

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1114 of 2017

Arising Out of P.S. Case No. -124 Year- 2014 Thana -BHAPATIYAH

District- SUPAUL

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Kashindar Mangraita @ Kashindra Mangraita, son of Soman Mangraita, Resident of village - Bhaptiyahi, P.S. - Bhaptiyahi, District - Supaul.

.... Appellant

Versus

The State of Bihar

.... Respondent/Opposite Party

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Appearance :

For the Appellant : Mr. S.B.K. Manglam, Adv.

Ms. Anita Kumari, Adv.

Mr. Bhagwati Prasad, Adv.

For the State : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 15-05-2018

The appellant/Kashindar Mangraita @ Kashindra Mangraita has been convicted for the offences punishable under Section 307 of the Indian Penal Code (*in short the I.P.C.*) and Section 27 of the Arms Act by judgment dated 24.01.2017, passed by the learned 2nd Additional Sessions Judge, Supaul in Sessions Trial No. 34 of 2015, arising out of Bhaptiyahi P.S. Case No. 124 of 2014 and by order dated 30.01.2017, he has been sentenced to undergo rigorous



imprisonment for five years, to pay a fine of Rs. 2,000/- for the offence under Section 307 of the I.P.C. and rigorous imprisonment for three years and to pay a fine of Rs. 2,000/- for the offence under Section 27 of the Arms Act. In the event of not paying the fine, the appellant has further been directed to suffer simple imprisonment for a period of three months for each of the offences. Both the sentences have been ordered to run concurrently.

2. The appellant is said to have fired at one Chhotelal Mehta, causing injuries in his chest.

3. The First Information Report (*in short the F.I.R.*) was lodged by one Manoj Kumar (not examined), who alleged that on 23.09.2014, he along with his uncle/Chhotelal Mehta was coming after a *panchayati* to his home. While coming back, the nephew/Manoj Kumar walked some paces ahead of his uncle. In the meantime, three persons on a motorcycle overtook them and came back again in front of the uncle of aforesaid Manoj Kumar and one of them fired from his weapon, leading to injuries. The miscreants are then alleged to have run away from the place of the occurrence. After the uncle of Manoj Kumar suffered injuries, he shouted for help. On going near aforesaid Chhotelal Mehta, Manoj Kumar saw that he was injured in the upper portion of his abdomen. In the



meantime, co-villager/Ram Lakhan Mehta and others arrived and with their help, the injured was taken to Raghopur for treatment. He has also alleged in the F.I.R. that he had seen the miscreants who were riding the motorcycle and can identify them if they are brought before him.

4. On the basis of the aforesaid *fardbeyan* statement by Manoj Kumar, a case *vide* Bhaptiyahi P.S. Case No. 124 of 2014, dated 23.09.2014, was instituted for the offences punishable under Sections 341 and 307/34 of the Indian Penal Code and Section 27 of the Arms Act.

5. The records reveal that after preliminary treatment was given to the injured/Chhotelal Mehta, he was referred to P.M.C.H., Patna for further treatment. At P.M.C.H., after four days of the occurrence, *i.e.* on 27.09.2014, the *fardbeyan* of the injured/Chhotelal Mehta was recorded. In the aforesaid statement made by the Chhotelal Mehta, who has been examined in this case as P.W. 2, he has named the appellant as the person who fired from his weapon hitting in his chest.

6. The police, after investigation submitted charge-sheet against the appellant, whereafter cognizance was taken and the case was committed to the Court of Sessions for trial.

7. The learned Trial Court, after examining eight



witnesses on behalf of the prosecution and one on behalf of the defence, convicted and sentenced the appellant as aforesaid.

8. Mr. S.B.K. Mangalam, learned Advocate for the appellant, while assailing the judgment and order of conviction, has submitted that non-examination of Manoj Kumar (nephew of the injured/Chhotelal Mehta), who lodged the report, in the first instance, against the act of shooting, has caused prejudice to the appellant. It has further been submitted that all other witnesses except Chhotelal Mehta (P.W. 2) are hearsay witnesses, who claim to have learnt about the occurrence from the mouth of the victim/Chhotelal Mehta. The only other person who claims to have seen the occurrence is Ranjit Kumar (P.W. 7), one of the sons of Chhotelal Mehta (P.W. 2), who has stated before the Trial Court that he saw the appellant firing from his weapon. However, he never got himself examined before the police for the fear of being arrested in the aforesaid F.I.R. as being eye-witness to the occurrence.

9. Mr. Mangalam, learned Advocate, has submitted that such a statement by one of the sons of the victim/Chhotelal Mehta (P.W. 2) does not appear to be genuine and he cannot be said to be an eye-witness to the occurrence. His deposition is absolutely unworthy of any



reliance.

