

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.523 of 2017**

Arising Out of PS. Case No.-63 Year-2013 Thana- AMBA District- Aurangabad

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Chakra @ Chakravarti Kumar S/o- Sita Ram Prasad, R/o village-
Dadhpabigha, PS- Kutumba, Distt.- Aurangabad (Bihar).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Smt. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate Ms. Kiran Kumari, Advocate
For the Respondent/s	:	Ms. Anita Kumari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT**

Date : 31-10-2023

1. The instant appeal has been filed against the impugned judgment dated 15.12.2016 and order of sentence dated 19.12.2016 passed by learned Additional Sessions Judge-VI, Aurangabad, by which the appellants were held guilty for the offences punishable under Sections 147, 148 and 307 read with Section 149 of the Indian Penal Code (hereinafter referred to as IPC). By the impugned order of sentence the appellants were sentenced to undergo simple imprisonment for one year for the offence under Section 147 of IPC, they were further sentenced to undergo simple imprisonment for one year for the offence under Section 148 of IPC and they were also sentenced to undergo rigorous

imprisonment for seven years with a fine of Rs. 10,000/- (Ten Thousand) each for the offence under Section 307 read with Section 149 of IPC and in case of non-payment of fine, they were directed to further undergo rigorous imprisonment for six months and all the said sentences were directed by the trial Court to run concurrently.

2. Here it is important to mention that after filing this appeal the appellant no. 2, Sujeet Mehta died, hence, vide order dated 12.10.2023 the instant appeal was directed to be abated in respect of said appellant and the appeal remains alive in respect of appellant no. 1 namely, Chakra @ Chakravarti Kumar.

3. The substance of the prosecution's case is as follows:-

As per the *fardbeyan* of informant, on 31.10.2013 at about 07:00 AM, the informant was sitting at Sharma mobile shop located at Amba, Hariharganj road, meanwhile two persons namely, Chakra (appellant no. 1) and Sujeet Mehta (appellant no. 2, now deceased) came on a motorcycle which was parked twenty to twenty-five feet away from the shop, thereafter co-convict Sujeet Mehta came near him and at that time he was talking with one Ramjee Sharma and some

other persons and then the appellant/convict Sujeet Mehta took out a pistol from his waist and opened fire at him which hit at his right hand near his elbow and thereafter the other appellant i.e., Chakra also fired at him, but anyhow he escaped from that firing and thereafter he rushed into the shop and saved himself. The informant further alleged that twenty to twenty-five persons also came with the convicts at the place of occurrence who instigated the convicts and they also fired at the informant and he did not identify any of them and after the occurrence the nearby people gathered but the accused persons fled away.

4. The informant recorded his *fardbeyan*, Exhibit -1, narrating the above allegations, on that basis a formal FIR, Exhibit-3, bearing Amba PS Case No. 63 of 2013 was registered under Sections 147, 148, 149 and 307 of IPC and under Section 27 of Arms Act against the appellants and twenty to twenty-five unknown persons which set the criminal law in motion. After the completion of investigation the police submitted chargesheet against the convicts on two different occasions. The present appellant Chakra @ Chakravarti Kumar stood charged for the offences punishable under Sections 147, 148, 149 and 307 of IPC and also charged for

the offence punishable under Section 27 of Arms Act. The co-convict Sujeet Mehta (now deceased) stood charged for the offences punishable under Sections 147, 148 and 307/149 of IPC and also charged for the offence under Section 27 of Arms Act. Both the convicts were charged by two different trial Courts but after the framing of charges upon them, their cases were amalgamated and their trial ran jointly. They were convicted by the same judgment which has been challenged in this appeal.

5. As the instant appeal has been abated in respect of the appellant no. 2, hence, this Court is now going to decide the appeal in respect of appellant no. 1 only.

6. During the Course of trial altogether seven prosecution witnesses were examined by prosecution who are as under:-

(i) PW-1 – Moharam Alam (A shopkeeper of place of the occurrence),

(ii) PW-2 – Ramjee Sharma (The owner of Sharma mobile center),

(iii) PW-3 – Satish Singh (villager),

(iv) PW-4 – Chandrashekhar Singh (villager),

(v) PW-5 – Kumar Ran Vijay Singh @ Chhunnu

Singh (Informant),

(vi) PW-6 – Vikash Kumar (doctor),

(vii) PW-7 – Abhinash Kumar (Investigating Officer).

7. In documentary evidence, the prosecution proved the following documents and got them marked as exhibits which are as under:-

(i) Exhibit-1 – *fardbeyan*,

(ii) Exhibit -2 – Injury report of the informant,

(iii) Exhibit-1/1 – An endorsement made by the SHO's office on the *fardbeyan*.

8. After the completion of prosecution's evidence, the statements of the convicts were recorded and the appellant no. 1 denied the circumstances appearing against him from the prosecution's evidences.

