

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.80 of 2009

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

[Against judgment of conviction and order of sentence dated 29.01.2009 and 30.01.2009 respectively passed by the Additional Sessions Judge, FTC III, Sheikhpura, in Sessions Case No.560 of 2007 arising out of Ariari P.S. Case No.149 of 2004]

=====

Chandan Singh, son of late Rajaram Singh, resident of village-Debra, P.S. and District-Sheikhpura.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

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

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

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-09-2018

By judgment of conviction and order of sentence dated 29.01.2009 and 30.01.2009 respectively passed by the Additional Sessions Judge, FTC III, Sheikhpura, in Sessions Case No.560 of 2007 arising out of Ariari P.S. Case No.149 of 2004, sole Appellant has been convicted for the offence under Section(s) 307 Indian Penal Code and 27 of the Arms Act and sentenced to undergo rigorous imprisonment for seven years under Section 307 Indian Penal Code and three years under Section 27 of the Arms Act. Both the sentences were ordered to run concurrently.

None appeared on behalf of the Appellant.



Mr. Arun Kumar Tripathi, is appointed as *Amicus Curiae* to assist the Court on behalf of the Appellant.

It is alleged in the written report filed by Ram Swaroop Yadav (injured) that on 02.11.2004 at about 10.00 AM he started for Sheikhpura from his village Devra. He was going on foot to join nomination process of Ashok Yadav relating to election of *Zila Parishad*. While he was passing through Sainora Devpuri village at about 10.30 AM situated near railway line, his villagers, Chandan Singh (Appellant), Mantu Singh, Salo Singh and Lalan Singh chased him. They were armed with pistol. He attempted to run away and raised alarm. Chandan Singh with the help of other chased him. Chandan Singh fired shot at his back, as a result of which, he sustained injury and fell down. He got up somehow and proceeded further. Then, Mantu Singh also fired, but it did not hit him and he fell down on the ground. Considering him dead and seeing that the villagers are coming, accused persons fled away.

The prosecution during course of trial has examined five witnesses in the case.

Learned *Amicus Curiae* has submitted that Informant has stated that occurrence took place between 10-10.30 AM whereas, the doctor has stated that he examined the injured at 9.00 AM, which demolishes the prosecution case as date of occurrence as mentioned in the written report does not corroborate with the medical report.



Counsel for the State submits that injured and other witnesses have fully supported the case. Injury Report also supports the allegation of causing fire arm injury to the Informant by this Appellant. He further submits that merely mentioning the time of examination at 9.00 AM will not demolish the prosecution case. The learned APP has further submitted that the Doctor himself has stated in his evidence that he has committed mistake in mentioning the date as 02.12.2004 in place of 02.11.2004. Therefore, such mistake in time of examination can also not be ruled out although doctor in his evidence has said that he examined the patient at 9.00 AM.

The Informant, Ram Swaroop Yadav, has been examined as PW 3. He has stated in his evidence that on the date of occurrence at about 10.30 AM he was coming to Sheikhpura and when reached towards south of railway line near border of Deokuli-Sanhaula village, the Appellant and other accused persons armed with pistol arrived. The Appellant fired from his pistol causing injury in his left shoulder. Pellet is still inside his body. He fell down after receiving injury. Accused fired second round, but it did not hit. He has proved the *fard-e-beyan* as Ext.1.

Ram Prakash Yadav (PW 2) is son of the Informant. He has stated that he was working in the field near border of Devra-Deokuli village. He heard sound of firing from side of railway line. He went there and saw his father had fallen. He saw this Appellant



and other accused persons running away armed with pistol. They were speaking that his father has died. Accused persons fled away towards west. He brought his father to hospital. His father had sustained fire arm injury near his right shoulder causing bleeding injury. He was referred to PMCH for treatment.

In cross-examination, he has stated that he had taken his father to the Police Station, but the police sent him for treatment seeing his injury.

Banarsi Yadav (PW 1) has stated that he was working in his land. He heard sound of firing and went towards the place of occurrence and found his brother, Ram Swaroop Yadav, had fallen on the ground after sustaining fire arm injury. This Appellant and other accused were running away with pistol. His brother was bleeding. He had sustained fire arm injury on his right shoulder. Ram Prakash, who is son of the Informant, arrived and thereafter they took the injured to the Police Station from where he was taken to hospital.

He has stated in his cross-examination that he had taken the injured to Police Station in unconscious state. He has stated that he first went to Police Station and thereafter went to Hospital. He had reached hospital at about 11.00 AM.

Dr. Mrigendra Prasad Singh (PW 4) has stated that he was posted on 02.11.2004 in Sub-Divisional Hospital, Sheikhpura.



He medically examined the injured, Ram Swaroop Yadav, and found lacerated wound with bleeding with inverted skin margin and slightly blackened on right side near scapular angle. Swelling on frontal part of the chest on corresponding area. He has further stated that on X-ray of chest P.A. view a bullet was found in chest wall near fifth inter coastal space. Patient was serious after primary treatment. He was referred to PMCH. Nature of wound was grievous, weapon used was fire arm. He has proved his injury report as Ext.2. He has stated that mistakenly he mentioned in the Injury Report month as 12 instead of 11, which is slip of pen.

