

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2798 of 2017

Arising Out of PS. Case No.-113 Year-2014 Thana- KHARAGPUR District- Munger

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1. Dhananjay Singh, Son of Late Ram Pratap Singh,
 2. Manish Kumar Singh Son of Late Ram Pratap Singh,
 3. Manoj Singh Son of Sri Karu Singh, All R/o Village- Bahira Tola, Brindavan, P.S.- Haveli Kharagpur, District- Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Lakshmi Kant Sharma

For the Respondent/s : Mr. SRI SHYED ASHFAQUE AHMAD

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 23-03-2018

Heard the learned counsels for the appellants, the informant and the State.

2. All the appellants have been convicted under Sections 448, 504, 506 and 307/34 of the Indian Penal Code and additionally appellants no. 2 and 3 have been convicted under Section 27 of the Arms Act as well by judgment dated 01.09.2017 passed by the learned District and Sessions Judge, Munger in Sessions Trial Nos. 161 of 2015/ Sessions Trial No. 161A of the 2015/ Sessions Trial No. 144 of 2015. By order dated 08.09.2017, they have been sentenced to undergo S.I. for one year each for the



offences under Sections 448, 504, 506/34 of the Indian Penal Code and R.I. for seven years, a fine of Rs. 10,000/- and in default of payment of fine to further suffer S.I. for three months for the offence under Sections 307/34 of the Indian Penal Code.

Appellants no. 2 and 3 have been additionally sentenced to undergo R.I. for three years, to pay a fine of Rs. 5000/- and in default of payment of fine to further suffer S.I. for three months for the offence under Section 27 of the Arms Act. The sentences have been directed to run concurrently.

3. The case of the prosecution is based upon the FIR lodged by Hemant Kumar Singh who has been examined as P.W. 8 at the trial. He has alleged that on 05.05.2014, at about 7:45 P.M., while he was sitting at his verandah along with others, co-accused Shampoo Singh came to his verandah and asked him to come out. P.W. 8 is then told him that either he should come on the verandah to meet him or should come the next day. In the meantime,



appellant/Dhananjay Singh again insisted P.W. 8 to come out of the verandah because he had to be sent to some other place. On refusal of P.W. 8, appellant/Dhananjay Singh instigated the appellants/Manoj and Manish to shoot him. On such exhortation, appellant/Manish Kumar Singh fired from his weapon, aiming at his chest but the bullet whizzed passed his chest, touching only the vest that he was wearing. The bullet, in fact, hit in the wall. P.W. 8 wanted to run away but appellant/Manoj Kumar Singh who also was armed with a pistol fired from his weapon which also did not hit him and the bullet went past his hand. P.W. 8 then started crying for help. P.W. 8 was thereafter threatened that he and his sons should not make any Pairvi in the case against the appellant/Manish Kumar Singh or else they shall be killed. The cause of occurrence, as stated in the FIR, is that one of the villagers of P.W. 8 viz. Ankit Kumar Chandel who was employed as a clerk in the Army was killed and in the case relating to his death, appellant/Manish Kumar Singh was made an accused. In



the aforesaid case, one of the sons of P.W. 8 viz. Santosh Kumar Singh has deposed against appellant/Manish Kumar Singh and his another son/Chandan Kumar Singh had to depose in the court. Because P.W. 8 and his sons were making Pairvi on behalf of the prosecution in case of murder of Ankit Kumar Chandel in which one of the appellants was an accused, the occurrence had taken place. On the basis of the aforesaid written report by P.W. 8 a case vide Kharagpur P.S. Case No. 113 of 2014 was instituted for investigation under Sections 448, 307, 504, 506/34 of the Indian Penal Code and Section 27 of the Arms Act.

4. The police, after investigation, submitted charge sheet whereby cognizance was taken and the case was committed to the court of Sessions.

5. The trial court, after examining ten witnesses on behalf of the prosecution and none on behalf of the defence convicted the appellants as aforesaid.



6. At the trial, P.W. 8 supported his initial version given in the FIR and has also stated that he had produced before the police his vest which had been damaged because of the firing resorted to by appellant/Manish Kumar Singh to the police. He proved his signature on the production-cum-seizure list (Ext. 2/2). He has also deposed that in his presence, the front portion of the pellet was also seized. However in his cross-examination, he has stated that he always went Munger from Bariyarpur without any bodyguard and in the past, there were no attempts to kill him. He has also admitted that after his son/Santosh Kumar Singh has deposed in Sessions Trial No. 330 of 2012 against one of the appellants of this case, a murderous attack was made on him but he did not file any case against the accused persons.

What is relevant to note is that P.W. 8 claims to have, after the incident, gone to Ankur Nursingh Home for his treatment but neither any doctor has been examined on behalf of either the prosecution or defence nor any



evidence has been produced that P.W. 8 was ever treated in Ankur Hospital. In this context, it would be relevant to state that the vest which he had given to the police and which bore marks of violence, was sent for forensic examination. The forensic examination report (Ext. 15) clearly indicates that the holes which were there in the vest was not found to have been caused by the passage of firearm projectile.

