

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.8 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUNGER

[Against the judgment of conviction dated 22.11.2008 and order of sentence dated 25.11.2008 passed by the Additional Sessions Judge, FTC IV, Munger, in Sessions Trial No.607 of 2002 arising out of Kotwali P.S. Case No.04 of 2002]

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Rajesh Ram, son of Karoo Ram, resident of village-Dilabarpur Bara, Police Station-Kotwali, District-Munger

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Ranjan, Advocate

For the Respondent/s : Mr. Bal Mukund Pd. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 05-01-2018

1. Sole appellant has been convicted for the offence under Section(s) 307 Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for seven years for the offence under Section(s) 307 Indian Penal Code with a fine of rupees two thousand and in default to undergo simple imprisonment for six months and three years rigorous imprisonment for the offence under Section(s) 27 of the Arms Act with a fine of rupees one thousand and in default to undergo simple imprisonment for three months by judgment of conviction dated 22.11.2008 and order of sentence dated 25.11.2008 passed by the Additional



Sessions Judge, FTC IV, Munger, in Sessions Trial No.607 of 2002 arising out of Kotwali P.S. Case No.04 of 2002.

2. Prosecution case is that on 06.01.2002, appellant and other accused persons came to the house of the informant and entered into the house after unlocking the door. On protest raised by the informant (PW4), the appellant fired by means of pistol with intention to kill him, which hit at his temple and the informant fell down. Thereafter, all the accused persons threw the *husk*, *Khalli* on the road and all the accused persons assaulted the informant with *lathi* and *paina*. The informant was brought to Munger Hospital in injured condition by his brother Tinku Ram. It is alleged that the accused persons has committed the offence out of enmity as they make claim over the house of the informant.

3. Case was registered on the basis of the *fard-e-beyan* given by injured-informant (PW 4).

4. The trial in the Court below proceeded against four accused persons. The Trial Court after conclusion of the trial acquitted three accused persons as mentioned in the impugned judgment and convicted this appellant for the offence under Section(s) 307 Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for seven years for the offence under Section(s) 307 Indian Penal Code with a fine of



rupees two thousand and in default to undergo simple imprisonment for six months and three years rigorous imprisonment for the offence under Section(s) 27 of the Arms Act with fine of rupees one thousand and in default to undergo simple imprisonment for three months.

5. Prosecution has examined, in all, six witnesses in the case. Informant has been examined as PW 4. He has proved his signature as well as signature of his brother on the *fard-e-beyan*, which has been marked as Ext.1 and 1/1. Hirdaya Nand Singh (PW 5) is the Investigating Officer of the case. He has proved the *fard-e-beyan*. PW 6 (Dr. Suresh) has examined the injured and has proved the Injury Report, which has been marked as Ext.3. Mother of the informant Meena Devi (PW 2) and father of the informant Gurudeo Ram (PW 3) have supported the case of the informant. The informant has also supported his case during his evidence as PW 4. PW 1 (Sushil Kumar Gupta) has been declared hostile.

6. Defence has not examined any witness, but has filed certified copy of the judgment dated 10.05.2005 passed by the Judicial Magistrate, 1st class, Munger, in G.R. No.184 of 2001/Trial No.73 of 2005 (State through Gurudeo Ram Vs. Kundan Yadav and others), which has been marked as Ext. A.

7. PW 4 (Pintu Ram @ Gayan Deo) is the informant,



who has stated in his evidence that on the date of occurrence accused persons tried to enter into the room after breaking the lock and on protest by him the appellant fired at him by means of pistol, which hit in his right temple and he fell down. Other accused persons also assaulted him with *lahti*, danda.

8. Mother of the informant, Meena Devi, (PW 2) has stated in her evidence that the appellant and other accused persons tried to break the lock of two rooms and on objection by her son, Pintu, the appellant fired with his pistol which hit the right temple of the informant and he fell down. Other accused persons also assaulted the informant by means of *lathi* and they fled away on arrival of the neighbours.

9. Gurudeo Ram (PW3) is the father of the informant. He has stated in his evidence that appellant and other accused persons arrived and threw *Bhusa*, *Khalli* from his house after breaking the lock. Son of this witness, Pintu Ram (PW 4) raised objection then the appellant fired from his pistol which hit his right temple. Other accused persons assaulted him with *Lathi* and *Danda*.

10. Dr. Suresh Saran, Medical Officer, Sadar Hospital, Munger, has been examined as PW 6. He medically examined the informant on 06.01.2002 and found one lacerated wound 1/4" x 1/4" x circular, margin averted with blackening on the right side of the face



1" above and front to ear.

11. On X-ray of the skull, bullet presence was noted and on dissection a bullet was recovered and X-ray plate shows fracture of surrounding bones. Nature of injury was found to be grievous caused by fire arm and the age of the injury was within six hours at the time of examination at 3.15PM. He has proved the Injury Report, which has been marked as Ext.3. He has proved his signature on the X-ray plates which have been marked Ext.1/2 and 1/3 respectively.

12. Investigating Officer, Hirdaya Nand Singh, PW 5, has recorded the *fard-e-beyan* of the injured, Pintu Ram, in Sadar Hospital, Munger. He has proved the *fard-e-beyan*, which has been marked as Ext.2. This witness has given description of the place of occurrence as *Pakki* road, passing from village Dilawapur Bara and house of informant, Pintu Ram, and Bathan of cow is at a distance of 40 yards from the place of occurrence. He has stated that he had submitted charge-sheet in the case after investigation.

