

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1967 of 2018

Arising Out of PS. Case No.-116 Year-2009 Thana- UDWANTNAGAR District- Bhojpur

Upendra Rai @ Chamku Rai, Son of Late Jagdish Rai, Resident of Village-
Dullamchajk, P.S.- Chauri, District- Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mahesh Prasad, (Amicus Curiae)
For the Respondent/s	:	Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 30-11-2023

1. Nobody appears on behalf of the appellant despite repeated calls and the appeal is old one, hence learned counsel Mr. Mahesh Prasad is appointed as an *Amicus Curiae* in the present matter to assist this court.
2. Heard the parties.
3. The instant appeal has been filed by the appellant against the judgment of conviction dated



28.08.2017 and order of sentence dated 31.08.2017 passed by the learned 4th Additional District and Sessions Judge, Bhojpur at Ara in Sessions Trial Case No. 253 of 2013, arising out of Udwanthnagar P.S. Case No. 116 of 2009, whereby and whereunder the appellant has been convicted for the offences punishable under Sections 307/34, 341/34 and also convicted for the offence under Section 27 of Arms Act and sentenced to undergo rigorous imprisonment for 7 years with a fine of Rs. 20,000/- for the offence punishable under Section 307 read with 34 of the Indian Penal Code (hereinafter referred to as "IPC") and also sentenced to undergo 1 year simple imprisonment for the offence punishable under Section 341 read with 34 of the IPC and 3 years of rigorous imprisonment with a fine of Rs. 1000/- for the offence punishable under Section 27 of the Arms Act and all the sentences were directed to run concurrently.

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

As per prosecution story, in the year 2000, informant's co-villager Bachhu Rai and 6 to 7 other



persons opened fire at the informant for which Chauri P.S. Case No. 51 of 2000 was lodged and regarding that incident a Sessions Trial Case was running and the accused persons of the present matter, including the appellant, are relatives of the accused of Chauri P.S. Case No. 51 of 2000. On 08.06.2009, the informant and his son Pramod Rai were returning by a motorcycle from Ara Court after attending the date of their case and the motorcycle was being driven by his son and he was riding as a pillion rider, when they reached near Middle School Belaur, one motorcycle came from behind, upon which three persons were riding and thereafter the said persons opened fire at him (informant) which caused fire- arm injury to his right hand and in that course he identified two of the assailants as being Dilip Rai and Chamku Rai @ Upendra Rai (appellant) and the third person who was driving the motorcycle could not be identified by him. The informant further alleged that after the incident of firing he asked his son to return back immediately as he apprehended that he and his son would be killed if they went ahead, then upon his direction his son started



returning back but thereafter the assailants again came near their motorcycle and started firing indiscriminately that resulted in 4-5 injuries at his rib portion and his son also sustained fire-arm injury at his left hand near thumb, after that the accused persons fled away towards Ara.

5. With the above allegations, the informant recorded his fardbeyan on 09.06.2009 just one day after the commission of the alleged occurrence at P.M.C.H., on that basis formal FIR bearing Udwanthnagar P.S. Case No. 116 of 2009 was lodged under Sections 307/34 and 341 of IPC and Section 27 of Arms Act, which set the criminal law in motion.

6. After the completion of investigation, the police submitted chargesheet against the appellant for the offences punishable under Sections 307, 324, 341 read with 34 of the IPC and Section 27 of Arms Act and investigation was kept pending in respect of other co-accused persons.

7. After taking cognizance of the alleged offences, the learned Chief Judicial Magistrate, Bhojpur at Ara committed the case of the appellant to the court of



Sessions for trial.

8. The appellant stood charged for the offences punishable under Sections 307, 324, 341/34 of the IPC and Section 27 of Arms Act.

9. As the appellant did not plead guilty, hence he was put on trial for the offences charged upon him.

10. During trial, altogether 6 witnesses including the so-called victims were examined and in documentary evidence, the prosecution proved the fardbeyan of informant, formal FIR and injury report of the informant and got them marked as Exhibits 3, 1 and 2 respectively.