In cross-examination, he has stated that he corrected the month in upper portion of the Injury Report. Time of examination was 9.00 AM, which he has correctly mentioned. The patient was treated at his private Nursing Home. He prepared the Injury report on 02.11.2004 and handed over the same to the Police on the same date.

Ram Bilash Yadav, PW 5, is the Investigating Officer of the case. He has stated that he inspected the place of occurrence. He did not find blood stain at the place of occurrence. He recorded statement of the witnesses and after completion of investigation submitted charge-sheet. He has no personal knowledge of date and time of occurrence. He has found bleeding injury on the person of injured. He has received Injury Report on 02.01.2005.



The defence has examined two witnesses in the case. DW 1 is Saryug Yadav. He has stated that he had no knowledge that Ram Swaroop Yadav sustained fire arm injury on the date of occurrence.

Sakaldeo Yadav has been examined as DW 2. He has stated that he had not stated before police that he saw accused persons running away on hearing sound of firing.

Both witnesses have been named in the charge-sheet, but they have not been examined as charge-sheet witnesses, rather, they have appeared as defence witness.

In the instant case, main point for consideration is whether on the basis of evidence of the doctor that he examined the injured at 9.00 AM on the date of occurrence the case of prosecution will be completely demolished, while the Informant has stated that he has sustained injury between 10-10.30 AM, which is corroborated by evidence of other witnesses. The Injury Report of Doctor has been marked as Ext.2. He has stated in his evidence that he examined the patient in his private Nursing Home although doctor has mentioned in the Injury Report that he was posted at Sheikhpura as Medical Officer in Sub-Divisional Hospital. From bare perusal of the Injury Report (Ext.2), it appears that there is no seal of hospital. Injury Report was issued on the plain paper by the doctor in which doctor has made some overwriting in date in upper portion by cutting



12 and making 11. The doctor has admitted in his evidence that mistakenly in the upper portion of the Injury Report he has mentioned 12 in place of 11. He has subsequently corrected the same. He has asserted in his evidence that he examined the patient at 9.00 AM. The doctor has found one injury on the person of injured caused by fire arm. He has also stated that on X-ray of Chest one pellet inside the chest wall was found near 5th inter coastal space. Patient was serious. After primary treatment, he was referred to PMCH. Injury was grievous caused by fire arm.

The Informant has fully supported the case and levelled specific allegation against the Appellant of causing fire arm injury to him. The evidence of Informant is corroborated by two other witnesses namely, Banarsi Yadav (PW 1) and Ram Prakash Yadav (PW 2). It further appears that injury, as stated by the Informant, gets corroboration from the Injury Report submitted by the Doctor. It further appears that the doctor has mentioned in the Injury Report that patient was examined on 02.11.2004 and date of occurrence is 02.11.2004.

Therefore, this Court is of the view that merely because the Doctor has mentioned the time of examination as 9.00 AM in his evidence and in the Injury Report, the entire prosecution case will not be demolished on the basis of solitary evidence of doctor. The Doctor has stated in his evidence that he examined the patient in



private Nursing Home although he was government Doctor posted in Sub-Divisional Hospital, Sheikhpura. It further appears from his evidence that he has admitted of having committed mistake in mentioning date of examination of patient in upper portion of the Injury Report and he made correction in the date of examination by cutting 12 making it 11. But, he has asserted that he examined the patient at 9.00 AM.

In such circumstances, evidence of the Doctor that he examined the patient at 9.00 AM does not appear to be wholly trustworthy. The Injury Report issued by Doctor fully corroborates the nature of injury sustained by the injured. It is also mentioned in the Injury Report that X-ray of chest showed one pellet inside the chest wall. The patient was serious on account of grievous injury and he was referred to PMCH. Injury was caused by fire arm.

Therefore, this Court is not convinced by the argument of learned *Amicus Curiae* that on the basis of evidence of Doctor that he examined the patient at 9.00 AM, the prosecution case becomes doubtful.

On the other hand, on the basis of evidence of Informant (PW 3) and other two witnesses i.e. PW 1 and 2 and also the Injury Report submitted by Doctor (PW 4) and the evidence of Investigating Officer, this Court finds that prosecution has been able to substantiate the charges levelled against the Appellant beyond all



reasonable doubt.

Therefore, this Court does not find any illegality in the impugned judgment of conviction and sentence.

In view of such, impugned judgment of conviction and order of sentence dated 29.01.2009 and 30.01.2009 respectively passed by the Additional Sessions Judge, FTC III, Sheikhpura, in Sessions Case No.560 of 2007 arising out of Ariari P.S. Case No.149 of 2004 is hereby affirmed.

This Criminal Appeal is, accordingly, **dismissed**.

Appellant is directed to surrender before the Court below to serve out the remaining period of his sentence.

The Court below is directed to secure arrest of the Appellant to serve out remaining period of his sentence in the event he does not surrender before the Court below.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29-09-2018
Transmission Date	29-09-2018

