

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.65 of 2004

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Gayanand Paswan @ Dihal Paswan, son of Tatar Pawan, resident of Village – Aiman Bigha, Police Station – Fatuha, at present resident of Sahjahanpur Police Station – Fatuha, District – Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Ms. Rushali, Amicus Curiae

For the Respondent/s : Mr. Anita Kumari Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 26-09-2024

1. This appeal is filed against the judgment dated 13.01.2004, passed in Sessions Trial No. 161/1986/338/2001 G.R. No. 1322/1984 in the file of Learned Additional Court No. 2, Patna (Fast Track Court), wherein the appellant was convicted and sentence to undergo rigorous imprisonment for a period of seven years for the offences punishable under Section 307 of the Indian Penal Code (hereinafter referred to as ‘IPC’) and to undergo rigorous imprisonment for a period of three years for the offence punishable under Section 27 of the Arms Act. Further, the trial Court directed the sentences to run concurrently for the aforesaid offences.



2. The case of the prosecution is that one Ajit Kumar Singh (P.W. – 6), son of Sheo Narain Singh filed a *Fardbeyan* at about 11:45 PM, on 15.10.1984 stating that the injured was admitted in Fatuha Hospital and he gave the *Fardbeyan* to the Police contending that in the evening at about 05:15 PM, the injured was sitting on the *Varandah* of Shadeo Singh and was talking with Ashok Kumar (P.W.-1). Meanwhile, from the northern side of the *Varandah*, Koli (gali) and from the eastern side Gayanand Paswan @ Dihal i.e. appellant and one Anil Kumar, son of Iswaranand Paswan and Langara, son of Manogi Kahar gathered and the appellant/Gayanand Paswan was armed with pistol, Anil Kumar was holding a small pistol and Langara was holding a country-made gun in their hands. No sooner the informant wanted to inquire something from the appellant, but the appellant open fired with the pistol for which injury was caused to his face, then the injured tried to run to the house of P.W. – 1/(Ashok Kumar) then the appellant asked Anil to fire, thereupon a second round of firing was done, which hit the informant on his back and after crossing *Choukhat* (door



wood), he fell down on *deodhi* (inside the door). From the western side of the *Varandah*, there was *Baithka* of Sachidanand Singh, where father of the informant and villagers, namely, Nagina Singh, Jai Govind Singh and others reached the place of occurrence. On seeing them, the appellant along with others fled away. The cause of occurrence was due to Caste tension for the last one week, when the mother of the appellant was murdered by fire injuries, but the informant had no hand in that incident. The appellant along with other accused had an impression that the informant was against them and with that intention, the said incident took place in order to kill the informant.

3. Basing on the *Fardbeyan*, an FIR was lodged against the appellant and two others for the offences punishable under Section 324 and Section 307 r/w Section 34 of the IPC and also for the offence punishable under Section 27 of the Arms Act.

4. After completion of the investigation, the Investigating Officer laid charge-sheet against the appellant as well as against the other accused/Anil Paswan and



Umesh Kahar @ Langara, who were reported to be dead. The trial Court framed charges against the appellant for the offences punishable under Section 307 of the IPC and Section 27 of the Arms Act.

5. During the course of trial, prosecution has examined altogether 8 witnesses P.W. – 1 to P.W. – 8. P.W. – 6 is the informant as well as injured. P.Ws.-1 to 4 are said to be eye-witnesses to the said incident. P.W. – 5 is the father of the victim. P.W. – 7 is the Medical Officer, who examined the injured and furnished the Inquiry Report. P.W. – 8 is one of the Investigating Officers in this case.

6. On behalf of the defence, D.Ws. – 1 to 3 were examined to prove the innocence of the appellant.

7. On appreciation of the evidences, the trial Court has convicted the appellant as aforesaid.

8. Heard Ms. Rushali, Learned *Amicus Curiae* on behalf of the appellant and Mrs. Anita Kumari Singh, Learned Additional Public Prosecutor for the State.

9. The point for determination in this case is:



(i). Whether the judgment of trial Court is liable to be set aside?

(ii). Whether the prosecution was able to prove the guilt of the appellant for the offences punishable under Section 307 of the IPC and Section 27 of the Arms Act?

10. It is just necessary to appreciate the oral evidence of the witnesses, to arrive at a conclusion whether the judgment passed by the trial Court is sustainable or not?

