bail bond of appellant is hereby cancelled directing him to surrender before the learned lower Court to serve out of remaining part of sentence within fortnight, failing which the learned lower Court will be at liberty to proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

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