

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.19 of 2007

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

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Rampukar Singh & Ors

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jagdish Prasad, Adv.
Mr. Rakesh Kumar, Adv.
Mr. Virendra Kumar, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 09-01-2018

By way of present appeal, appellants seek to challenge the Judgment of conviction dated 24.11.2006 and order of sentence dated 25.11.2006, passed by Shri Om Prakash, Additional Sessions Judge/FTC –V, Patna, in Sessions Trial No. 740/86, by which the appellants stood convicted under Sections 148, 307/149 of the Indian Penal Code (hereinafter referred to as the “IPC”) and under Section 27 of the Arms Act and were sentenced to undergo R.I. for one year under Section 148 of IPC, R.I. for three years under Section 307/149 of the IPC and R.I. for three years under Section 27 of the Arms Act. All the sentences were directed to run concurrently.

2. Prosecution case as per the written statement of informant – Bimlesh Kumar Singh is that on 30.11.83 at about 8 A.M., while he



along with Amlesh Kumar Sharma was going to plough their field,, he saw accused persons variously armed and when they reached near the accused persons, appellant – Nand Kishore Mishra started abusing them and on protest by the Amlesh Kumar Sharma, appellant – Nand Kishore Sharma ordered to kill them, on which informant and his brother – Amlesh Kumar Sharma started to run to save their lives. In the meanwhile, appellant – Krishnandan Mishra fired on them, which caused injury to Amlesh Kumar Sharma on his different parts of body. On alarm, people assembled and accused persons fled away. Thereafter F.I.R was registered and the injured was sent for medical examination.

3 Charges were framed against all accused persons under Sections 148, 307, 149 of the IPC and under Section 27 of the arms Act, except co-accused Nand Kishore Shama, who died before framing of charge against him.

4. It appears from perusal of record that initially the charges were framed against the accused Kaushal Kishore Mishra, Devendra Kumar, Rampukar Singh and Rajdeo Singh on 24.08.1991, however, later on appellant – Krishnandan Mishra was summoned under Section 319 Cr.P.C. It further appears from record that as the appellant – Krishnandan Mishra appeared in court and after hearing, charge against him was also framed under Section 148/307 of IPC and



Section 27 of the Arms Act and the trial court, thereafter, conducted a *de novo* trial and recorded the evidences of witnesses afresh, relying on the Judgment of Hon'ble Supreme Court in the case of Shashikant Singh v. Tarkeshwar Singh and another reported in 2002 CRI. L.J. 2806

5. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Om Prakash, Additional Sessions Judge/FTC –V, Patna, for trial and disposal.

6. To prove its case, prosecution has examined seven witnesses.. They are; P.W. 1 Doctor N.K. Singh, who examined the injured and proved his medical report (Ext. 1). P.W. 2 Bimlesh Kumar is the informant in this case, who has proved his written report (Ext. 2.), P.W. 3 is Madan Singh, who was tendered for cross-examination by the prosecution, P.W. 4 Srikant Sharma has been declared hostile by the prosecution, P.W. 5 Krishna Mohan Sharma is an independent witness in this case, P.W. 6 Amlesh Kumar Sharma is the brother of informant and injured of this case and P.W. 7, Parmanand Sharma is cousin brother of the informant. In this case I.O. has not been examined.

7. When examined under Section 313 Cr.P.C., appellants pleaded not guilty and completely denied the occurrence and stated to have



been falsely implicated.

8. Post trial, the learned trial court, convicted the appellants and sentenced them in the manner stated above.

9. Contention of the appellants is that no such occurrence had ever taken place and in fact the victim sustained injuries at some different place caused by unknown persons and they have falsely been implicated in this case due to village politics, which will appear from the fact that not a single witness including the informant and injured has stated in their evidence as to who fired on the victim causing injuries to him. Further no motive has been assigned for commission of such an offence by the appellants. It has also been submitted that in this case I.O. has not been examined in this case, which has caused great prejudice to the appellants and there are several contradictions between the evidence of the witnesses from their earlier statement given before the police and the trial court without considering all these facts, has convicted the appellants, which is not sustainable in the eye of law and if allowed to continue, the same would result in travesty of justice.

10. On the other hand, learned counsel for the respondent – State has submitted that there is no infirmity in the impugned judgment either legal or factual as there is evidence of informant (P.W. 2) and injured (P.W. 6) that on the fateful day, they were going to plough



their field and saw the appellant armed with various weapons and the appellant Nand Kishore Mishra abused and ordered to kill him and as soon as the injured, could turn around to verify as to whom they wanted to kill, firing was made and he instantaneously fell down and became unconscious. Informant (P.W. 2), who was also going with the injured (P.W. 6) saw appellants fleeing away from the place of occurrence. Evidence of P.W. 2 and P.W. 6 found corroboration from the evidence of Krishna Mohan Sharma (P.W. 5), who also saw the appellants escaping. Further the doctor (P.W. 1), who conducted medical examination found fire arm injury on the person of the injured and, therefore, there is no infirmity in the impugned Judgment and the conviction of appellants under Section 148, 307/179 of the IPC as well as under Section 27 of the Arms Act, is just and proper.

