

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1050 of 2017**

Arising Out of PS. Case No.-28 Year-2005 Thana- CHAUTHAM District- Khagaria

Chhittan Yadav son of late Haribansh Yadav resident of Village-Rajajan, PS
Mansi, District-Khagaria. Appellant/s

Versus

The State Of Bihar Respondent/s

Appearance :

For the Appellant/s : Mr. Prabhakar Nath Rai,
Mr. Deovind Kr. Singh, Advocates.
For the Respondent/s : Mr. Zeyaul Hoda, APP

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT**

23-04-2019

Sole Appellant, Chittan Yadav has been found guilty for an offence punishable under Section 307 of the IPC and sentenced to undergo RI for five years as well as to pay fine of Rs. 5000/- and in default thereof, to undergo SI for one month additionally, under Section 448 IPC and sentenced to undergo RI for one year, under Section 27 of the Arms Act and sentenced to undergo imprisonment for three years and also to pay fine of Rs. 1000/-, in default thereof, to undergo SI for one month additionally with a further direction to run the sentences concurrently, vide judgment of conviction dated 23.02.2017 and order of sentence dated 01.03.2017 passed by 3rd Additional Sessions Judge, Khagaria in Sessions Trial No. 410 of 2005.

2. Bhushan Yadav (PW 4) filed a written report on 22.02.2005 disclosing therein that on the same day at about 11:00 AM, Chittan Yadav and his son, Santu Kumar indulged in



an altercation relating to money. In the aforesaid background, Chittan Yadav and his mother came at his house and began to abuse whereupon, protested. On this, mother of Chittan ordered to kill as a result of which, Chittan took out 3-Nut (a kind of illegal fire-arm) shot at causing injury over his left hand. After hearing sound of firing, his wife, Sunita Devi as well as neighbours came, till then, Chittan and his mother made escape. During course thereof, they have also assaulted his wife with fists and slaps. Thereafter, his wife tied the injury with a towel and brought to police station.

3. After registration of Chautham (Mansi) PS Case No. 28/2005, investigation commenced and concluded by way of submission of charge-sheet, facilitating the trial, meeting with the ultimate result, subject matter of the instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been pleaded that both the parties are Pattidars and on account of land dispute got the appellant/accused involved in this case. Informant might have sustained injury at different place in different manner by the different person. Also adduced oral evidence on that very score.



5. In order to substantiate its case, prosecution had examined altogether 5 PWs out of whom PW-1, Santu Kumar, son of informant, PW-2, Dr. Sudhanshu Kumar who had not only examined the informant but also operated and took out bullet from his wound, PW-3, Sunita Devi wife of informant, PW-4, Bhushan Yadav, informant himself and PW-5, Raghuvansh Yadav, as well as had also exhibited Ext-1, Xerox copy of Injury report of Bhushan Yadav, Ext-2, Signature of Sunita Devi on the Fardbeyan. One DW i.e., DW-1, namely, Kamal Yadav, own brother of informant had been examined on behalf of defence.

6. It has been submitted at the end of learned counsel for the appellant that there happens to be some sort of slackness during course of cross-examination at the end of the appellant and so, the witnesses could not properly be tested over the factum of occurrence as well as manner of occurrence. In the aforesaid background, it has been submitted that argument is being confined the applicability of appropriate penal provision deracinating Section 307 IPC in consonance with quantum of sentence.

7. In order to justify the same, it has been submitted that Investigating Officer has not been examined. The



independent witness PW-5 did not support the case of the prosecution. PW-1 is the son, PW-3 is the wife and PW-4 is the victim himself. It is not the universal rule that family members should not be relied upon but where the family members concealed the major event by way of suppressing the same, then in that event, reliability of their evidence could be under shroud.

8. In order to justify the same, it has been submitted that after all, PW-4 the informant admitted that appellant happens to be his Gotia having no dispute with him since before though, has developed the story that Rs. 500/- was being demanded by the appellant as Rangdari which could not be on account of absence of aforesaid theme in the written report and on account of non examination of I.O., the defence could not be able to bring on record leglly with regard to remaining PWs by way of contradiction. In its continuity, it has also been submitted that there happens to be inconsistency with regard to the place of occurrence as according to PW-3, the occurrence took place inside the house which is not at all found duly corroborated by either PW-1 or PW-4. On account of non-examination of I.O. that part also remained unresolved.

