

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.114 of 2013

Arising Out of PS. Case No.-14 Year-2007 Thana- MOHANIA District- Bhabhua (Kaimur)

1. Nilam Singh S/o Ramji Singh Resident of Village Dandwash, P.S. Mohaniya, District Kaimur (Bhabhua).
2. Kashi Singh S/o Ramji Singh Resident of Village Dandwash, P.S. Mohaniya, District Kaimur (Bhabhua).
3. Radha Singh @ Radhe Singh S/o Ramji Singh Resident of Village Dandwash, P.S. Mohaniya, District Kaimur (Bhabhua).
4. Ramji Singh S/o Late Hamir Singh Resident of Village Dandwash, P.S. Mohaniya, District Kaimur (Bhabhua).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sanjay Kumar Singh Mr. Shasank Shekhar Sinha Mr. Binod Kumar Singh
For the Respondent/s	:	Smt. Abha Singh (App)

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 31-10-2018

Heard learned counsel for the appellants and learned APP for the State on this Criminal Appeal.

2. This criminal appeal has been preferred against the judgment and order of conviction and sentence dated 19.09.2012 passed by learned Adhoc Additional Sessions Judge-V, Kaimur at Bhabhua in Sessions Trial no. 118 /73 arising out of Mohania P.S. Case No. 14 of 2007 whereby the learned trial court convicted the accused Nilam



Singh for the offence punishable under Sections 324, 447 of the Indian Penal Code and Section 27 of the Arms Act and accused Radha Singh, Kashi Singh, Ramji Singh for the offence punishable under Sections 447, 324 of the Indian Penal Code and sentenced the accused Nilam Singh to undergo S.I. for three years under Section 324 of the Indian Penal Code, S.I. for one month under Section 447 of the Indian Penal Code and S.I. for three years under Section 27 of the Arms Act and also slapped him with a fine of Rs. 500/- and in default of payment of fine to further undergo S.I. for one month and sentenced the accused Kashi Nath Singh, Ramji Singh and Radha Singh to undergo S.I. for six months each under Sections 324/34 of I.P.C. and S.I. for one month each under Sections 447 of I.P.C. All the sentences were directed to run concurrently.

3. The factual matrix of the case is that Mohania P.S. Case No. 14 of 2007 was instituted under Sections 447, 307, 324/34 of the Indian Penal Code and Section 27 of the Arms Act against accused Nilam Singh, Kashi Singh, Radha Singh and Ramji Singh on the basis of fardbeyan of Rama Kant Singh S/o Ramdal Singh recorded by S.I. S.N. Jha of P.S. Mohania on 27.01.2007 at around 05:45 PM at the Referral



Hospital, Mohania with the allegation, in succinct that on 27.01.2007 at around 2:00 PM, while the informant along with his brother Sanjay Singh was doing work in their paddy khalihan, in the meantime, Nilam Singh, Kashi Singh, Radha Singh and Ramji Singh armed with gun and country made pistol descended there and they started resorting firing upon him and his brother with intention to do away with their life inflicting pellet injury in his left eye and also injury on the left hand of his brother. His wife Dhanraji Devi standing besides him and Jang Bahadur Singh and others rushed there and rushed him to Referral Hospital, Mohania where he is undergoing treatment. The bone of contention is said to be the pendency of land dispute with the accused Nilam Singh.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against accused Radha Singh, Kashi Singh, Ramji Singh showing the investigation pending against accused Nilam Singh and subsequently submitted supplementary charge-sheet against Nilam Singh.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court



of sessions, and after commitment and on transfer finally the case came in *seisin* of the learned Adhoc Additional Sessions Judge-V, Kaimur at Bhabhua for trial.

6. Charge against accused Neelam Singh, Radha Singh, Kashi Singh and Ramji Singh was framed under Sections 307/34, 447 of the Indian Penal Code and Section 27 of the Arms Act. Charge was read over and explained to them by the court to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether ten prosecution witnesses namely, Rabindra Prajapati as PW-1, Jang Bahadur Singh as PW-2, Ramdal Singh as PW-3, Dhanraji Devi as PW-4, injured Sanjay Singh as PW-5, Dr. Krishna Mohan Singh, Medical Officer of Referral Hospital, Mohania as PW-6, informant Ramakant Singh as PW-7, I.O. Sonfi Paswan as PW-8, Dr. Satish Chandra Singh, Medical Officer, SSPG Hospital, Varanasi as PW-9 and Abhay Kumar as PW-10. Out of the aforesaid witnesses, PW-10 happens to be formal witness. In documentary evidence, the prosecution has also filed and proved some documents in the case.

