

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.120 of 2006

1. Lakshman Choubey, son of Late Aditya Narayan Choubey
2. Mithilesh Choubey, son of Lakshman Choubey
Both residents of Village-Rajdiha, P.S.-Dumraon, District-Buxar

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajesh Kumar
For the Respondent/s : Mr.App.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 13-03-2024

Heard Mr. Ramakant Sharma, learned senior
counsel for the appellants and Mr. Abhay Kumar, learned
A.P.P for the State.

2. The present appeal has been filed against
the judgment of conviction dated 15.02.2006 and order
of sentence dated 16.02.2006 passed by learned 2nd
Assistant Sessions Judge, Buxar in connection with
Sessions Trial No. 273 of 2003, arising out of Dumrao
P.S. Case No. 101 of 2000, whereby and whereunder
the appellants were found guilty and convicted for the



offences punishable under Sections 307/34 of the Indian Penal Code and further appellant Mithlesh Kumar Chaubey was further convicted for the offences punishable under Section 27 of the Arms Act and they were sentenced to undergo rigorous imprisonment for ten years for the offence punishable under Sections 307/34 of the I.P.C and a fine of Rs. 5000/- and in case of non-payment of fine, the appellants were further directed for simple imprisonment for a period of three months each. The appellant Mithilesh Kumar Chaubey was further sentenced to undergo rigorous imprisonment for three years under Section 27 of the Arms Act and a fine of Rs. 1000/- and for non-payment of fine, he was further directed to undergo simple imprisonment for one month. The sentences were directed to run concurrently.

3. The prosecution case as per the F.I.R is that the informant Brahmeshwar Nath Choubey gave his *fardebayan* to the effect that at about 8:45 P.M. when the informant was sleeping with her daughter in the *Aangan*,



the appellant Lakshman Choubey told the informant from the roof-top to compromise the case filed by him, otherwise he would have to face the consequences. When the informant denied to compromise the case, appellant No. 1 Lakshman Choubey ordered his son appellant No. 2 Mithilesh Choubey to kill the informant upon which, appellant Mithilesh Choubey fired from his pistol to the informant which did not hit the informant. The informant thereafter went to the room to save himself. The police came thereafter at the spot and registered a case against the appellants.

4. On the basis of the aforesaid *fardbeyan* of the informant, Dumraon P.S. Case No 101 of 2000 was registered against the appellants for the offences punishable under Sections 307/34 of the Indian Penal Code and Section 27 of the Arms Act.

5. After completion of the investigation, finding the case true, the police submitted charge sheet against the appellants for the offences punishable under Sections



307/34 of the Indian Penal Code and Section 27 of the Arms Act and thereafter cognizance was taken in the aforesaid sections against the accused appellants. Thereafter, the case was committed to the Court of Sessions for trial.

6. During the course of trial, altogether four witnesses were examined on behalf of the prosecution.

7. P.W 1 Brahmeshwar Nath Choubey is the informant of the case who has stated in his examination-in-chief that on the alleged date of occurrence, while he was sleeping with his daughter in the *Aangan*, appellant Lakshman Choubey told him to compromise the case and when he denied to compromise the matter, appellant Lakshman Choubey ordered his son appellant Mithilesh Choubey to kill the informant (P.W. 1), whereupon appellant Mithilesh Choubey fired from his pistol to the informant (P.W. 1) but it did not hit him. The police thereafter came at the place of occurrence and recorded the statement of the informant (P.W. 1). This P.W. has



stated in his evidence that appellants are agnates and at earlier point of time, criminal as well as civil cases were pending against them.

8. P.W. 2 Rajkali Devi is the mother of the informant (P.W. 1) and she has stated that on the alleged date and time of the occurrence she was also sitting in the *Aangan* and informant (P.W. 1) was sleeping with his daughter when at about 9:00 P.M. appellant Lakshman Choubey told him to compromise the case and when the informant (P.W. 1) denied to compromise the case, appellant Lakshman Choubey ordered appellant Mithilesh Choubey to kill the informant (P.W. 1), whereupon Mithilesh Choubey fired from his pistol from the roof-top upon the informant which did not hit him. This witness in her cross-examination has accepted this fact that appellants are agnates and there is long standing land dispute between the parties and civil and criminal cases are pending between them.

