

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.272 of 2009

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Pinku Sahani @ Vicku Sahani, son of Chhattu Sahani, resident of Mohalla-
Lal Darwaja, P. S. Kotwali-District-Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranbir Singh-Amicus Curiae
For the Respondent/s : Mr. Syed Ashfaque Ahmad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

12-12-2018

None appears on behalf of appellant on repeated

call, on account thereof, Sri Ranbir Singh, learned counsel has
been requested to assist the Court as an Amicus Curiae.

2. Appellant Pinku Sahani @ Vicku Sahani has
been found guilty for an offence punishable under Section 341
of the I.P.C. and for that, no separate sentence has been
recorded, under Section 307/34 of the I.P.C. and sentenced to
undergo R.I. for five years, under Section 27 of the Arms Act
and sentenced to undergo R.I. for three years with a further
direction to run the sentences concurrently vide judgment of
conviction dated 09.03.2009 and order of sentence dated
16.03.2009 passed by the Additional Sessions Judge, Fast Track
Court-VII, Munger in Sessions Trial No.522 of 2008.

3. Sohan Yadav (PW-6) gave his fard-bayan on
27.12.2007 at about 12.30 hours at Sadar Hospital, Munger



where Rajnish Kumar Gupta, an injured was admitted alleging inter alia that his wife Laxmi Mira Sharma (PW-5) happens to be Secretary of Kanya Madhya Vidhyalaya Lal Darwaza. Fencing as well as repairing of the school was going on. In order to inspect the ongoing work, the Engineer came to inspect at about 11.00 A.M. He along with his wife shown the work being carried out at the school premises and then, they have come over road in order to see him off. After departure of the Engineer, Jaya Devi, wife of Late Upendra Yadav came and indulged with them in an altercation on the plea that on account of fencing of school, the passage to her house will be blocked. During course thereof, Pinku Sahani, Ravi Sahani, Daini Yadav armed variously came taking side of Jaya Devi. During midst thereof, Rajnish Kumar Gupta @ Chandar Kumar arrived along with building material, which he began to unload as he was also engaged in fencing of his land lying by the side of the school. It has further been narrated that no sooner than arrival of these persons, Pinku Sahani said that these two persons be murdered as they are the person, who provoked Rajnish Kumar Gupta to block the passage, whereupon Pinku Sahani and Ravi Sahani shot at. He along with his wife fell down as a result of which, Rajnish Kumar Gupta sustained injury over his head and



became unconscious. He along with his wife as well as mother of Rajnish Kumar Gupta lifted Rajnish to hospital for treatment.

4. After registration of Kotwali (Munger) P. S. Case No.501 of 2007, investigation commenced and concluded by way of submission of chargesheet, whereupon trial commenced and concluded in a manner, subject matter of instant appeal.

5. 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. However, nothing has been adduced in defence.

6. In order to substantiate its case, prosecution has examined altogether seven PWs, who are PW-1, Bharat Yadav, PW-2, Rajesh Yadav, PW-3, Ganesh Yadav @ Rajiv Kumar, PW-4, Rajnish Kumar Gupta, PW-5, Laxmi Meera Sharma, PW-6, Sohan Yadav and PW-7, Kuldeep Paswan. Prosecution has also exhibited as Exhibit-1, signature of informant over fard-bayan, Exhibit-1/1, signature of PW-5 as an F.I.R. attesting witness, Exhibit-2, fard-bayan, Exhibit-3, formal F.I.R., Exhibit-4, injury report, letter written by the Deputy Superintendent, Sadar Hospital, Munger Exhibit-5.

7. From the record, it transpires that PW-1, PW-



2, PW-3 have not supported the case of the prosecution and on account thereof, they all were declared hostile. PW-4, Rajnish Kumar Gupta, is an injured, who had substantiated the prosecution case so far injury is concerned, but did not name the appellant to be his assailant. His mother has not been examined. Now, remains the evidence of PW-5, PW-6 and PW-7, which extol the conclusion.

8. From the record, it is further evident that doctor has not been examined. However, it is evident from the order dated 05.03.2009, that on a petition filed on behalf of prosecution under Section 294 of the Cr.P.C., the learned defence counsel had not objected, whereupon the injury report has been marked as an exhibit under the guise of Section 294 of the Cr.P.C.

