

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.424 of 2011

1. Wakil Tanti, Son of Chhathu Tanti.
2. Mukesh Tanti, Son of Chandradeo Tanti.
3. Ram Jee Tanti, Son of Nago Tanti.
4. Janardan Tanti, Son of Nago Tanti.
5. Chandradeo Tanti, Son of Mithu Sharma.
6. Jhalendar Tanti, Son of Chhathu Tanti.
7. Jay Jay Ram Tanti, Son of Madan Tanti.
8. Mahanth Tanti, Son of Mithu Sharma.
9. Shambhu Tanti, Son of Bhutto Tanti.

All are Resident of Village- Farreh, P.S.- Choutham, District- Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Sumiran Rai, Adv.

For the Respondent/s : Ms. Anita Kumari, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 28-02-2024

Heard Mr. Ram Sumiran Rai, learned counsel appearing for the appellants and Ms. Anita Kumari, learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellants against the judgment and order of conviction dated 29.01.2010 passed by Sri. Jay Ganesh Singh, Additional Sessions Judge, F.T.C.-5th, Khagaria in S. Tr. No. 01 of 2002 arising out of Choutham P.S. Case No. 117 of 2000, G.R. No. 834 of 2000 convicting the appellant Chandradeo Tanti under Section 147 Indian Penal Code (for short IPC), appellant Janardan Tanti under Section 148 and 324 IPC and rest nine accused were convicted under Sections 147 and 323 IPC. On the point of



sentence, instead of ordering for imprisonment to the convicts/appellants persons, giving the benefit of Section 4 of Probation of Offenders Act by trial court had released them after furnishing probation bond of Rs. 3,000/- without sureties. Convicts Surendra Tanti and Mithu Sharma were released under the provision of Section 3 of the Probation of Offenders Act after due admonition with direction to resist from the same type of activity in future.

3. The prosecution case in brief is that, on 11.08.2000 at about 8:15 a.m., informant was cleaning his land to prepare *gilawa* for erecting walls, accused Mithu Sharma came there and obstructed him for doing so as the same land is Gairmazarwa Aam land. After a while, FIR named accused persons laced with pistol and lathi, came there and started to abuse and assault to the informant. His elder brother, namely, Birendra Kumar Ray came for rescue him but appellant nos. 4 and 5 made fire upon him due to which he sustained gunshot injury on the palm of right hand. On hearing the noise, informant's nephew, namely, Hemant Kumar Rai also made firing from his licensee gun to create fear but later on informant came to know that the gun shot, which was opened by his nephew has hit to Mithu Sharma.



4. On the basis of written report given by informant Narendra Kumar (P.W.-5) Choutham P.S. Case No. 117 of 2000 was registered against the appellants. After completing the investigation, police submitted charge-sheet thereafter learned chief judicial magistrate took cognizance against the appellants and the case was committed to the Court of session for trial and disposal and charges were framed against the appellants.

5. In this appeal, point for consideration is whether the prosecution is able to prove the charges levelled against the appellants beyond the shadow of reasonable doubt or not.

6. To substantiate the charges leveled against the appellants, altogether seven witnesses were examined by the prosecution as P.W.-1 Niraj Kumar Ray, P.W.-2 Swadesh Suman, P.W.-3 Hemant Kumar Ray, P.W.-4 Birendra Kumar Ray (injured eye witness), P.W.-5 Narendra Kumar Ray (informant as well as injured eye witness), P.W.-6 Dr. Devanandan Paswan and P.W.-7 Bharath Pandey (Investigating Officer),

7. Learned counsel appearing on behalf of the appellants argued that evidence of witnesses suffered from serious infirmities and contradictions, which makes their case



highly doubtful, totally unreasonable and untrustworthy. In the background of the alleged occurrence, there was land dispute, which is clearly apparent from the FIR itself as the appellants have forbade the informant for cutting the soil from the gairmazura land. As per FIR, members of both sides have sustained injury as nephew of the informant, namely, Hemant Kumar Rai (P.W.-3) had also opened fire with a licensee pistol upon Mithu Sharma, and the same fact has come in para-6 of his cross-examination. All the prosecution witnesses except P.W.-6 and P.W.-7, are the interested witnesses as they belong to the same family and their evidence is not trustworthy.

8. Learned APP appearing for the state argued that the impugned judgment in question is based on cogent and consistent evidence, which is adduced by the prosecution witnesses. Doctor (P.W.-6) is an independent witness, who found injuries on the body of the informant and Birendra Kumar Roy (P.W.-4). He has deposed clearly in para-2 of examination-in-chief that injury received by Birendra Kumar Roy was caused by fire arms and further says in para-3 of his deposition that out of four injuries on the body of informant, injury no. 3 is grievous. Both injury reports of injured persons



are proved by P.W. 6. P.W.-7 is investigating officer of the case and he also supports and corroborates the deposition of other prosecution witnesses and prosecution case. Learned trial court has rightly convicted the appellants by relying upon the evidence brought on record by the prosecution during trial. Therefore, the judgment and order assailed in this appeal requires no interference and appeal is liable to be dismissed.

9. I have gone through the entire prosecution evidence, documents, exhibits, defense evidence, medical reports in respect of injury of P.W.-4 and P.W.-5, which are proved by P.W.-6 (doctor). Evidence of all the witnesses including the injured eye witnesses i.e. P.W.-4 and P.W.-5, proved the prosecution case in respect of manner of occurrence, place of occurrence and time of occurrence. The doctor proved the medical report of P.W.-4 and P.W.-5. I reached to the findings that dispute had taken place due to land dispute and the alleged occurrence was not in a planned manner and the accused persons of this case are not aggressor.

10. After scrutinizing all the evidences, which are available on record and the impugned judgment of conviction, there is no need of interference in the said judgment. The impugned judgment is delivered on the basis of cogent and



consistent evidence and the trial court had rightly convicted the accused Chandradeo Tanti u/s 147 IPC and accused Janardan Tanti u/s 148 and 324 IPC. And rest of the accused persons under Sections 147 and 323 of the Indian Penal Code. Convicted accused, namely, Surendra Tanti and Mithu Sharma were released under provision of Section 3 of the Probation of Offenders Act from custody after due admonition with direction to resist from these activities in future. And other remaining convicted accused-appellant are directed to be released on furnishing probation-bond of Rs. 3,000/- without sureties under the provision of Section 4 of the Probation of Offenders Act. This Court does not find any infirmity in the order impugned. Being the first offence committed by the appellants, trial court released the appellants after giving them the benefit of Section 4 of Probation of Offenders Act. I find no reason to disbelieve the judgment of conviction passed by the trial court.

11. Accordingly, the instant appeal is hereby dismissed.

(Sunil Kumar Panwar, J)

Sushma/-

AFR/NAFR	NAFR
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