13. Ext. A filed by the defence shows that Gurudeo Ram (PW 3), father of the informant, has filed criminal case against Kundan Yadav, Prakash Yadav, Mugal Ram and others relating to the occurrence alleged to have taken place on 07.02.2001 in which accused persons appeared and the case ended in acquittal.



14. From Injury Report (Ext.3), it is apparent that the informant has sustained fire arm injury. The informant (PW 4) has stated in his evidence that the aforesaid injury was caused by this appellant with pistol. Similar statement has been given by other two witnesses, namely, Meena Devi (PW2) and Gurudeo Ram (PW 3) that the appellant fired with pistol on the informant causing injury in his right temple. Informant has stated in his evidence that he sustained fire arm injury on his right temple caused with pistol by this appellant. The doctor has mentioned in his report that on dissection a bullet was recovered and X-ray plate shows fracture of surrounding bones. Nature of injury was found to be grievous caused by fire arm.

15. Defence of the appellant is that the house, in question, belongs to him. The appellant and other accused had forcibly entered into the house and the occurrence took place on account of aforesaid dispute.

16. PW 4 has stated in his cross-examination at para 8 that when the accused persons entered into the house then he had gone to evict them. No injury was caused to the accused persons.

17. Learned APP has submitted that enmity cuts both ways. There is consistent evidence of the informant that he sustained fire arm injury at the hands of this appellant. Doctor has stated that



the bullet was recovered from the wound. PW 2 and 3 have supported the case. Non-recovery of the blood from the place of occurrence as mentioned by PW 5, in para 7 of his evidence is not very fatal for the prosecution because as per the medical report bullet was found inside the wound of the injured.

18. Counsel for the appellant has submitted that as per the First Information Report occurrence has taken place inside the house, but the Investigating Officer has stated the place of occurrence to be the *Pakki* road, as such, place of occurrence is not established in this case.

19. The informant has stated in the *fard-e-beyan* that occurrence took place during altercation when the accused persons attempted to enter into the house of the informant after breaking the lock. Similar statement has been given by other two witnesses, namely, Meena Devi (PW2) and Gurudeo Ram (PW3). The Investigating Officer has stated in his evidence in para 2 that place of occurrence is *Pakki* road passing from village Dilawapur Bara. The house of informant, Pintu Ram, and Bathan of cow is situated at a distance of 40 yards from the place of occurrence.

20. Learned APP has submitted that there is consistent evidence of the informant and other two witnesses that firing took place near door when the informant raised objection on entering of



accused persons inside the house after breaking the lock and in that firing informant sustained injury. As such, consistent evidence of the witnesses gets support from the evidence of the doctor, who has found bullet inside the wound of the injured. Therefore, minor discrepancies with regard to place of occurrence as stated by the Investigating Officer in his evidence will not demolish the prosecution case. Investigating Officer has stated in his evidence that the house of the informant was at a distance of 40 yards from the place of occurrence, which is *Pakki* road, but there is no such case of the prosecution, either in the *fard-e-beyan* or during evidence.

21. This Court after perusing the evidence of the prosecution witnesses finds force in the argument of the learned APP. Informant and other two witnesses have consistently stated that the occurrence took place when the accused attempted to enter into the house after breaking the lock of the house. In the *fard-e-beyan* also, the informant has stated that the occurrence took place when the accused persons attempted to enter into the house after breaking the lock.

22. Evidence of the informant of sustaining fire arm injuries at the hands of the appellant gets full corroboration with the evidence of other two witnesses, namely, Meena Devi (PW 2) and



Gurudeo Ram (PW 3). Doctor (PW 6) has found fire arm injury on the person of the injured. Injury on the person of the injured was found to be grievous. Bullet was found inside the wound. The Investigating Officer (PW 5) has stated in his evidence that he had obtained injury report of the injured before submission of the charge-sheet.

23. Therefore, this Court does not find any reason to interfere with the impugned judgment of conviction passed by the learned court below against the appellant.

24. So far sentence of the appellant is concerned, learned Court below has sentenced the appellant to undergo rigorous imprisonment for seven years for the offence under Section(s) 307 Indian Penal Code with a fine of rupees two thousand and in default to undergo simple imprisonment for six months and three years rigorous imprisonment for the offence under Section(s) 27 of the Arms Act with a fine of rupees one thousand and in default to undergo simple imprisonment for three months.

25. Learned Court below has mentioned in the impugned judgment that from perusal of the record available it appears that convict Rajesh Ram is the first offender and there is nothing on record about his criminal antecedents. Both parties are next door neighbours. It further appears that the case is of the year



2002. It further transpires from the Injury Report that there was no repetition of shot from fire arm by this appellant.

26. In such circumstances, this Court, in the interest of justice, feels that sentence of three years under Section(s) 307 Indian Penal Code as well as for the offence under Section(s) 27 of the Arms Act will be justified for the offence alleged to have been committed by this appellant.

27. Accordingly, sentence of the appellant passed by the learned Court below is reduced to three years for the offence under Section(s) 307 Indian Penal Code. The amount of fine payable by the appellant for the offence under Section(s) 307 Indian Penal Code will remain the same as ordered by the learned Court below. Similarly, sentence imposed by the learned Trial Court for the offence under Section(s) 27 of the Arms Act will remain the same. Both the sentences shall run concurrently.

28. Bail bond of the appellant, who is on bail, is hereby cancelled. Appellant is directed to surrender before the Court below to serve out the remaining part of his sentence.

29. Learned court below is directed to take appropriate steps for arrest of the appellant in the event he does not surrender voluntarily to serve out the remaining part of his sentence.

30. This appeal is, accordingly, dismissed with



modification in the sentence as ordered above.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18-01-2018
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