11. Heard both sides. From perusal of evidence of P.W. 1, Doctor N.K. Singh, it appears that he has treated the injured at Patna Medical College and Hospital, Patna on being referred by Primary Health Center, Dhanarua and he has stated in his evidence that on 02.01.84, he examined the victim Amlesh Kumar Sharma and found that (i) X-ray plate No. 90 of chest showed four radio-opaque metallic shadow simulating pellets, (ii) X-ray of skull showed on metallic pellets like shadow on right and one at mid line of skull and ;(iii) X-ray of left elbow showed three metallic pellets like shadow around elbow joint.



He further opined that the injuries were caused by fire arm and were simple in nature. On his cross-examination, he has stated that his report is based on X-ray findings and he did not notice any track of pellets in the X-ray plate. In para -8 of his cross- examination, this witness has stated that he has not given the age of injury as it was not possible on the basis of X-ray. Out of other witnesses, P.W. 3 has been tendered hostile by the prosecution as there was nothing in his cross examination. P.W. 4 was declared hostile by the prosecution. P.W. 2 is the informant and he has stated in his evidence that on the alleged date he was going along with the victim (P.W. 6), he heard a sound of firing and found the victim (P.W. 6) in an injured condition and also saw the appellants fleeing away from the place of occurrence. This witness has also admitted in his evidence that he did not see as to who made the firing. Thereafter, the went to police station to report the matter, which was written in the handwriting of one Satendra Kumar Singh, on which he made his signature and proved the written report (Ext. 2). Attention of this witness was drawn towards his previous statement made before the police, in which he had state that firing was made by Krishnanandan Mishra, however, he denied any statement made by him before the police. P.W. 6 Amlesh Kumar Sharma is the injured in this case and he has stated in his evidence that on 30.12.83 at about 8. A.M., while he was going towards his



field with bullock, in the way, he saw appellants standing there and on seeing him coming appellant – Nand Kishore Mishra abused and ordered to kill him. In the meanwhile firing was made and he fell down and became unconscious. Evidence of this witness discloses that he could not see as to who had made the said firing. In para -2 of his evidence, this witness has stated that he was being treated at Dhanarua Hospital. Further attention of this witness was drawn towards his earlier statement made under Section 161 Cr.P.C., however, he stated that he could not remember as to what he has stated in his earlier statement. P.W. 5 has stated in his evidence that he saw victim (P.W. 6) in an injured condition and also saw the appellants fleeing away from the place of occurrence with various weapons in their arms. However, this witness in his cross – examination has stated that he could not say as to which of the accused was having what types of weapons.

12. The evidence discussed above clearly shows that none of the witnesses has named anyone as the assailant nor they had describe the weapons, with which they were armed. Though attention of P.W. 2 and 6 was drawn towards their earlier statement made before the police but the I.O. has not been examined in this case to confront them about their earlier statement made before the police.

13. From perusal of the above evidence as well as the materials



available on record it appears that trial court has based his finding on circumstantial evidence only as admittedly, there is no direct allegation against any of the appellants and none of the witnesses including injured (P.W. 6) and informant (P.W. 2) could say as to who made the firing on the victim causing injuries to him. Further on close scrutiny of the statement of appellants recorded under Section 313 Cr.P.C it appears that only general questions have been asked from them as they were armed with various weapons and assaulted Bimlesh Kumar Sharma and Amlesh Kumar Sharma and had not been asked as to what they had to say in their defence and none of the circumstances that has been considered by the trial court while recording his finding, has been put to the accused – appellants. Hon'ble Apex Court in the case of **Sukhjit Singh v. State of Punjab** reported in (2014) 10 **Supreme Court Cases 270** had considered this aspect of the matter and observed in paragraphs 10, 11 and 12 as follows:-

10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr. Talwar, has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav v. State of Bihar*. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts serious lapse on the part of the trial Court making the conviction vitiated in law.



11. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. The State*² wherein, Bose, J. explaining the significance of the faithful and fair compliance of Section 342 of the Code as it stood then, opined thus:

"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them.

He must be questioned separately about each material circumstance which is intended to 1 (2009) 6 SCC 595 2 AIR 1951 SC 441 be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question.

Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial



because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."

12. In *Hate Singh Bhagat Singh v. State of Madhaya Bharat*, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the code expressed thus:- "8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal P.C. are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused, person is not allowed to enter the box and speak 3 AIR 1953 SC 468 8 Page 9 on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box."

and further held in paragraph -13 as under:-

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* following terms:

"14. The word "generally" in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a



way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed.

The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

14. In the case in hand, disregard of provisions of Section 313 Cr.P.C. to my opinion, is so gross that there is grave likelihood of prejudice to the appellants.

15. Appellants have also been convicted under Section 27 of the Arms Act but there is no substantial evidence available on record that appellants were armed with fire arm. No doubt, in F.I.R, it has been stated that appellants were armed with various weapons and the victim sustained fire arm injuries, however, F.I.R is not the substantive piece of evidence and that can only be considered for corroboration of contradiction and, therefore, there is no substantive evidence available on record to prove the guilt of appellants under Section 27 of the Arms Act.



14. Considering the entire discussions made above, the impugned judgment of conviction and order of sentence suffers from serious infirmities as stated above.
15. Accordingly, this appeal is allowed. Judgment of conviction dated 24.11.2006 and order of sentence dated 25.11.2006, passed by Shri Om Prakash, Additional Sessions Judge/FTC –V, Patna, in Sessions Trial No. 740/86 is set aside.
16. As the appellants are on bail, they are discharged from the liabilities of bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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