9. Now, coming to the evidence of the witnesses, PW-5 had stated that on 27.12.2007 at about 11.00 A.M., Engineer had visited her school to inspect the ongoing construction/ repairing work. She along with her husband had accompanied him upto road in order to see him off. After departure of Engineer Sahab, Jaya Devi came and began to quarrel with her, who was joined by Vicku Sahani, Ravi Sahani and Daini Yadav, who were standing since before near a shop



duly armed with pistol. They came over which, Jaya Devi and Daini Yadav provoked to kill as they were responsible for blocking her passage over which, Vicku Sahani and Ravi Sahani began to fire aiming them. Unfortunately, Rajnish Kumar Gupta sustained firearm injury over his temporal region. Then thereafter, she along with her husband as well as mother of Rajnish Kumar Gupta lifted him to hospital where he was treated. He was also treated at Patna. Then she disclosed the motive for occurrence as on account of fencing of school, the local inhabitants were debarred from enjoying the privilege of the openness of the school and so, they were very much annoyed and in the aforesaid background, aforesaid activity has been taken up. It has further been divulged that accused persons were coercing her to compromise the case and for that, they were threatened, identified the accused. During course of cross-examination, first of all, she has been questioned in what capacity, she was engaged in fencing of school. Whether aforesaid fencing was passed by Aam Sabha, whether register of Aam Sabha was there, whether fund was allotted, corroborative evidence with regard to presence of Engineer Sahab, proper acknowledgement of her husband and the competent person to discharge such function happens to be the Principal. It is further



evident that she happens to be hostile to the principal due to which, approximately seven cases were pending in between. In a case instituted by the Principal, she had gone to Jail. Then had said that Principal is absconding. After absence of the Principal, Manohar Kumar, became incharge, who is also evading his presence. Then Jai Narayan Paswan has been entrusted to discharge as a Principal. In Para-7, she had stated that she had shown boundary wall to the I.O. Then had said that fencing was being constructed in presence of the police officials itself. At the time of construction of the boundary wall, no marpit had taken place. Construction of boundary wall had already been completed 14-15 days ago. Then thereafter, Engineer has come to inspect the same and after departure of the Engineer, this occurrence has taken place. In Para-8, she had stated that there happens to be no presence of Vicku Sahani in the vicinity of the school. In Para-9, she had stated that at the time of occurrence about 200 persons were present at the place of occurrence, but she is unable to disclose their names. In Para-10, she had shown boundary of the P.O. as North- Land of Rajnish Kumar Gupta, South-Raghunath Paswan, East-Road, West-Road. At Para-12, she had stated that firing was made from a distance of 5-6 hands. Two rounds were fired, one aiming at her husband while



the second aiming her. Then had admitted that she unsuccessfully contested Election of Ward Commissioner. Then had denied the suggestion that on account of previous animosity as well as being aggrieved by on account of non-cooperation of the accused during course of Ward Commissioner Election, he has been falsely implicated in this case.

10. PW-6 is Sohan Yadav, an advocate husband of PW-5, he had stated that on 27.12.2007 at about 11.00 A.M., he had accompanied the Engineer to Kanya Madhya Vidhyalaya, Lal Darwaza of which, his wife happens to be the Secretary. At that very time, repairing work was going on and so, in order to inspect the same, presence of Engineer was there. Thereafter, they came over road in order to see him off. At that very moment, Jaya Devi came and indulged in quarrel with him on the ground that you people are responsible for blocking the passage provoking Rajnish Kumar Gupta. She was joined by Daini Yadav, who later on directed to kill, whereupon Vicku Sahani and Ravi Sahani took out pistol and shot at. They fell down as a result of which, Rajnish Kumar Gupta sustained the injury, who was engaged in unloading of the raw materials. Then thereafter, he along with his wife as well as mother of Rajnish Kumar Gupta took him to hospital where police came