11. P.W. – 6, namely, Ajeet Kumar Singh is the injured/informant. The *Fardbeyan* of the informant/P.W. – 6 clearly disclose that the incident took place on 15.10.1984 at about 05:15 PM and the *Fardbeyan* was recorded at Fatuha Hospital at about 11:45 PM by the Sub-Inspector of Police of Fatuha P.S. From the *Fardbeyan* it is evident that P.W. – 6 was sitting at the entrance door of one Sahdev Singh of his village and was talking to his son, namely, Ashok Kumar i.e. P.W. – 1. Meanwhile, the appellant along with the others came to the place of occurrence and there was a pistol in the hands of the appellant, small pistol in the hand of Anil Kumar and a large country-made gun in the hands of



Langara, the other accused persons. Initially, the appellant opened fire with his pistol for which P.W. – 6 received an injury on his face. Later, the appellant instigated Anil Kumar, another accused to fire and thereupon Anil Kumar fired on P.W. – 6 for which, P.W. – 6 sustained injury on his back and fell down at the entrance of Shadeo Singh's house. Meanwhile, the father of the informant along with others reached the place of occurrence. On seeing them, the accused fled away.

12. The evidences of P.W. – 6 is also partly in consonance with that of the details of the *Fardbeyan*. As per the evidence of P.W. – 6, he sustained two injuries. The bullet fired by the appellant, hit on the face and chest of P.W. – 6 and the other injury was caused by bullet fired by Anil Kumar which hit his right shoulder of the injured.

13. Exhibit 1 is the signature of the Sheo Narayan Singh (P.W.-5), who is the father of P.W. – 6 to prove that he was the witness to the *Fardbeyan*. Exhibit 1/1 is the signature of Ram Nagina Singh, (P.W. – 4) on the *Fardbeyan*. But P.W. – 4 did not testify about his signature



on the Fardbeyan. Exhibit 1/2 is the signature of the informant.

14. Further, the evidence of P.W. – 6 disclose that after few moments, there was a sound of a bomb and a gunshot. Later, he was taken to Fatuha Hospital. After First Aid, he was referred to PMCH (Patna Medical College and Hospital) for treatment. His *Fardbeyan* was said to be recorded at Fatuha Hospital. P.W. – 6 identified the signature as Exhibit – 1/2. P.W. – 6 further testified that he gave his bloodstain vest to the Inspector, but the Inspector did not receive it.

15. In the cross-examination, it is specifically stated by P.W. – 6 that the appellant had a revolver and again stated that it was Country-Made Pistol and that he did not raise any alarm after seeing the Country-Made Pistol. P.W. – 6 also admitted that he did not raise any alarm, when he was shot and that he received the shot at a distance of 6 ft. and that P.W. – 1 raised an alarm, on which 10 to 15 persons gathered at the place of occurrence.



16. It is important to appreciate the medical evidence of P.W. – 7, the Medical Officer, who examined the injured/P.W. – 6. The evidence of P.W. – 7 discloses that on 16.10.1984, at about 04:30 PM, he examined P.W. – 6 and found the following injuries:

i. Multiple black spots at face, neck and shoulder.

ii. The wound of entrance at right shoulder, joint/back ¼ inch in diameter. The wound of entrance was jabbed. No wound of exit is found. Bullet fell over left side of back of the chest and near inferomedial aspect of scapula 1 inch lateral to mid-line of sixth rib space.

iii. The above injuries were caused by firearm.

iv. I got the injury No. 2 X-rayed. This is the X-ray Plate (Exhibit – 2). The injury report (Exhibit – 3) is in my pen and signature. Injury No. is dangerous to life.

v. This discharge certificate of the injured is in my signature. Discharge certificate is Exhibit – 4.



In the cross-examination, it is specifically stated by P.W. – 7 that he had recovered a bullet, which was mentioned in the discharge certificate.

17. As per the evidence of P.W. – 7 (Medical Officer), there was no bullet injury over the face and the back of the injured i.e. P.W. – 6. There are multiple black spots over chest, neck and shoulder, but the evidence of injured (P.W. – 6) contradicts with that of Injury report, such as sustaining a bullet injury on his face, and on his back. Further, the evidence of P.W. – 6 also contradicts with the *Fardbeyan*. As stated supra in the *Fardbeyan*, it is specifically mentioned that P.W. – 6 sustained a bullet injury on his face and on his back, whereas it is testified by P.W. – 6 that he sustained injuries on his face, chest and on the right shoulder. The evidence of P.W. – 7/Medical Officer corroborates to certain extent as to the injury No. 2 along with that of the evidence of P.W. – 6 (Injured). Furthermore, P.W. – 7 testified that he recovered the bullet from the body of the injured.



18. P.W. – 8 is the Investigating Officer. The evidence of P.W. – 8 is very much necessary to appreciate as to the manner of investigation done by him. His evidence clearly disclose that one R.N. Chaturvedy, the S.I. has recorded the *Fardbeyan* and registered the case and the FIR is Exhibit – 5. The signature of R.N. Chaturvedy on the *Fardbeyan* is Exhibit – 8.