9. The main submissions advanced by Smt. Vaishnavi Singh, learned counsel appearing for the appellant are that before the trial Court the prosecution failed to establish the alleged place of occurrence and there is a serious contradiction among the statements of the material witnesses of the prosecution regarding the place of occurrence and there is also serious contradiction with regard to the number of

accused persons who are stated to have participated in the alleged occurrence and the informant who is stated to be the injured of the present matter made contradictory statement regarding the place of occurrence and the informant improved his version before the trial Court regarding the number of the accused persons as well as regarding the persons who are stated to have witnessed the alleged occurrence. It has been further argued that PW-2, who is stated to be an eyewitness of the alleged occurrence as per FIR, deposed a contradictory fact in respect of the allegation concerned to the appellant No. 1 and the Investigating Officer did not examine the shopkeepers whose shops are situated nearby the place of occurrence, except one shopkeeper.

10. Learned APP has opposed the appeal and submitted that the appellant is named in the FIR and he has been alleged to be present with main co-accused and as per allegation, he also opened fire at the informant and the said allegation has been supported by the material prosecution witnesses during trial and on the person of the informant fire-arm injury was found as per medical evidence given by the doctor concerned which is completely corroborative to the allegation of firing levelled in the FIR against the co-convict

Sujeet Mehta. It has been further submitted that though there are some contradictions with regard to the number of the accused persons who allegedly participated in the commission of the alleged occurrence as well as regarding the place of occurrence but the same are minor contradictions and ignorable.

11. Heard both the sides, perused the judgment impugned and evidences available on the case record of trial Court and also perused the statement of the present appellant. In the present matter, the informant is stated to be the sole injured person, who recorded his *fardbeyan*, on that basis formal FIR was registered and according to him, he was talking with one person namely, Ramjee Sharma when the alleged occurrence took place at the shop of said Ramjee Sharma, so, the evidence of informant and Ramjee Sharma is very important in the present matter.

12. The informant has been examined as PW-5, he alleged in the FIR that twenty to twenty-five persons participated in the alleged occurrence but he specifically named two accused persons, who were convicted and they have filed the instant appeal. But the informant deposed in the examination-in-chief before the trial Court that four to five

persons arrived on two motorcycle at the place of occurrence, as such regarding the total number of accused persons, he made a contradictory statement. He alleged in the FIR that this appellant also fired at him after the firing of the convict Sujeet Mehta, but in respect of said fact, he made contradictory statement before the trial Court in his examination-in-chief and deposed that this appellant took out a *sixer* then he (informant) rushed and entered into the house of Ramjee Sharma but he did not make the allegation that the appellant also fired at him while in the FIR he alleged that the said appellant also fired at him. The said contradiction appearing from the evidence of PW-5 creates a serious doubt in the allegation made against the appellant by the prosecution. PW-5 (informant) revealed the names of two accused persons in his *fardbeyan* and regarding the rest accused persons, who are stated to be twenty to twenty-five persons, he showed his inability to identify any of them. But later the informant claimed to have got the information of other three co-accused persons as being involved in the alleged occurrence from the other persons but he remained silent in respect of said co-accused persons in his *fardbeyan*. As per the allegation levelled by the informant in his

fardbeyan, which is the basis of the prosecution's case, the first firing was made by the co-convict (Sujeet Mehta), which hit at the right hand of the informant and thereafter the second firing was made by this appellant and then the informant rushed inside the Sharma mobile shop in front of which he was sitting when the alleged occurrence of firing took place. But the informant deposed before the trial Court that he rushed into the house of Ramjee Sharma in order to save himself from the alleged incident of firing. The said contradiction also creates a suspicion in the prosecution's allegation. During trial, the prosecution failed to establish the motive of the appellant in attempting to kill the informant and in this regard the informant's own evidence is important. He deposed in the cross-examination that he has no enmity with the accused persons and the alleged occurrence was committed mainly to establish dominance of the accused persons. Accordingly, I find the evidence of PW-5 (informant), who is the most important witness of the prosecution to be highly suspicious with regard to the nature of allegation appearing against the appellant from the prosecution's story narrated in the FIR.

13. PW-1, Moharam Alam, is also an important

witness of the prosecution. Though the name of this witness does not find place in the FIR, but as per his evidence, his shop is situated nearby the place of occurrence. He deposed in the examination-in-chief that after firing, the accused, who fired at informant started fleeing but he could not identify him. As per his evidence, it appears that only one person fired at the informant and the said accused was not identified by this witness and as per his statement made in the cross-examination, the appellant No. 1 is known to him. If the said appellant was present along with other co-accused persons at the place of occurrence and involved in firing then the appellant might have been identified by this witness as the said appellant is known to him. But this witness did not claim to have identified this appellant. Moreover, this witness denied to have recorded his statement before the police. In view of these facts, the evidence of PW-1 is not sufficient to establish the allegation levelled against the appellant no. 1 by the prosecution. Accordingly, the evidence of PW-1 does not help the prosecution.