10. Lastly, it has been submitted on behalf of the appellant that the Investigating Officer (P.W. 8) also did not get any incriminating substance from the place of the occurrence, where he had visited immediately after lodging of the case, recovered.

11. In order to appreciate the contentions of the appellant, it would be necessary to briefly refer to the deposition of the witnesses.

12. It has already been noted that the aforesaid Manoj Kumar, the first informant, has not been brought to the witness-box to testify that he was present along with the victim/Chhotelal Mehta at the time of the occurrence.

13. Bharat Lal Mehta (P.W. 1) is one of the brothers of the victim/Chhotelal Mehta, who has learnt about the occurrence from his brother/Chhotelal Mehta.

14. Chhotelal Mehta (P.W. 2) has stated that while he was coming back from a *panchayati*, he was accosted by the accused persons and one of them fired from his weapon, causing injuries to him. There was nobody present at the place of the occurrence. After about 4 – 5 minutes of his having been shot at, he became unconscious. Thereafter, his son and other members of his family including his wife came. He had seen the aforesaid



witnesses in a state of semi-consciousness. However, he did not state about the occurrence to anyone of them.

15. From the deposition of P.W. 2, two things come to the fore. At the time when he was shot at, there was nobody available along with him and secondly, it was a dark night when he was shot at. Immediately, after the occurrence he claims to have become unconscious.

16. Veena Devi/wife of P.W. 2, Ram Lakhan Mehta and Sanjay Rai, who have been examined as P.Ws. 3, 4 and 5, have made attempts to support the prosecution version, but do not claim to have seen the occurrence. They have also learnt about the same from others. However, all of them have stated that at the time of the occurrence it was dark night and none of the aforesaid witnesses have spoken about any source of light in which the appellant or for that matter his associates could have been identified by anyone, much less P.W. 2. As has been noted earlier, Ranjit Kumar (P.W. 7), who is one of the sons of the victim/P.W. 2, has stated that he saw the appellant firing from his weapon, but he did not come to the rescue of his father or gave his statement before the police straightway. The reason assigned by him during his deposition was that he had apprehension that since he is an eye-witness to the occurrence, he shall be arrested. Only about 6 – 7 days



before his making the statement, he was made to understand that he ought to depose before the Trial Court.

17. Mr. Shailendra Kumar Mishra (P.W. 8), the Investigating Officer has also not stated anything which could throw light on the participation of the appellant in the aforesaid occurrence. No sign of fired cartridge was found by him and nothing incriminating was recovered from the place of occurrence.

18. As opposed to all this, the father of the appellant has examined himself as D.W. 1, who has stated that about two days prior to the occurrence, the son of the appellant had died which had made the appellant a nervous wreck. Ever since the death of his son, the appellant never came out of his house.

19. From the perusal of the evidence on record, it becomes very clear that except for P.W. 2, nobody has seen the occurrence. The only person who could have seen the occurrence apart from P.W. 2 (Chhotelal Mehta) was Manoj Kumar, the first informant, who has been, for reasons unknown to the appellant, held back from deposing before the Trial Court. The statement of P.W. 2/victim does not also appears to be absolutely reliable inasmuch as he has not stated at all about the reason for the appellant or for that matter his associates to have caused injuries to him by



firing at him. What was the source of identification of the appellant is also not known. If P.W. 2/victim was coming back home along with Manoj Kumar, he ought not to have said before the Trial Court that he was all alone. Where did the occurrence take place is also not clear from the deposition of the witnesses.

20. In that view of the matter, the statement of the wife and other relatives of the victim/P.W. 2 that they heard the sound of firing also appear to be doubtful.

21. The false implication of the appellant gets further concretized by the statement of one of the sons (P.W. 7) of P.W. 2/victim, who has taken a most specious plea of not reporting the matter to the police or of coming to the rescue of the victim/Chhotelal Mehta immediately after he was shot at.

22. For the aforesaid reasons, the prosecution version appears to be doubtful. This Court is constrained to but is left with no alternative but to accord benefit of doubt to the appellant.

23. Thus, the judgment and order of conviction against the appellant cannot be sustained in the eyes of law.

24. The appeal, therefore, is allowed.

25. The judgment of conviction dated 24.01.2017 and order of sentence dated 30.01.2017, passed by the



learned 2nd Additional Sessions Judge, Supaul in Sessions Trial No. 34 of 2015, arising out of Bhaptiyahi P.S. Case No. 124 of 2014, is set-aside.

26. The appellant/Kashindar Mangrait @ Kashindra Mangrait is in custody. He is directed to be released forthwith, if not wanted in any other criminal case.

27. Let a copy of this judgment be transmitted to the Superintendent of concerned jail for necessary compliance, record and needful.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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