8. The statement of the accused persons was



recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. The accused persons have also adduced certified copy of the plaint of Title Suit no. 150/1993 and certified copy of the judgment of Sessions Trial no. 386/65, 98/10 in buttress of their case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convicts have preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellants that barring the injured Sanjay Singh and informant Ramakant Singh, there is no eye witness of the occurrence. There is vital contradiction between the testimony of the informant and injured Sanjay Singh regarding the manner of



occurrence, assailant and injury sustained by them. The aforesaid inconsistent ocular evidence of the said witnesses also does not stand corroborated by the medical evidence. PW-2 Jang Bhadur Singh happens to be brother-in-law of the informant PW-3 Ramdal Singh father, PW-4 Dhanraji Devi wife, PW-5 Sanjay Singh injured and PW-7 informant and they are interested witnesses of the case. As per the account of the witnesses, around 100 people congregated at the place of occurrence at the time of occurrence, but barring PW-1 Rabindra Prajapati, no independent witness has been examined by the prosecution in corroboration of the aforesaid case of the prosecution. It is further submitted that admittedly there is animosity and land dispute between the parties and criminal case has been fought between them leading to the conviction of the informant and due to the aforesaid animosity, the prosecution has falsely implicated the appellants in the case. It is further submitted that as per the account of the I.O., a Sanha was registered regarding the aforesaid occurrence preceding to the FIR to the effect that the informant and his brother had been assaulted by means of firearm by some unknown miscreants which also goes to completely rule out the prosecution case. Thus, the prosecution has utterly and



miserably failed to substantiate the prosecution case against the appellants beyond all reasonable doubt by adducing trustworthy, convincing and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned trial court is liable to be set aside and the appellants are entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant and injured have supported the prosecution case in toto and the other witnesses, who happen to be eye witnesses of the occurrence have also corroborated the prosecution case and doctor has also found the injury above the eye of the informant caused by firearm. Thus, the ocular evidence of the prosecution also stands corroborated by the medical evidence and learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of record, it appears that PW-1 Rabindra Prajapati, PW-2 Jang Bahadur Singh and PW-4



Dhanraji Devi have made an abortive bid to support the prosecution case by stating in their respective examination-in-chief in consonance to the prosecution case, but they do not happen to be eye witnesses of the occurrence. As as per the account of the informant Ramakant Singh (PW-7), as given by him in paragraph 15 of his cross-examination, his wife Dhanraji Devi (PW-4) along with his *Behnoi* Jang Bahadur Singh (PW-2) and Rabindra Prajapati (PW-1) arrived at the Kahalihan, but the accused persons had resorted firing and had decamped to their house 5-10 minutes preceding to their arrival there. The aforesaid account of the informant candidly rules out witnessing of the occurrence by the aforesaid witnesses. As as per his aforesaid account, the aforesaid witnesses had arrived at the place of occurrence after culmination of the occurrence and departure of the accused persons from the place of occurrence.

15. PW-3 Ramdal Singh though has also made an abortive bid to support the prosecution case by stating in his examination-in-chief in consonance to the prosecution case, but in paragraph 9 of his cross-examination, he has stated that when he arrived at Khalihan, he found injury on the person of his sons. In paragraph 12 of his cross-examination, he has



further stated that when he arrived at Khalihan, by that time the accused persons had decamped 20-25 yards away from the said Khalihan. The aforesaid statement of PW-3 candidly rules him out to be eye witness of the occurrence. As per the aforesaid account of the said witness, when he arrived at the place of occurrence i.e. Khalihan, the accused persons had decamped 20-25 yards from there and he had seen the injury on the person of his sons which means that he had arrived at the place of occurrence after culmination of the occurrence and not witnessed the occurrence of assault on his sons at the hand of the appellants.

16. So far as the injured Sanjay Singh PW-5 and informant Ramakant Singh PW-7 are concerned, from perusal of testimony of the PW-5, it appears that he has stated in paragraph 1 of his examination-in-chief that Nilam Singh fired upon both of them by. He sustained pellet injury on his left hand while his brother on his left eye. In paragraph 5 of his cross-examination, he has further stated that only one person i.e. Nilam Singh resorted firing upon him and his brother. Nilam Singh resorted single firing which hit both of them. In paragraph 7 of his cross-examination, he has stated that both of them fell senseless sustaining injury. In the said paragraph,



he has further stated that pellet had penetrated in his left hand and in the left eye of his brother which was operated out by the doctor. But in quite contradiction to the aforesaid statement of PW-5, informant PW-7 has stated in his examination-in-chief that he sustained pellet injury on his left eye from the firing made by the Nilam Singh and Kashi Singh. Kashi Singh assaulted Sanjay Singh by means of gun while Nilam Singh resorted firing upon him. In paragraph 17 of his cross-examination, he has further stated that he had sustained two pellet injuries, one is on his eye and another on his left hand. The pellet penetrated in his hand was taken out while that in the eye is still in his eye and could not be taken out despite efforts made by the doctor. Moreover, the aforesaid contradictory and inconsistent ocular evidence of PW-5 and PW-7 also does not stand corroborated by the medical evidence. As as per the prosecution case and account of PW-5, he had sustained pellet injury on his left hand, but PW-6 Dr. Krishna Mohan Singh has not found such injury on his hand rather one abrasion of the size of 1/4"x1/4" on middle part of back of left arm which was opined by the doctor as simple in nature caused by friction by some hard and blunt substance. As per the account of PW-5, the pellet was inserted in his left



