

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.398 of 2021**

Arising Out of PS. Case No.-42 Year-2018 Thana- KINJAR District- Jehanabad

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KIRAN KUMARI W/O SUNIL KUMAR RESIDENT OF VILLAGE
THAKURI, POLICE STATION-PALIGANJ, DISTRICT-PATNA.

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. ANURAG SHARMA @ ANU S/O -LATE RAJENDRA SHARMA
RESIDENT OF VILLAGE SIDHIPUR, POLICE STATION JEHANABAD
KALPA), DISTRICT- JEHANABAD

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Abhimanyu Sharma, Adv.

For the Respondent/s : Ms.Km. Shashi Bala Verma, APP

For respondent no. 2 : Mr. Ajay Kumar Thakur, Adv.

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE KHATIM REZA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 28-03-2024

1. Heard Mr Abhimanyu Sharma, the learned
Advocate for the appellant and Mr Ajay Kumar
Thakur, the learned Advocate for the Respondent



No. 2. The State has been represented by the learned APP.

2. This appeal is directed against the judgment 09.03.2021 passed by the learned Additional Sessions Judge -VIII, Jehanabad in Sessions Trial No. 101/2019 arising out of Kinjer P.S. Case No. 42/2018 whereby the respondent no. 2 has been acquitted of all the charges for the offence under Section 307/120-B of the Indian Penal Code and Section 27 of the Arms Act.

3. The appellant had lodged the First Information Report on 09-04-2018 at Paras Hospital, Patna, wherein, she had alleged that while she along with her husband (PW1) was coming back home on motorcycle, two persons on a motorcycle chased them and the pillion rider fired at her husband. The firing was resorted for a number of times. In fact, she too was hit by the firing by the miscreants. Both the accused persons



fled away towards Imamganj. In the meantime, according to the appellant (PW2), many persons of the local area arrived and with whose help her husband could be brought to hospital. Both the miscreants were in the age group of 25 years. She also claimed that she would identify the miscreants if they are shown to her.

4. On the basis of the afore-noted *fardbeyan* statement of PW2, a case vide Kinjar PS Case No. 42 of 2018, dated 09-04-2018 was instituted for offences under Section 307 of the IPC and Sections 25(1-b)a, 26 and 27 of the Arms Act against unknown.
5. No clue could be found about the miscreants.
6. Later, after six months of the occurrence, the husband of the appellant (PW1), gave his statement under Section 164 Cr. P. C., alleging that he had become unconscious at the time of lodging of the First Information Report and he



remained under continuous treatment for about six months at Vellore, and therefore, the respondent No. 2 could not be named either by him or by his wife (PW2). It was only then that the respondent No. 2 was made an accused in the case and was put up on trial.

7. The Trial Court after having examined five witnesses on behalf of the prosecution, acquitted the respondent No. 2 of all charges.

8. We have gone through the records of this case rather carefully as the doctor (PW5), who had examined PW1, had found several gunshot injuries on him. The claim of the prosecution is that because of the assault perpetrated by the miscreant/ respondent No. 2, PW1 had become wheelchair-bound. From the deposition of PW1, it becomes very clear that after he was shot at, he was referred to Paliganj and from there to Paras Hospital, Patna where he remained unconscious for



10 days. He regained his consciousness after 10 days, but was under treatment in the same hospital for about a month. It was only thereafter that he went to Vellore and stayed there for six months. It further appears from the deposition of the Investigator (PW3) that the statement of PW1 was recorded on 27-04-2018, i.e. after 17 days of the occurrence, in which he did not name anybody as the assailant.

9. Apart from this, what has caught our attention is that admittedly, the respondent No.2 is the son-in-law of one Janardan Sharma who is the cousin of PW-1 and who stays only five meters away from the house of PW-1. When this was the relationship between respondent No. 2 and PW's 1 and 2, it does not appear to be believable that PW-2 would not have identified respondent No. 2 when she had lodged the *fardbeyan* statement or had given her further statement. Some persons were



suspected to have committed the offence on the basis of the physiognomy provided by PW-2. 12 such persons were interrogated. Their telephone numbers were put under surveillance. They were found to be somewhere near the place of occurrence at the time of occurrence. However, surprisingly, when the telephone number of respondent No. 2 was put to the same scrutiny, he was not found to be in or around the place of occurrence at the time when the occurrence took place. Several suggestions were given to both PW's 1 and 2 about the possible reason for some persons to have attacked PWs 1 and 2 because of some grudge in the past. However, those were denied by PW's 1 and 2. It, therefore, appears that after six months of the occurrence, for some reason or the other, respondent No. 2 has been named by PW1. This makes the prosecution case highly doubtful.



10. There is nothing on record to disbelieve the deposition of PW3 that he had recorded the statement of PW1 during the period of his convalescence at Paras Hospital. According to the own admission of PW1, he had recovered his consciousness after about 10 days. Not referring to respondent No. 2 in such a statement after 17 days of the occurrence, clearly illustrates that for some obvious purposes, a new story has been introduced about PW1 having given 10 lakhs Rupees to respondent No. 2 for the purposes of marriage of his sister which he wanted to appropriate.

11. The relationship between respondent No. 2 and PW1 was very cordial. The Investigator, during the course of investigation learnt that PW1 had got a lady teacher transferred to a different school and after dropping his wife (PW2), he used to drop that lady teacher. After her marriage, the in-laws



of that teacher protested against the close association of PW1 with her. This could be one of the reasons for the attack on PW1. PW1 was also involved in organizing a committee through which he had garnered several crores of rupees which he had invested in some business. This could also have been the reason for somebody to vent out his anger against PW1.

12. The Supreme Court on number of occasions has clarified that it is not acceptable that the main accused person would be avoided to be arraigned as an accused and person with whom there is enmity would be named as an accused, especially when the maker of the FIR or his relative has been injured in the occurrence. However, in the present case, neither PW1 nor his wife (PW2) had any idea as to who were the miscreants. It was only later that PW1 decided to frame respondent No. 2. The reason for such shift in the stand remains



inexplicable to us. This perhaps was the sole ground for the Trial Court to disbelieve the prosecution case.

13. So far as the accusation against respondent No. 2 is concerned, we do not find the reasoning of the Trial Court to be perverse on any account. It is difficult to accept the version of PW1 that it was respondent No. 2 who had shot at him and also at his wife (PW2). It appears that PW1 chose to implicate respondent No. 2 much later and was unsuccessful at that.

14. Finding no merit in this appeal, we dismiss the same.

(Ashutosh Kumar, J)

(Khatim Reza, J)

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shyambihari

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