9. P.W. 3 Vandana Devi is the wife of the



informant (P.W.1) and she has stated in her examination-in-chief that on the alleged date and time of the occurrence, she was taking her dinner and her husband (P.,W 1) was sleeping with his daughter when at about 9:00 P.M, appellant Lakshman Choubey told her husband (P.W. 1) from the roof-top to compromise the case and when he denied to compromise the case, appellant Lakshman Choubey ordered his son Mithilesh Choubey to kill her husband (P.W. 1) whereupon Mithilesh Choubey fired from his pistol which did not hit her husband. The police came at the spot and arrested the appellants. In her cross-examination, this witness has accepted that there is a land dispute between the parties. This witness has further stated that on hearing gunshot firing, the villagers assembled at the place of occurrence.

10. P.W. 4 Ram Prabodh Yadav is the Investigating Officer of the case who has stated in his examination-in-chief that while he was coming after



doing investigation of another case, he heard sound of firing at Village-Rajdiha, then he went to the place of the occurrence, recorded the statement of the informant. However, he has also disclosed in his evidence that before lodging the present fardbeyan, he has also taken fardbeyan of the daughter of the accused namely Seema Kumari and registered Dumrao P.S. Case No. 100 of 2000 against the informant for the offence punishable under Section 307 of the Indian Penal Code. He further disclosed that there was no recovery on the place of occurrence though there was recovery in connection with Dumaro P.S. Case No. 100 of 2000 from the roof-top of Sachidanand Choubey. This witness in his evidence has stated that during search, he did not find any arms from the house of the appellant.

11. Mr. Rama Kant Sharma, learned senior counsel appearing on behalf of the appellants has submitted that appellants and the informant are agnates and before registering the present case, the appellants'



side has also filed a case against the informant. There is a long standing land dispute between the parties. Admittedly, the informant has not received any gunshot injuries. The P.W. 3 has stated in her evidence that on hearing gunshot injuries, the villagers assembled at the place of occurrence but during the course of investigation, no independent witness has come forward to claim himself to be the eye witness to the occurrence. All the prosecution witnesses are closely related to each other and are highly interested witnesses. Hence, in the absence of any independent witness or material exhibit, the evidence of these witnesses cannot be relied upon to prove the case as against the appellants.

12. From perusal of the records and on going through the evidences, it appears that both sides are agnates and there is a long standing land dispute between the parties. Admittedly, the informant has not received any gunshot injuries. The Investigating Officer has not found any empty cartridge from the place of



occurrence. There is counter version of the occurrence and the case of the appellants' side against the informant is at earlier point of time. All the prosecution witnesses except P.W. 4 (Investigating Officer) are closely related to each other and are highly interested witnesses, hence their evidence cannot be relied upon in the absence of any independent eye witness or reliable evidence. During the course of investigation, not a single witness has come forward to claim himself to be the eye witness to the occurrence. Hence, the prosecution has failed to establish its case beyond the shadow of all reasonable doubts. Therefore, the benefits of doubt goes in favour of the appellant.

13. In that view of the matter, the judgment of conviction dated 15.02.2006 and order of sentence dated 16.02.2006 passed by learned 2nd Assistant Sessions Judge, Buxar in connection with Sessions Trial No. 273 of 2003, arising out of Dumrao P.S. Case No. 101 of 2000, is set aside.



14. The appellants are acquitted of all the charges after giving benefits of doubt.

15. The appellants are all along on bail. They are discharged from the liabilities of the bail bonds.

16. Accordingly, the appeal stands allowed.

(Sunil Kumar Panwar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	N/A
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