9. In the background of the aforesaid deficiencies, it has been submitted that from the evidence of PW-2. Simple in



nature. It is evident that no vital part of body was aimed at rather the injury happens to be over left arm and in the opinion of PW-2, it is also evident from the consistent testimony of the PW-1, 3 and 4 that only one round was shot at, no effort was made for second attempt. There was no intervening circumstance. That means to say, the overall situation itself suggest there would not be an intention or knowledge to have murderous attack over PW-4. As such, in worst case, it could be an offence punishable under Section 324 IPC as well as under Section 27 of the Arms Act and that being so, appellant being under custody since the day of judgment even at an initial stage be sentenced as period undergone taking lenient view, supported with the law propagated by the Hon'ble Apex Court in the case of *Shyam Sharma v. State of Madhya Pradesh* as reported in *(2017) 3 SCC (Cri) 722*.

10. Learned APP while opposing the submission, has submitted that so far status of witnesses are concerned, the *inter se* relationship amongst PWs-1, 3 and 4 is not under controversy. PW-5, an independent witness has gone *volte face* to the prosecution. Also fairly admitted that I.O. has not been examined but, on account of absence of vital contradiction, has not caused prejudice to the appellant. It has also been submitted



that fire-arm is a deadly weapon and firing therefrom, should not be found to be a child play rather itself denotes the mental culpability whereupon, the learned lower court rightly convicted and sentenced. But also admitted with regard to the location of the injury, nature of injury, absence of intervening circumstance, even then no repetition was attempted.

11. In *Shyam Sharma* (supra) the Hon'ble Apex Court in paragraphs-4 and 5 has held as follows:-

“4. However, fire-arm injury suffered by Manjeet Singh (PW 3) could not be impeached in their cross-examination. It is also evident that the accused fired at Manjeet Singh without any premeditation. The injury suffered by Manjeet Singh was not on the vital part of his body. In our view, the prosecution has failed to prove that the accused intended to cause death of the deceased. Therefore, the appellant can only be convicted under Section 324 IPC and not under Section 307 IPC. Therefore, the appellant is convicted under Section 324 IPC instead of Section 307 IPC.

5. The appellant has already been imprisoned for about four months. Having regard to the facts and circumstances of the case, it is just and proper to reduce the sentence to the period already undergone by the appellant Shyam Sharma. Ordered accordingly.”

12. Though, there was fire-arm injury in the aforesaid *Shyam Sharma* (supra) but no conviction under Section 27 of the Arms Act was inflicted by the learned lower court whereupon, there was no occasion for the Superior Court



to peep into, on that very score. Here, conviction is under Section 27 (1) of the Arms Act also whereupon, the appellant has to face the minimum sentence so prescribed thereunder for a period of three years. However, from the evidence of PW-8, it is crystal clear that there was no intervening circumstance, even then no attempt to repeat the action has been alleged. Furthermore, it is evident that informant (PW 4) had not deposed that he was shot at with an intention to kill. It is evident from his evidence that there was no enmity since before. It was by fluke . So, considering the principle laid down by the Hon'ble Apex Court in *Shyam Sharma* (supra) no offence under Section 307 IPC is made out and so, coming to the downward, acknowledging the minor Section i.e. Section 324 IPC.

13. Consequent thereupon, maintaining the conviction and sentence with regard to Section 27(1) of the Arms Act, the finding with regard to Section 307 IPC is set aside and modified to Section 324 IPC sentencing the appellant to undergo imprisonment for three years with a further direction to run the sentences concurrently. So far applicability of Section 448 IPC is concerned, the same is not at all found duly substantiated from the evidences having been on the record and



to that extent, the finding of the learned lower court is set aside.

14. The appellant is under custody which he will remain till saturation of the period of the sentence. In terms thereof, this appeal is partly allowed.

(Aditya Kumar Trivedi, J)

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