11. After the completion of prosecution's evidence, the statement of the convict was recorded in which the main circumstance relevant to the alleged offences appearing against him from the prosecution evidence was explained to him which was denied by the appellant and he took the defence that at the time of commission of the alleged occurrence he was under treatment and hospitalized on account of fracture of his shoulder and he claimed himself to be innocent.

12. The appellant did not give any evidence in



his defence.

13. Heard the learned *Amicus Curiae* as well as learned APP appearing for the State and perused the judgment impugned and evidences available on the case record of trial court and also gone through the statement of the accused.

14. In the present matter, the formal FIR was lodged on 18.06.2009 but before that, the informant had recorded his fardbeyan at P.M.C.H. on 09.06.2009 just one day after the commission of the alleged occurrence and as per FIR, after the commission of the alleged occurrence, the victim was immediately rushed to the hospital by his son by arranging an Ambulance and thereafter the victim, informant, recorded his fardbeyan at P.M.C.H. on 09.06.2009, hence there was no delay on the part of the informant in lodging the case against the accused/appellant and others and the FIR appears to be very natural. As per informant, there was no good relation between him and one namely, Bachhu Rai and some others on account of an incident of firing allegedly committed by said Bachhu Rai and others upon the



informant, for which Chauri P.S. Case No. 51 of 2000 was lodged which resulted in Sessions Trial Case and the same was running at the time of commission of the alleged occurrence and according to the informant, the appellant and co-accused Dilip Rai are relatives of the accused persons of Chauri P.S. Case No. 51 of 2000. The appellant did not succeed to elicit any fact going against the said enmity in the cross-examination of the prosecution's witnesses and even in his statement recorded under Section 313 of Cr.P.C., he did not take any plea against the said enmity, hence the plea of enmity running in between the appellant and the prosecution party, as taken by the informant, appears to be credible and the same can be deemed to be a motive on the part of the appellant and others to commit the alleged occurrence and the said circumstance goes in favour of the prosecution and against the appellant.

15. As per allegation, the appellant and co-accused Dilip Rai were identified by the victims Mangal Rai and his son when the alleged occurrence was being committed by the accused persons and firstly, the



appellant and co-accused Dilip Rai fired at the victims which resulted in fire-arm injuries to the informant and thereafter the informant and his son started returning back fastly but in the meantime the accused persons, including the appellant, again came near them and again started firing indiscriminately that resulted in several fire-arm injuries to the informant and his son.

16. The manner of occurrence, as described by the informant, is sufficient to draw the presumption that alleged occurrence was committed with an intention to kill the informant and his son by using fire-arm and the allegations levelled by the informant are relevant to satisfy the necessary ingredients of the alleged offences.

17. In the instant matter, the most important witnesses of the prosecution are informant Mangal Rai and his son Pramod Rai because as per prosecution's story they are stated to be the eye-witnesses of the alleged occurrence. Both the said persons have been examined as P.W.6 and P.W.1.

18. P.W.1 Pramod Rai, deposed in the examination-in-chief that at the time of commission of the



alleged occurrence, the accused who was driving the motorcycle could not be identified as he was wearing a helmet but the rest two accused persons were identified by him who were the appellant and Dilip Rai and the accused made 5-6 gun shot firing which resulted in fire-arm injuries to right shoulder, right arm, right ribs area and stomach of the victim Mangal Rai (his father) and he also sustained an injury at his left hand near thumb. He further deposed that after the incident of first firing, when he turned his motorcycle and started returning back fastly then the accused persons came again near them and opened fire 4 to 5 times and after the incident his father was taken to P.M.C.H. for treatment by an Ambulance where his fardbeyan was recorded by the police.