14. PW-2 (Ramjee Sharma) is also an important witness of the prosecution as according to FIR, he was present at the place of occurrence and he was talking to the informant

when the alleged occurrence took place. Hence, his evidence is very important in respect of the allegation concerned to the appellant No. 1. Though this witness revealed the presence of the appellant at the place of occurrence with co-convict Sujeet Mehta (now deceased), but he deposed in the examination-in-chief that the co-convict Sujeet Mehta fired at the informant and he further stated that the appellant also attempted to fire, but the firing did not take place in that attempt. The said statement made by this witness is completely contradictory to the evidence of the informant as according to the informant, the appellant No.1 also fired at him, but according to the evidence of this witness, the said appellant only attempted to fire but firing did not take place in that attempt. The witness deposed in the examination-in-chief that the informant rushed into his house after sustaining fire-arm injury. While as per the prosecution story narrated by the informant in his *fardbeyan*, he rushed into the shop of said witness. In view of these contradictory statements, I find the evidence of this witness to be not credible and the same is not sufficient to establish the allegation levelled against the appellant No. 1 by the prosecution.

15. PW-3, Satish Singh, though the presence of this

witness at the place of occurrence at the time of commission of the alleged incident was not revealed by the informant in his *fardbeyan*, but later on before the trial Court, the informant revealed the presence of this witness at the place of occurrence, so in view of this fact, the evidence of this witness does not seem to be important, however, in respect of the allegation concerned to this appellant, I am appreciating his evidence. The witness claimed before the trial Court that he knew the appellant and co-convict and also revealed the presence of appellant No. 1 with co-convict at the place of occurrence and he alleged that co-convict Sujeet Mehta fired at the informant and after firing the informant rushed into the house of Ramjee Sharma and during that course, he and others raised an alarm and in the meantime two more accused persons fired and thereafter they fled away. Accordingly, as per the statement of this witness, the first firing was made by the co-convict Sujeet Mehta and other firing was made by two co-accused persons but the witness did not name the appellant No. 1 as being involved in the alleged firing, while the said appellant is known to him and this circumstance goes against the prosecution in respect of the allegation levelled against the appellant.

16. PW-4, Chandrashekhar Singh, though the name of this witness did not find place in the *fardbeyan* of the informant, but later on the informant, who was examined as PW-5 revealed the presence of said witness at the place of occurrence when the alleged occurrence took place. Hence, in view of the said statement of the informant, the evidence of this witness can be deemed to be relevant to some extent. The witness deposed in the examination-in-chief that five accused persons came on two motorcycles at the place of occurrence and thereafter two of them came at the shop of Ramjee Sharma, from whom he identified only one namely, Sujeet Mehta but the second person was not identified by him and in the meantime co-convict took out a pistol from his waist and fired at the informant by using the said fire-arm. The witness identified the appellant No. 1 in the trial Court, when he was recording his evidence and this fact shows that the appellant was known to him when the alleged occurrence took place but he did not claim to have identified the co-accused who was along with the co-convict Sujeet Mehta and the said circumstance appearing from his evidence goes in favour of the appellant No. 1 and goes against the prosecution.

17. PW-7, Abhinash Kumar, is a police officer who

investigated the allegations made by the informant in his *fardbeyan*. He deposed in the cross-examination that the place of occurrence was a mobile shop of one namely, Ramjee Sharma and he did not record the statement of any family member of Ramjee Sharma and also did not interrogate the tea shop owner whose shop was situated nearby the shop of Ramjee Sharma. He deposed in the examination-in-chief that he inspected the place of occurrence and also sketched a map of the place of occurrence. But he did not reveal any fact to show the recovery of any incriminating article by him at the place of occurrence to substantiate the allegation of firing and moreover, he accepted that he did not examine the family members of Ramjee Sharma, while as per the informant's evidence just after the incident of firing, the victim rushed into the house of Ramjee Sharma, but the Investigating Officer did not take pain to record the statements of the family members of Ramji Sharma. Accordingly, I find the investigation made by the Investigating Officer in the allegations levelled by the informant in his *fardbeyan* to be faulty, which goes against the prosecution.

18. In the light of the circumstances appearing from the above discussed facts and evidences, this Court is of the

view that the prosecution did not succeed to prove the allegations levelled against the present appellant No. 1 by the so-called victim in his *fardbeyan*, beyond reasonable doubt and the evidences of the prosecution were not appreciated in right manner in respect of the allegations made against the appellant No. 1 and the said allegations appear to be highly suspicious. As such, the impugned judgment convicting the appellant No. 1 and impugned order sentencing the said appellant are hereby set aside and the appellant is acquitted of the offences charged. In result, the present appeal stands allowed.

19. The appellant No. 1 is on bail, hence, his bail bond and his sureties' bonds stand cancelled and they are discharged from their liabilities arising out of their respective bond. Let the LCR be sent back to the trial Court for the needful.

(Shailendra Singh, J)

Shahnawaz/-

AFR/NAFR	AFR
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