

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1730 of 2017

Arising Out of PS. Case No.-79 Year-2012 Thana- SHEKHPURA District- Sheikhpura

MD. KHURSHID ALAM @ KUSHO @ KHUSO Son of Late Md. Azim
Mian, Resident of Village- Navi Nagar Kakrar, P.S.- Ariary, District-
Sheikhpura.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 1819 of 2017

Arising Out of PS. Case No.-79 Year-2012 Thana- SHEKHPURA District- Sheikhpura

1. Md. Akbar Son of Md. Ahmed
2. Md. Manzoor Son of Md. Mokhtar
3. Md. Zumman @ Md. Iftekhhar, Son of Late Md. Matin, All are Resident of
Village-Navinagar Kakrar, P.S.-Ariyari, District-Sheikhpura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 1730 of 2017)

For the Appellant/s : Mr. Bharat Lal, Mr. Rabindra Kumar, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (SJ) No. 1819 of 2017)

For the Appellant/s : Mr. Ansul, Mr. Krishna Chandra, Advocates

For the Respondent/s : Mr. Binod Bihari Singh, APP

For the Informant : Md. Fazal Rahman, Mr. Anisur Rahman, Advocates

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

08-04-2019

Appellant, MD. KHURSHID ALAM @ KUSHO

@ KHUSO (Cr. Appeal No. 1730/2017), appellants, namely,

Md. Akbar, Md. Manzoor, Md. Zumman @ Md. Iftekhhar (Cr.

Appeal No. 1819/2017) have been found guilty for an offence



punishable under Section 341/34 IPC and each one has been sentenced to undergo SI for 15 days, under Section 323/34 IPC, and each one has been sentenced to undergo RI for six months, under Section 324/34 IPC, and each one has been sentenced to undergo RI for two years, under Section 307/34 IPC, has been sentenced RI for five years as well as to pay fine of Rs. 3000/- in default thereof, to undergo SI for six months, additionally, under Section 504/34 IPC and each one has been sentenced to undergo RI for one year and Md. Khurshid Alam @ Kusho @ Khuso has further been found guilty for an offence punishable under Section 27(1) of the Arms Act and has been sentenced to undergo RI for three years as well as to pay fine of Rs. 1000/- in default thereof, SI for two months vide judgment of conviction dated 23.05.2017 and order of sentence dated 25.05.2017 passed by Additional Sessions Judge-1st, Sheikhpura in Sessions Trial No. 854/2012, on account thereof, heard conjointly are being disposed of by a common judgment.

2. Md. Amjad (PW-8) while was admitted at Sadar Hospital, Sheikhpura in an injured condition on 05.03.2012 at about 2.45 PM gave his Fard-beyan divulging therein that while he was returning from Sheikhpura after withdrawing Rs. 1,50,000/- from a post-office to his house on



his motorcycle, the accused persons (appellants) along with three unknown persons followed them on a motorcycle and as soon as reached near Pansalla over Sheikpura Road, all of them encircled him. Md. Khurshid Alam @ Kusho @ Khuso shot at causing fire arm injury over his right hand as a result of which he fell down. Subsequently thereof, all of them assaulted him with the butt of pistol over delicate part of his body. Jumman took out money from dicky. It has further been disclosed that the aforesaid occurrence was committed in the background of prevailing animosity amongst them.

3. After registration of Sheikpura PS Case No. 79/2012, investigation commenced and after completing the same, charge-sheet has been submitted, facilitating the trial, meeting with ultimate result, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement under Section 313 CrPC is that of complete denial as well as false implication in the background of prevailing animosity. However, nothing has been adduced at the end of appellant on that very score.

5. In order to substantiate its case, prosecution has examined altogether 11 PWs out of whom PW-1, Md. Iliyas, PW-2, Md. Mukhtar, PW-3 Md. Tano, PW-4, Md. Saiful Haque,



PW-5, Md. Ehsanuddin, PW-6, Amresh Kumar, PW-7, Md. Mokhtar, PW-8, Md. Amjad, Informant, PW-9, Ravi Ranjan Rejesh, PW-10, Ashok Kumar and PW-11, Dr. Jayant Kumar Desh Dipak as well as has also exhibited Ext-1, Signature of Md. Ehsanuddin over the Fard-beyan, Ext-2, Injury Report (Md. Amjad Ali), Ext-3, Signature of Incharge PS over Fardbeyan, Ext-3/1, endorsement over the Fardbeyan, Ext-4, Formal FIR, Ext-2/1, Requisition of injury report, Ext-5, Injury Report (Md. Amjad Ali), Ext-6, Identity card of Amjad Ali.

6. As stated above, nothing has been adduced on behalf of defence.

7. Learned respective counsels representing both the set of appeals independently, have fairly stated that on account of deficiency whereupon, the witnesses were not at all properly cross-examined nor suggested and further, had there been proper cross-examination, the witnesses being set up at the end of the prosecution in the background of prevailing animosity as well as being a member of group hostile to the appellants, would have properly been exposed and in likewise manner, there would have been proper explanation with the regard to the injuries having over the informant, more particularly, in the background of evidence of independent



witness, PW-6, on account thereof, the interest of appellants are found at stake without their fault.