hand and is operated out, but the doctor PW-6 in his examination-in-chief has candidly stated that X-ray report dated 28.01.2007 shows no pellet or any foreign body inside left arm of Sanjay Singh. Though, the said doctor has found one small size 1/8"x1/8" skin deep injury with inverted margin on middle of left upper eyelid and conjunctival haemorrhage in upper part of left eye ball with oozing of blood from upper part of eye ball and has stated in his examination-in-chief about finding of pellet in left upper eyelid caused by firearm, but, in paragraph 6 of his cross-examination, he has stated that no metallic pellet was recovered either from injury no. 1 or injury no. 2 and PW-9 Dr. Satish Chandra Singh, who had examined the informant in SSPG Hospital, Varanasi, where he was referred by the Referral Hospital, Mohania has stated in paragraph 7 of his cross-examination that he was not sure about the nature and arms used, that is why, the injured was referred for X-ray. In paragraph 10 of his cross-examination, he has stated that he has not received any X-ray report of the injured, that is why, he had not given supplementary and final injury report regarding nature and arms used against the injured. He has found only two injuries, one is the abrasion of the size of "2x"2 cm. on left eyebrow and second one is also



abrasion of the size of “2x”2 cm. on the base of left thumb exterior side. He has not found any inverted wound on the left eye of the informant.

17. I.O. Sonfi Paswan PW-8 has stated in paragraphs 10 and 11 of his cross-examination that preceding to lodging of fardebyan, a Sanha was registered on 27.01.2007 regarding the occurrence to the effect that Ramakant Singh and others were gunned down by some unknown miscreants. The aforesaid statement of the I.O. also goes to create serious doubt about the prosecution case. As as per the aforesaid account of I.O., the Sanha was registered preceding to the FIR regarding the occurrence of resorting firing upon the informant and others by some unknown miscreants, but in the FIR, lodged later on the basis of fardbeyan of informant, he has named the appellants in the occurrence.

18. PW-2 happens to be brother-in-law, PW-3 father-in-law, PW-4 wife and PW-5 injured and brother of the informant and PW-7 informant himself. They are interested witnesses of the case. It is settled principle of law that testimony of interested witness should not be discarded outrightly rather it should be scanned and scrutinized carefully. On careful and cautious scanning of the testimony



of the said witnesses, I find that there is vital contradiction in their testimonies regarding material aspect of the case as discussed hereinabove.

19. From perusal of record, it appears that fardbeyan of the informant was recorded on 27.01.2007 at around 05:45 PM, but the same was received in the P.S. on 27.01.2007 at 05:00 PM i.e. preceding to recording of the fardbeyan. Moreover, the FIR was registered on the same day at 07:00 PM, but the same was received in the court of C.J.M. after inordinate and abnormal delay of four days i.e. on 31.01.2007. The prosecution has not assigned any plausible and convincing reason to explain the aforesaid delay in sending the FIR to the court giving ample opportunity to the prosecution to concoct false and frivolous case against the appellants.

20. As per the informant PW-7 and the injured PW-5, several persons had congregated at the place of occurrence and PW-5 has also stated in paragraph 13 of his cross-examination that around 100 people had congregated at the place of occurrence at the time of occurrence, but none of the aforesaid independent witness barring PW-1 Rabindra Prajapati, who does not happen to be eye witness of the



occurrence have been examined by the prosecution in corroboration of the prosecution case.

21. It is the admitted case of the informant as per the fardbeyan that the land dispute is pending with the appellant Nilam Singh. PW-2 Jang Bahadur Singh has stated in paragraph 16 of his cross-examination that Sanjay Singh divulged him that the land dispute is pending between them and the accused persons since before. PW-3 Ramdal Singh in paragraph 5 of his cross-examination has stated that partition suit is pending between him and the accused persons since before. PW-4 Dhanraji Devi has stated in paragraph 12 of her cross-examination that land dispute is pending between the parties. PW-5 Sanjay Singh in paragraph 12 of his cross-examination has stated that partition suit is pending between them and the accused persons and informant PW-7 has stated in paragraph 1 of his examination-in-chief that bone of contention is the pendency of land dispute between the parties. In paragraph 6 of his cross-examination, he has further stated that in the case filed by the informant Jitendra @ Kashi Singh regarding the murder of his uncle, namely, Ramashish Singh, he was convicted and sentenced. In paragraph 10 of his cross-examination, he has further stated that partition suit is pending



between him and the accused persons. The aforesaid case of prosecution and statements of the prosecution witnesses indicate that both parties are on inimical terms as Partititon Suit is still pending between the parties and they had also fought criminal case which eneded into conviction of the informant. Enmity cuts both the edges, but in view of the contradictory statement of the injured regarding manner of occurrence, assailant, injury, non-examination of independent witness of the occurrence, other witnesses being the family members, non-corroboration of the ocular evidence by the medical evidence, receiving of the information at P.S. preceding to the recording of the fardbeyan and sending the FIR to the court after inordinate and abnormal delay without assigning plausible and convincing explanation for the same, false implication of the appellants in this case by the prosecution party cannot be ruled out.

22. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and complicity of the appellants in the occurrence by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and



sentence passed by learned trial court against the appellants is set aside and the appellants are acquitted of all the charges levelled against them. As the appellants are on bail, they are discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	03-11-2018
Transmission Date	03-11-2018