7. This opinion was given by the Senior Scientific Officer on the basis of the report of the chemical test and analysis which indicated a negative result, including the presence of lead and copper. Thus, it was conclusively opined that the holes which were found in the vest produced by P.W. 8 was not damaged as a result of firing resorted to by the appellants. However, Ext. 15 also refers to the report about the fired bullet which also was seized from the house of P.W. 8. The fired bullet on examination was found to have been fired from a country made firearm designed to fire .315/8 mm caliber rifle cartridge which is



part of ammunition. Thus, two things emerge from the deposition of P.W. 8. Except for firing at P.W. 8, no attempt was made by anyone of the accused persons/appellants to hurt anybody else and that two rounds of fire did not hit him. If the fired projectile came so close to P.W. 8 that it caused two holes in his vest, he would surely have been hurt in the occurrence. There is no evidence of his having been hurt in any manner whatsoever and even the two holes which were shown by P.W. 8 to have been caused as a result of firing were, on chemical examination, not found to be caused by any firing. Thus major part of the statement made by P.W. 8 is rendered doubtful.

8. It would also be relevant here in this context to refer to the deposition of Rajendra Singh (P.W. 1) who also was sitting along with P.W. 8 in the verandah at the time of occurrence. Though he has also supported the prosecution version but has admitted that no harm was caused to the son of P.W. 8 who has deposed against



appellant/Manish Kumar Singh in the case for murder of Ankit Kumar Chandel. He has, but, stated that one of the bullets fired by the appellants had hit the wall in the verandah. In paragraph-22 of his deposition, he has also said that the investigating officer came to the place of occurrence and took out the bullet from the wall which were two in number.

9. Similarly Ramanand Singh (P.W. 2) who is father of Ankit Kumar Chandel (the deceased) has also supported the prosecution version but has clearly admitted that the appellant did not make any attempt to injure him. He has stated that after the occurrence, neither he nor P.W. 8 or any other person present there went to the police station to lodge the case. In fact, if there would have been any attempt on the part of the appellants, the first effort would have been to threaten or injure Ramanand Singh (P.W. 2) who is none else but the father of aforesaid Ankit Kumar Chandel and who is prosecuting the case.



10. Aforesaid P.W. 2 has also deposed that in the case for murder of his son, about 8-9 witnesses have already been examined and some are yet to be examined. He did not say anything about anybody having been threatened or accosted by the accused persons/appellants for not deposing against them in the case.

Niranjan Singh, (P.W. 3) the nephew of P.W. 8 does not claim to have seen the occurrence but is only stated to have taken P.W. 8 to hospital for treatment. His deposition therefore is of no avail so far as the occurrence of firing is concerned.

Now, it would be necessary to see the deposition of Rajballabh Paswan (P.W. 9) who is the first I.O. of the case. He has deposed that after the investigation was entrusted to him, he took the re-statement of P.W. 8 and visited the place of occurrence. He had prepared the seizure list but had handed over the investigation to another officer. He has proved the seizure list dated 06.05.2014 (Ext. 4) and the production-cum-seizure list



dated 06.05.2014 (Ext. 5). In his cross-examination he has stated that during the investigation and recording of statement of P.W. 8, he had examined the person of P.W. 8 and he did not find any mark of injury of any kind whatsoever over his body. He has also stated in paragraph-29 of his deposition that the vest which was produced before him by P.W. 8 did not at all smell of any gun powder. He had, but found a pellet at the place of occurrence and had also seen some mark of firing on the wall situated to the left side of the verandah.

11. Whether the pellet which was seized by him was of the shot which was fired by the appellant and whether the gun shot mark on the wall was as recent as that of the occurrence, is not known. Neither any investigation was done on that aspect nor is there any material on record to conclusively establish that the pellet which was recovered and the mark on the wall was because of the firing resorted to by the appellants/Manish and Manoj.



As stated earlier, no doctor has been examined in this case.

Thus, from the evidence on record, it stands established that Ankit Kumar Chandel was killed in an occurrence for which his wife Rubi had filed a case. In the investigation of that case, the named accused persons were found to be innocent and the charges were levelled against the appellant Manish and Rubi, wife of the deceased. At the time of occurrence, P.W. 8 (informant) was sitting along with father of aforesaid Ankit Kumar Chandel (deceased). The motive suggested by P.W. 8 for the occurrence is that the appellants were aggrieved by the fact that he was making pairvi in the case as a clerk. If this were correct, the main person to have been intimidated or threatened was Rajendra Singh (P.W. 2) who too was sitting along with P.W. 8. No attempt was made by anyone of the accused persons to damage anybody else. This coupled by the fact that the vest which was produced by P.W. 8 was not found to have been hit by



firing of gunshot clearly establishes that the occurrence as narrated by P.W. 8 never took place. A pellet having been found at the place of occurrence and some marks on the wall cannot be the basis for definitely coming to the conclusion that firing was resorted to by the appellants. The case was not lodged immediately by P.W. 8 and only later, such a report was lodged.

12. Thus, this Court finds it difficult to rely upon the testimonies of P.Ws. 1, 2, 3 and 8 that an attempt was made at the life of P.W. 8 by the appellants. That apart, when the investigating officer visited the place of occurrence, he did not find any generator in the house or electric lamp in the verandah. The occurrence is of night and P.W. 8 claims to have seen and identified the appellants in the light of the lamps which were run on generator. In the absence of any corresponding injury and the attempt of P.W. 8 in demonstrating that the bullet had only touched his body thereby causing two holes in the vest also having failed in the chemical/forensic test, it



would be difficult to convict the appellants either under Section 307 of the IPC or under Section 27 of the Arms Act.

13. The judgment dated 01.09.2017 passed in Sessions Trial Nos. 161 of 2015/ Sessions Trial No. 161A of the 2015/ Sessions Trial No. 144 of 2015 and the order of sentence dated 08.09.2017 are therefore set aside.

13. The appeal succeeds.

14. The appellants are in custody. They are directed to be released forthwith, if not required in any other case.

15. A copy of the judgment be transmitted to the Superintendent of jail for information, compliance and record.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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