

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.93 of 2006

Subhash Singh son of Thakur Singh, resident of Village-Karki, P.S.-Ariyari,
District-Sheikhpura

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vipul Sinha, Amicus Curiae
For the Respondent/s : Mr. APP.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 28-02-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae*
and learned A.P.P for the State.

2. The present appeal has been filed against the judgment of conviction dated 17.01.2006 and order of sentence dated 18.01.2006 passed by learned Additional District Judge, F.T.C-III, Sheikhpura in connection with Sessions Case No. 1191 of 1999, arising out of Ariyari P.S. Case No. 13 of 1999, whereby and whereunder the appellant was found guilty and convicted for the offences punishable under Section 307 of the Indian Penal Code and Section 27 of the Arms Act



and he was sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 307 of the I.P.C and further rigorous imprisonment for three years for the offence punishable under Section 27 of the Arms Act. Both the sentences were directed to run concurrently.

3. The prosecution case as per the F.I.R is that the informant Parshadi Manjhi gave his *fardbayan* on 27-01-99 at 3:00 P.M to the effect that at about 10:00 a.m. on the same very day, when he was watching the field of village-Karki and was at Aahar Khanda, the appellant Subash Singh came there and stated that he would uproot *khesari* crop and when the informant did not agree, the appellant opened fire which caused injury on his left temple. On raising alarm, the family members and villagers reached at the place of occurrence and thereafter the informant was taken to the hospital for treatment.

4. On the basis of the aforesaid fardbeyan of



the informant, Ariyari P.S. Case No. 13 of 1999 was registered against the appellant for the offences punishable under Sections 307, 379, 511 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 appellant for the offences punishable under Sections 324 and 307 of the Indian Penal Code and Section 27 of the Arms Act and thereafter cognizance was taken in the aforesaid sections against the appellant. Thereafter, the case was committed to the Court of Sessions for trial.

6. During the course of trial, out of seven cited prosecution witnesses, altogether five witnesses were examined on behalf of the prosecution. The Investigating Officer namely, Surendra Rai and the Doctor namely, K.N. Singh could have not been examined by the prosecution in this case.

7. On behalf of the defence one witness was examined before the Trial Court.



8. The learned Trial Court, after examining the witnesses had found the appellant guilty and convicted him for the offences punishable under Section 307 of the Indian Penal Code and Section 27 of the Arms Act and the appellant was sentenced to undergo rigorous imprisonment for seven years for the offence under Section 307 I.P.C and further for a period of three years for the offence punishable under Section 27 of the Arms Act. Both the sentences were directed to run concurrently.

9. P.W.1 Parshadi Manjhi is the informant of this case who has stated in his examination-in-chief that he was paid by the villagers for watching the field and he was doing this job for the last 15-16 years and after sustaining firearm injury in this case, he left the job. This witness has also stated that he had no enmity with the appellant. He has stated that his wife arrived at the scene of the occurrence because she used to bring meal for him and in that course she had come on the date and



time of the occurrence also.

10. P.W. 2 Nathiya Devi is the wife of informant (P.W. 1), who has stated that she had gone to the place of occurrence with meal for the informant and she had seen the appellant fleeing from the scene of the occurrence with pistol in his hand and with the help of others, she had brought her injured husband to the hospital.

11. P.W.3 Sukhdeo Manjhi has not supported the case of the prosecution and he has been declared hostile.

12. P.W. 4 is Chhotelal Manjhi. This witness has been tendered for Cross-examination. The defence has obtained from him that he knows nothing about the occurrence. It is worth mentioning that this witnesses (P.W.4) is the attesting witness on the recording of *fardbayan*.

13. P.W. 5 is Mundrika Manjhi. This witness has also been tendered by the prosecution for Cross-



examination and against the question of the defence, one line answer has been given by him to the effect that he has come to the Court on notice.

14. Mr. Vipul Sinha, learned *Amicus Curiae*, in defence of the appellant has submitted that admittedly the informant Prasadi Manjhi (P.W. 1) was the watchman of Lakhan Singh and the evidence on record suggests that a case is pending between Lakhan Singh and the family members of the appellant from before. Hence, on this score, the prosecution has not been able to establish its case beyond shadow of reasonable doubt and the preponderance of probability is against the prosecution case. Moreover, P.W. 2 is wife of the informant whereas P.W. 3 has become hostile and P.Ws. 4 and 5 are tender witnesses. Learned *Amicus Curiae* has further contended that the Investigating Officer and the Doctor have not been examined in this case. Hence, in the absence of non-examination of the Doctor, the injuries have not been proved and there is nothing on



the record on the basis of which it can safely be said that injuries sustained by the injured were caused by firearms. Moreover, except informant (P.W. 1) and his wife (P.W. 2), no witness has supported the case of the prosecution and in the absence of examination of the Investigating Officer, the place of occurrence was not proved.

15. From perusal of the records and on going through the evidences, it appears that none of the prosecution witnesses except the informant (P.W. 1) have seen the occurrence. Whatever have been stated by the witnesses in their examination-in-chief was not contradicted in absence of evidence of Investigating Officer. The right of bringing on record the contradictions in the statement of witnesses made before the Investigating Officer is a very valuable right of the accused and by showing that, the witness has made improvements or has given evidence, which contradicts his earlier statement, the accused is able to satisfy the



Court that the witness is not reliable witness. In my view, the Investigating Officer is a material witness and non-examination of the Investigating Officer has definitely prejudiced the appellant since the appellant lost opportunity to cross-examine the Investigating Officer on point of seized materials, visit of I.O. at the place of occurrence and contradictions in the statement of prosecution witnesses before the Investigating Officer. The non-examination of the Doctor has also made the case of the prosecution doubtful as the injuries sustained by the injured (P.W.1) is fatal or not is to be proved by the evidence of the Doctor. There is also long standing dispute between Lakhan Singh who has employed the informant (P.W. 1) as Watchman and the family members of the appellant. Hence, the prosecution has failed to establish its case beyond the shadow of all reasonable doubts with respect to the manner and motive of the occurrence and the injuries sustained by the victim.



16. In that view of the matter, the judgment of conviction dated 17.01.2006 and the order of sentence dated 18.01.2006 passed by the learned Additional District Judge, F.T.C-III, Sheikhpura in connection with Sessions Case No. 1191 of 1999, arising out of Ariyari P.S. Case No. 13 of 1999 is set aside and the appeal is allowed.

17. The appellant is acquitted of all the charges.

18. The appellant is all along on bail. He is discharged from the liabilities of the bail bonds.

19. This Court expresses the appreciation for the efforts taken by Mr. Vipul Sinha, learned *Amicus Curiae* who had insisted for assisting the Court in the matter. This Court directs the Patna High Court Legal Services Committee to pay to Mr. Vipul Sinha a sum of Rs. 6000/-(Six Thousands) towards his professional fee for extending valuable assistance to this Court in deciding this appeal.



20. Accordingly, the appeal stands allowed.

(Sunil Kumar Panwar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14/03/2024
Transmission Date	14/03/2024