19. Here, it is important to mention that no body on behalf of the appellant appeared before the trial court to cross-examine the said witness despite repeated calls by the trial court, hence the witness was discharged without cross-examination. The evidence given by P.W.1, as discussed above, is completely corroborative to the factum of identification of the appellant and co-accused



by the victims and as to the manner of the occurrence and the evidence of this witness makes the prosecution's case to be strong and believable.

20. P.W.6, Mangal Rai, who sustained several fire-arm injuries, supported the prosecution's story in his Examination-in-Chief and he deposed that the incident of firing took place on 08.06.2009 on the main road near Belaur village at 4 P.M. and at that time he was returning from Civil Court, Ara and he claimed to have identified the appellant and co-accused Dilip Rai at the time of happening of the alleged occurrence. The witness supported the factum of repeated firing allegedly committed by the appellant and co-accused Dilip Rai at the victims. He deposed that a case was running in between him and the accused and he did not fall down from the motorcycle after sustaining fire-arm injuries and his son kept on driving his motorcycle and when his son started returning back fastly, the accused also returned back and one of the accused persons, who was driving the motorcycle was wearing helmet and at the place of concurrence there was no other person except he, his son



and accused persons. The appellant did not succeed to elicit any fact in the cross-examination of this witness to disprove the allegations made by this witness in his fardbeyan rather the witness remained firm to his stand in the cross-examination also. In this way, the evidence of this witness is reliable and the same is sufficient to substantiate the allegations levelled by him against the appellant in the fardbeyan.

21. As according to the prosecution's story, the informant sustained several fire-arm injuries in the firing allegedly committed by the appellant and co-accused, hence in this matter the medical evidence given by the Doctor concerned who examined the victim, is very important, the said Doctor was examined as P.W.5 and he found 8 injuries on the body of the informant, though he opined the said injuries to be simple in nature but also opined that the injuries were caused by fire-arm and some of the injuries were found at or near some vital organs of the victim. The nature of the weapon which was used by the assailants in causing the injuries, as opined by the Doctor (P.W.5), is completely corroborative to the



allegations levelled by the victim in his fardbeyan and the number of injuries sustained by the victim, as described by this witness, also goes to show that the alleged occurrence was committed by the appellant and others with an intention to kill the victims. The witness proved the injury report of the informant which was marked as Exhibit-2. In this way, the medical evidence which is very relevant and important in this matter goes in favour of the prosecution.

22. The appellant in his statement recorded under Section 313 of Cr.P.C. while denying the main circumstance appearing against him from prosecution's evidences, mainly took the defence that he was under-treatment and hospitalized on account of fracture injury to his shoulder at the time of alleged occurrence but the said defence does not seem reliable as firstly no evidence was given by the appellant to prove the said defence and secondly the appellant did not succeed to elicit any fact from the witnesses of the prosecution while cross-examining them to support his defence hence, in the absence of any evidence, this court finds no force in the



said defence of the appellant.

23. After the discussion of above facts and evidences, this court is of the considered opinion that in the trial of the appellant the prosecution succeeded to prove the offences, for which the appellant was charged, beyond reasonable doubt and the evidences adduced by the prosecution are sufficient to substantiate the allegations levelled by the prosecution against the appellant and the allegations which were proved by the prosecution satisfy the main ingredients of the alleged offences and this court finds no reason to interfere in the conclusion of conviction of the appellant made by the convicting trial court. Hence, the instant appeal stands dismissed.

24. Mr. Mahesh Prasad, learned *Amicus Curiae* shall be entitled to remuneration, as per notification dated 18.05.2017 issued by the State Government, to be paid by the Patna High Court Legal Services Committee for assisting this court as *Amicus Curiae*.

25. Let the copy of the judgment be sent to the learned trial court as well as the jail authority concerned



for needful and the L.C.R. be also sent back to the trial court
forthwith for needful.

(Shailendra Singh, J)

Rajiv/-

AFR/NAFR	AFR
CAV DATE	NA
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