19. The record reveals that the S.I., namely. R.N. Chaturvedy is one of the witnesses in the list of witnesses filed along with the charge-sheet, but the prosecution has not examined him. P.W. – 8/Paras Nath Rai is the Investigating Officer. His evidence clearly disclose that he had neither registered the case nor filed any charge-sheet before the Court. His evidence further disclose that he cannot say about the investigation done in this matter, as he could not go through the case diary. The evidence of P.W. – 8 is noway helpful for the prosecution, to prove the charges framed against the appellant.

20. It is surprising to note that the material objects were not marked in this case. On one hand, P.W. –



7/Medical Officer testified that a bullet was recovered from the body of the injured (P.W. – 6), and whether the said bullet was collected by Investigating Officer or not? is not known. In the absence of record, the said fact cannot be appreciated in this appeal. There is no evidence as to that aspect before the trial Court. P.W. – 6/the injured clearly testified that he handed over the bloodstain clothes belonging to him to the Police. No weapon was recovered from the appellant. There is no evidence on record as to the confession of the accused or of any recovery pursuant to the confession under Section 27 of the Indian Evidence Act. Expect the oral evidence of P.W. – 6 (the injured), P.W. – 5 (father of the injured) and the other witnesses i.e. P.W. – 1 to P.W. – 4, there is also no other evidence on record.

21. The evidence of P.W. – 1 disclose that the appellant fired on P.W. – 6 and the bullet hit the face of the injured and that Anil Kumar fired while they were running, which hit the shoulder of the injured and people sitting there raised an alarm. The evidence of P.W. – 1 contradicts with the evidence of the injured/P.W. – 6. On one hand, P.W. – 6



testified that he did not raise an alarm, when he received the gunshot rather it was P.W. – 1 who raised the alarm, and about 10-20 people gathered at the place of occurrence.

22. The evidence of P.W. – 2 clearly disclose that injured/P.W. – 6 was shot and smoke came out from the pistol of the appellant. The evidence of P.W. – 3 disclose that after hearing the gunshot, he rushed to the place of occurrence and saw that the appellant, Anil Paswan and Umesh Ram were running away with the pistol. Further, the evidence of P.W. – 4 disclose that Anil Paswan had a big gun and others had pistol with them and appellant fired the shot, the bullet hit to the injured (P.W. – 6) and Anil Paswan also fired a bullet which hit P.W. – 6.

23. On perusal of entire prosecution evidence, injury No. 2 has been caused by one Anil Paswan and not by the appellant. All the witnesses i.e. P.Ws. – 1 to 4, P.W. – 5 and P.W. – 6 in one tone stated that the injured sustained bullet injury on his face, due to firing of the appellant, but the medical evidence is not corroborating with the oral



evidence of anyone of the witnesses to prove the guilt of the appellant.

24. As already stated (supra), there is no material available on record as to the mode and manner of the investigation conducted by the Investigating Officer in this case. The other accused Anil Paswan and Umesh Ram died during the pendency of the trial and the criminal case against them got abated.

25. The evidences of P.Ws. – 5 & 6 disclose that the incident took place because the mother of the appellant was murdered and that the appellant had suspected that P.W. – 6 had committed the murder of his mother, therefore, this Court considers that there is sufficient motive for the injured and P.W. – 5 to file a false criminal case against the appellant, in view of the dispute between the family members of the appellant and P.W. – 6.

26. The cardinal principle of Criminal Law are that the prosecution has to prove the guilt of the accused beyond all reasonable doubt and the accused shall be presumed to be innocent until the guilt is proven. Furthermore, it is for



the prosecution to connect the accused with that of the crime. In the present case the prosecution has miserably failed to connect the appellant with that of the crime by bringing the sufficient evidence on record.

27. There is no material available against the appellant to convict him for the offences punishable under Section 307 of the IPC and for the offences punishable under Section 27 of the Arms Act and, therefore, the judgment of the trial Court is liable to be set aside.

28. In view of the aforesaid discussions, the conviction of the appellant for the offence punishable under Section 307 of the IPC and Section 27 of the Arms Act is not tenable and the conviction and sentence of the trial Court dated 13.01.2004 in connection with Sessions Trial No. 161/1986/338/2001 GR No. 1322/1984 in the file of Learned Additional Court No. 2, Patna (Fast Track Court) is hereby set aside and the appellant is hereby acquitted.

29. The record reveals that the appellant was enlarged on bail on 01.02.2006, The bail bonds of the appellant shall stand cancelled.



29. In result, Criminal appeal is allowed.

(G. Anupama Chakravarthy, J)

Shanu/-

AFR/NAFR	NAFR
CAV DATE	NA
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