

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1665 of 2017

Arising Out of PS.Case No. -78 Year- 2013 Thana -
SHAMBHUGANJ District- BANKA

=====

Garib Yadav, son of Late Bishan Yadav, resident of Village-
Mohidipur (Kaitha Yadav Tola), Police Station-Shambhuganj,
District-Banka

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Najmul Hodda, Advocate

For the Respondent/s : Ms. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 24-07-2018

The appellant/Garib Yadav has been convicted under Section 307 of the Indian Penal Code and Section 27 of the Arms Act by judgment and order dated 29.03.2017 passed by the learned 1st Additional District & Sessions Judge, Banka in connection with Sessions Trial No. 1051 of 2013, arising out of Shambhuganj P.S. Case No. 78 of 2013 and has been directed to undergo rigorous imprisonment for ten years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer simple imprisonment for three months for the offence under Section 307 of the Indian Penal Code; rigorous imprisonment for five years, to pay a fine of Rs. 5000/- and in default of payment of fine, to further suffer simple imprisonment for two months for the offence under Section 27 of the Arms Act. Both the sentences have been ordered to run concurrently.



2. The appellant is alleged to have fired at the informant/Jyotish Yadav/P.W. 4 which hit him in his thighs.

3. The case of the prosecution is based on the fardbeyan statement of the informant/P.W. 4 who has alleged that in the night intervening between 15/16-05-2013, while he was sleeping in front of his house along with his wife, the appellant along with another came and fired at him. The informant/P.W. 4 and his wife/P.W. 7, both, started shouting for help when other persons of the village arrived and took the informant/P.W. 4 to the hospital, where he was treated. The cause of occurrence, it has been alleged is that the informant/P.W. 4 had, in the past, impressed upon his cousin for not obliging the appellant by falsely deposing in his favour in a case.

4. On the basis of the aforesaid fardbeyan statement, a case vide Shambhuganj P.S. Case No. 78 of 2013 was instituted for the investigation under Sections 307/34 of the Indian Penal Code and Section 27 of the Arms Act.

5. The Police after investigation submitted charge-sheet whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

6. The learned Trial Court, after examining ten witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellant as foresaid.



7. The informant/P.W. 4 in his deposition before the Trial Court has supported the prosecution version and has stated that while he was talking to his wife/P.W. 7 in the night, the appellant along with another came and fired at him. After he was shot at, many persons of the village arrived, first being one Bihari who was told by the informant/P.W. 4 that the appellant had fired at him. There was no dispute with the appellant from before but only because the informant/P.W. 4 had prevented his cousin from giving false evidence in favour of the appellant in another case, the aforesaid occurrence had taken place.

8. One of the sons of the informant/P.W. 4 viz. Dayanand Yadav who has been examined as P.W. 1 though has supported the prosecution version of the appellant having fired at the informant/P.W. 4 but has narrated a different story. He claims to have been sleeping with his father/informant/P.W. 4 when the occurrence had taken place. He has also introduced a new story of the appellant having indulged in some kind of a fight with the informant/P.W. 4 and thereafter he fired from his weapon.

9. This, it has been argued, is not the version of either the informant/P.W. 4 or his wife/P.W.7.

10. Another son of the informant/P.W. 4 has been examined as P.W. 6 who has not claimed to have seen the occurrence. He came to the place where his



father/informant/P.W. 4 was bleeding.

11. The wife of the informant, who has been examined as P.W. 7, has claimed to have identified the appellant in the torch light flashed by her at the time of occurrence. She knew the appellant from before and therefore could clearly identify that the appellant had fired from his weapon leading to the injuries beneath the waist of the informant/P.W. 4.

12. The other witnesses do not claim to be the eye witness of the occurrence.

13. The doctors who first attended the informant/P.W. 4 and examined him at the superior centre have been examined as P.W. 8 and P.W. 10 respectively. They have testified to the fact that the injuries suffered by the appellant was by gun shot and was dangerous to life.

14. The learned counsel for the appellant has submitted that there are serious contradictions in the statements of the witnesses and but for one independent witness, all other are related to the informant. In that view of the matter, the evidence of the other witnesses, who are related to the informant/P.W. 4, needed to be seen with greater care and circumspection.

15. The lone independent witness, who was examined as P.W. 5 has only stated that he learnt about the occurrence from the informant and others.



16. On the aforesaid ground, it has been argued on behalf of the appellant that the conviction and sentence of the appellant is not justified.

17. No doubt, the deposition of P.W. 1, one of the sons of the informant/P.W. 4 is diametrically different from the one made by the informant/P.W. 4 and his wife/P.W. 7 but so far as the allegation of firing from a fire arm is concerned, his evidence also is consistent that the appellant came in the dead of the night and fired at his father/informant/P.W. 4. The ocular testimony finds support from the medical papers as also the deposition of the doctors viz. P.W. 8 and P.W. 10.

18. The genesis as well as the cause of the occurrence also stand proved. In that view of the matter, the Trial Court had the justification of convicting the appellant under Section 307 of the Indian Penal Code and Section 27 of the Arms Act.

19. However, regard being had to the circumstances of the case, the reason why the firing was resorted to and also taking into account that the appellant has remained in jail since 29.05.2013, this Court is of the view that the interest of justice would be sufficiently met if the quantum of sentence is reduced to the period of custody which the appellant has already undergone. While saying so, this Court has also taken note of the fact that the appellant has some responsibility in life and has remained in jail for more than five years continuously.



20. For the aforesaid reasons, the judgment and order of conviction dated 29.03.2017 passed by learned Additional District & Sessions Judge, 1st, Banka in Sessions Case No. 1051 of 2013, Tr. No. 428 of 2017, arising out of Shambhuganj P.S. Case No. 78 of 2013 is upheld and affirmed. However, the sentence imposed upon the appellant is modified to the extent of the period which he has already undergone in custody.

21. The appeal is partially allowed.

22. The appellant is in custody.

23. He is directed to be released from jail forthwith, if not wanted in any other case.

24. A copy of the judgment be transmitted to the Superintendent of the concerned Jail for information, compliance and record.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26/07/2018
Transmission Date	26/07/2018