and recorded his fard-bayan over which, he put his signature, his wife had also put her signature, identified the accused. It has further been disclosed at his end that accused persons were coercing him to compromise the case and for that, he was threatened of dire consequence. During cross-examination at Para-6, he had shown the boundary of the P.O. as North-Raghunath Paswan again corrected North-Rajnish Kumar Gupta, South-Raghunandan Paswan. Then had shown the presence of houses of so many persons in the vicinity as is evident from Paras-7 and 8 of his cross-examination. In Para-10, he had stated that during course of altercation, large number of persons have assembled, but none are ready to depose against the accused. In Para-12, he had stated that police outpost lies at a distance of five minutes coverup. In Para-13, he had stated that he had telephonically informed the police, who came at the P.O., lifted the injured to hospital and then, his fard-bayan was recorded. In Para-15, he had stated that he was not at all concerned with the affair of the school. He had further admitted that they both were indulged in a litigation with the Principal of the school wherein his wife had gone to Jail as is evident from Paras-16 and 17. At Para-18, he had admitted to have instituted a case against one Manish Kumar, an Advocate. He had further



denied the suggestion that he happens to be inhabit of instituting a false case against so many persons and after realizing money either abstain from the case or enter into compromise. In Para-20, he had stated that while altercation in between was going on, the accused persons fired aiming them from a distance of 25 feet. Then had denied the suggestion that no such type of occurrence had ever taken place. In Para-23, he had admitted that his wife had contested unsuccessfully the Ward Commissioner Election. The own caste of accused namely Kavita Nath also contested, but lost.

11. PW-7 is the Investigating Officer. He had stated that on 27.12.2007, he was posted at Kotwali Police Station. He had accordingly exhibited the relevant document. Then had stated that after registration of the case, investigation was entrusted to him. Accordingly, he had gone to Sadar Hospital and recorded further statement of the informant, statement of Laxmi Mira Sharma, statement of injured Rajnish Kumar Gupta and then, proceeded to place of occurrence. He had identified the P.O. to be a Pakki road lying in front of house of Raghunandan Paswan. During course of inspection of the P.O., he had found stone chips, sand accumulated at the P.O. He had found copious blood there. He had found construction work



was going on over the land of Rajnish Kumar Gupta. Then had stated that North to the P.O. land of Rajnish Kumar Gupta and South to that land, half constructed house of Sidheshwar Yadav was found. In the South of P.O., house of Gurudev Paswan, East and West-road has been shown by the I.O. Examination of other witnesses, procurement of injury report and then after, completing investigation, submitted chargesheet against the accused Pinku Sahani @ Vicku Sahani, keeping investigation pending against remaining. During cross-examination, he had stated that he came to know regarding the occurrence on O.D. Slip issued from the hospital. He had not received telephonic information nor he had visited the P.O. before the registration of the case. He had not recorded statement of Guddu Paswan. He had not recorded statement of family members of Rajnish Kumar Gupta.

12. From the evidence available on the record, it is abundantly clear that injured (PW-4) had not claimed identification of his assailant. So far identification of appellant being one of the assailant is concerned, that has been claimed by PW-5 and PW-6. No independent witnesses have come forward to support the case. From the objective finding of the I.O., it is evident that there happens to be non-presence of school in the



boundary of the P.O. So, presence of PW-5 and PW-6 at the P.O. in a manner as suggested by them became suspicious. Apart from this, the status of PW-5, when she indulged in a litigation with the Principal, also became doubtful and for that, at least she should have substantiated that construction of boundary wall as well as repairing of the school was being carried out as per resolution of the Aam Sabha and further, would have been proved by cogent evidence. Absence on that very score, that means to say, the school has not been visited by the I.O. the prosecution version that construction/ repairing work of school was going on could not find substantiated and that being so, presence of Engineer also became doubtful and in likewise manner, presence of PW-5 and PW-6 over the road where they claimed to come to see off the Engineer also became doubtful. Apart from this, I.O. has not found any passage having been blocked by Rajnish Kumar Gupta nor Rajnish Kumar Gupta during course of evidence, has stated that by way of construction of boundary wall, he has blocked passage going towards the house of Jaya Devi and others and so, the motive whatever been assigned at the end of the prosecution also became doubtful. Apart from this, when the boundary of the P.O. is being considered, the same is found inconsistent with,



whatever been incorporated by the I.O.

13. Accordingly, the judgment of conviction recorded by the learned lower Court did not appear to be fit for concurrence. Consequent thereupon, is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability. The first and last page of the judgment be handed over to the learned Amicus Curiae for needful.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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