8. Be that as it may, even from the evidences as it exist, no offence under Section 307/34 is made out in the background of the fact that there happens to be consistent evidence of the witnesses that other co-accused persons were also armed with pistol which they have not used on the other hand, they carry allegation that by butt of the pistol, informant was assaulted at head and other parts of body which, in the opinion of the doctor, PW-9 as well as PW-11 found to be simple. So far location of injury no.1, fire arm injury also not found to be on delicate part of the body and that also suggests that even in worst case, it completely mopish the application of Section 307/34 IPC. In worst case, it could be under Sections 324/34, 323/34, 341/34 and for that taking into account the period of custody, the sentence could be modified as already undergone.

9. Learned APP, though opposed the submissions but argued that there happens to be consistent version of the prosecution witnesses that butt of pistol was used during course of assault over the informant, PW-8 by the other while appellant Khurshid shot at. That indicates more than sufficiency that all



the accused/appellants indulged themselves in assaulting the victim in the background of persisting animosity. However, shown some sort of reservation over the submission having been made on behalf of the appellants.

10. PW-9, Ravi Ranjan Rajesh, the doctor had examined the injured PW-8 on 05.03.201 and found the following:-

- (1) Lacerated wound C blacken and inverted skin margin on top of medial side deltoid region of right upper Arm 1/4" x 1/4" bone deep and bleeding.
- (2) Lacerated wound on right side of temporal region of skull 1/2" x 1/4" skull deep and bleeding. Nature of injury no.1 was preserved due to pending x-ray report and nature of injury no.2 is simple. Weapon used--- Injury No.1 is caused by firearms. Injury No.2 is caused by HBS. Age of injury within 6 hours.

11. On the same day, the informant was taken to PMCH as was referred from Sheikpura Sadar Hospital whereupon PW-11 had examined and found the following:-

- (1) One oval lacerated wound on anterior aspect of right shoulder joint 1" x 1/2" depth could not be asserted.
 - (2) Minute multiple abrasions involving interior aspect upper arm supra seapular region.
 - (3) One lacerated wound at occipital region right side on lower part 1" x 1/4" x scalp deep.
 - (4) One lacerated wound Rt. Parietal region on back 1 x 1/4 Scalp deep.
 - (5) Two lacerated wound 1 1/2" apart at left occipital region 1/2" x 1/4" scalp deep each.
- X-ray done in Radiological department



PMCH, Patna on 05.03.2012 shows radiological opinion as follows given by Dr. A. Kumar S. R.

(1) XPN 1249 skull lateral view nothing abnormal deduction.

(2) of Rt. Shoulder AP/Lateral NAD

(3) of Chest AP/PA/Lateral NAD

Total Five X-ray plate.

12. PW-11 has opined that the nature of the injury could be obtained from the first treating doctor who, accordingly, disclosed that injury no.1 was caused by firearm while injury no.2 was caused by hard and blunt substance. However, nature has not been disclosed. So, from the evidence of the respective doctors, it is evident that single fire arm injury over the medial side, deltoid region of upper arm has been found, certainly neither could be dangerous to life nor over delicate part of body and further, in the background of negligence at the end of PW-9 as well as PW-11 and even at the end of the prosecution who could not succeed in getting the nature of injury even during trial, the nature of injury remained under cloud.

13. Because of the fact that the learned respective counsels were very much conscious over the deficiency having at their end during course of conduction of trial, more particularly, over the manner of occurrence at least while cross-examining, PW-5, Md. Ehsanuddin the FIR attesting witness as



well as PW-8, the informant along with PW-10, the I.O., at the end of appellants even then, the fact remains that irrespective of disclosure having at the end of injured as well as witnesses, the appellants so armed did not use, except Khurshid, who also not repeated.

14. In order to appreciate, the evidences of the respective witnesses have been gone through, out of whom PW-1 and PW-2 are hostile while PW-4, hearsay, PW-6, stranger. Considering the evidence of PWs-3, 5, 7 and 8, it is evident that there happens to be allegation against appellant, Md. Khurshid Alam @ Kusho @ Khuso to have fired only once and in likewise manner, though the other appellants including three unknown persons were in possession of firearms but none of them used. On the other hand, there happens to be allegation that they simply assaulted with the butt of the pistol over the head and other parts of body. Furthermore, it is also evident that there was no intervening circumstance, even then, the appellants have not exceeded their limits.

In *Jage Ram v. State of Haryana* as reported in (2015) 11 SCC 366, it has been held as follows:-

“12. For the purpose of conviction under [Section 307](#) IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had



attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under [Section 307](#) IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc.

15. That being so, the finding recorded by the learned lower court relating to Section 307/34 and 504/34 IPC is not at all found properly substantiated whereupon, are set aside, retaining the conviction for the offences punishable under Section 324/34, 323/34 and 341/34 IPC as well as Section 27(1) of the Arms Act.

16. Now coming to sentence, in the facts and circumstances of the case, while appellant, Md. Khurshid Alam @ Kusho @ Khuso will have to suffer minimum sentence of three years as prescribed under Section 27(1) of the Arms Act and so, the sentence so prescribed by the learned lower court, on that very score, is maintained and so, being under custody will remain till saturation of the period, while with regard to other



appellants, namely, Md. Akbar, Md. Manzoor, Md. Zumman @
Md. Iftekhar (Cr. Appeal No. 1819/2017), the sentence is
modified as the period already undergone.

17. In terms thereof, these two appeals are partly
allowed.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
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