

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.21 of 2011

Against the judgment, dated 30.11.2010, and sentence, dated 04.12.2010, passed by Sri Abhimanyu Lal Srivastava, the Additional Sessions Judge, Fast Track Court, III, Banka, in Sessions Trial No. 355 of 2008/1330 of 2008

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1. Dhrub Singh @ Dhrub Kumar Singh	
2. Pritam Singh @ Pritam Kumar Singh	
3. Gautam Singh, all sons of Sachindra Prasad Singh, residents of Ramchua, P.S. Shambhu Ganj, district Banka	 Appellants

Versus

The State of Bihar	 Respondent
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Appearance :

For the Appellants : M/S Surendra Kumar Singh, Sudha Chandra & Tolika Singh, Advs.

For the Respondent : Mr. Ajay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 09-02-2018

Heard the parties.

2. The appeal is directed against the judgment and order of sentence, dated 30.11.2010 and 04.12.2010, respectively passed by the Additional District & Sessions Judge, Fast Track Court, III, Banka in Sessions Trial No. 355 of 2008 and Sessions Trial No. 1330 of 2008 thereby convicting all three accused/appellants under Section 307/34 of the Indian Penal Code and has sentenced each one of them to undergo rigorous imprisonment for a term of seven years and fine of Rs.2500/- each for committing offence under Section 307/34 of the Indian Penal Code and in default of the payment of fine to further undergo sentence for the term of three months.

3. Being aggrieved and dissatisfied with the aforesaid judgment and sentence the present appeal has been preferred by all three convicts.

4. The prosecution case, in brief, as per the written



information submitted to the police by Hari Shankar Singh, the informant (P.W. 3) alleging therein that at 09.00 A.M. on 27.07.2005 he was sitting nearby his house, in the meanwhile, Dhrub Singh along with his two brothers Pritam Singh and Gautam Singh came with fire arms wrongfully restrained him and demanded money in extortion. The informant refused, then Gautam Singh fired at him causing injury nearby his eye and left side of his head. The informant being scared started running away towards his house raising alarm so his two brothers Shankar Singh and Gauri Shankar Singh rushed towards him for rescue. In the meanwhile, Pritam Singh shot at Gauri Shankar Singh causing injury on his left chest and Dhrub Singh shot at the eldest brother Shankar Singh causing fire arm injury on his right hand and right side of the head. Seeing the villagers coming all accused escaped away.

5. The police on the basis of the written information registered Shambhooganj P.S. Case No. 39 of 2005 under Sections 448, 341, 324, 385 and 307/34 of the Indian Penal Code as well as under Section 27 of the Arms Act. Police started investigation and on its completion submitted charge sheet. The Chief Judicial Magistrate took cognizance of the offence and as the case was triable by the Court of sessions committed to the Court of sessions and after framing of the charge accused persons were put on trial. By the impugned judgment all the three accused persons have been convicted, as stated at the very outset.

6. The learned counsel for the appellants submits that two sessions trials proceeded initially, one Sessions Trial No. 355 of 2008 wherein Dhrub Singh and Pritam Singh put on trial and in Sessions Trial



No. 1330 of 2008 Gautam Singh faced trial because of his late appearance as trial had proceeded against two aforesaid accused. In the meanwhile, in the first sessions trial already two witnesses, brothers of informant, Shanker Prasad Singh (P.W. 1) and Gauri Shankar Singh (P.W. 2) had already been examined. Thereafter, both the sessions trial were amalgamated and denovo trial started. P.Ws. 1 and 2, both, were again examined before the Court, but in their testimony they have not supported the case of the prosecution and stated that they could not identify the assailants because their faces were concealed. Moreover, in such situation the examination of the investigating officer was necessary and relevant in order to draw the contradiction, but, the investigating officer too has not been examined.

7. The learned counsel appearing for the State submits that P.Ws. 1 and 2, Shankar Singh and Gauri Shankar Singh, earlier supported the case of the prosecution while giving deposition in Sessions Trial No. 355 of 2008, but, later on it appears that both have been gained over.

8. In the present case altogether five witnesses have been examined by the prosecution, namely, Shankar Prasad Singh (P.W. 1), Gauri Shankar Singh (P.W. 2), both injured and the informant. Hari Shankar Singh (P.W. 3) and another prosecution witnesses Rana Pratap Singh (P.W. 4) but all turned hostile to the prosecution case and last witness Dr. Manoj Kumar (P.W. 5), who had examined the injured witnesses, namely, P.Ws. 1, 2 and 3 out of which P.Ws. 1 and 2, both were examined twice. While they were examined in Sessions Trial No.



355 of 2008 P.Ws. 1 and 2 both witnesses supported the prosecution case and claimed to have identified the assailants. However, their testimony after amalgamation in both sessions trials retracted from their earlier testimony with regard to the identification of the accused though they deposed in their examination-in-chief that they identified them, but, in the cross examination both resiled from the statement given in examination-in-chief stating that they could not identify the assailants because they have concealed their faces under the mask. The testimony of P.W. 3, Hari Shankar Singh, is also contradictory in view of the fact that he also could not identify the assailants because they have concealed their faces though in examination-in-chief it is stated that it was the appellants who opened fire. The evidence of all the three injured persons and witnesses examined in the trial have turned hostile in denovo trial. There is contradiction on the point of identification of the assailants creating doubt to the prosecution case. In their evidences they deposed that the assailants had concealed their faces. So because of the infirm testimony all the three injured persons and in absence of any corroboration of any further evidence of the prosecution creates doubt regarding the identification of assailants. Moreover, coupled with the fact that in such circumstance non-examination of the investigating officer also proves fatal to the prosecution case. P.W. 4 is another eye witness who turned hostile and P.W. 5 the doctor is not the eye witness so taking into account in totality of the evidence of prosecution on record reasonable doubt is created regarding commission of the alleged offence or not against P.Ws. 1, 2 and 3. So, in the light of the entire evidence



adduced by the prosecution available on record, in particular evidence of injured and the eye witness turning hostile to the prosecution case and absence of any evidence in support of prosecution as not elicited during cross-examination, the evidence of prosecution witnesses stands squarely and totally discredited and as a matter of prudence the entire evidence is discarded. The trial Court has convicted the appellants on unreliable and hostile testimony of material witnesses.

9. Hence, as prosecution has failed to prove the charge against the appellants, they are acquitted from the charge under Section 307 of the Indian Penal Code, accordingly, their sentence and conviction passed by the impugned judgment is **set aside**. As all the three appellants are on bail so discharged from the liabilities of their respective bail bonds.

10. The appeal is **allowed**.

(Arun Kumar, J)

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