

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.285 of 2006

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UPENDRA KUMAR MANDAL @ OPI MANDAL @ UPENDRA MANDAL son of Sakhichand Mandal, resident of village Babu Tola, Murgidih, P.S. Banka, Distt. Banka

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vipul Sinha (Amicus Curiae)
For the Respondent/s : Mr. A.M.P. Mehta

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 11-03-2024

Heard Mr. Vipul Sinha, learned Amicus Curiae
appearing for the appellant as well as Mr. A.M.P. Mehta,
learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant
challenging the judgment of conviction and order of
sentence dated 17th day of April, 2006 passed by Sri.
Shambhu Nath Singh IV, Bhagalpur in Sessions Trial no.
2/1993 and 184/2004 whereby and whereunder appellant
has been convicted for the offence punishable under
Sections 307/34 and 342/34 of the Indian Penal Code. He
has been sentenced to undergo rigorous imprisonment for
five years and to pay a fine of Rs. 5,000/- under Section
307/34 of the Indian Penal Code and Rigorous



Imprisonment for one year under Section 342/34 of the Indian Penal Code and both the sentences shall run concurrently.

3. An FIR was registered on the basis of fardbeyan given by injured/informant, namely, Mukesh Kumar, (P.W.-6) under Sections 307, 324, 341/34 of the Indian Penal Code and Section 27 of the Arms Act.

4. The prosecution case, in short, is that at 8 P.M. on 24.01.1992, informant was watching television at his house in the meantime accused Neeru Gangota came to his house for calling him to Durga Sthan. He left his house with him for Durga Stan where he saw that appellant and two more persons standing there. It is further alleged that all the three accused persons surrounded him and accused Neeru Gangota fired upon him which hit his back. On hearing the sound of firing and hulla raised by the informant, his uncle Arjun Prasad Yadav (P.W.-5) came there and he along with Shobha Nath Mishra (P.W.-4) brought the injured/informant to hospital for treatment.

4. On 24.1.1992 fardbeyan of the injured/informant was recorded by the police at Hospital as



Kotwali P.S. Case No. 53 of 1992 dt. 24.1.1992 and ASI Sudhir Singh was directed to investigate the case. After completing the investigation, I.O. Sudhir Singh has submitted chargesheet against three accused persons including the appellant under Sections 307, 324, 341/34 of the Indian Penal Code and Section 27 of the Arms Act. Thereafter cognizance has been taken and the case was committed to the court of Sessions for trial and disposal and the appellant alongwith co-accused Kishore Kumar Yadav and Ashok Kumar Yadav (both acquitted) was put on trial.

5. Charges have been framed u/s 307/34 I.P.C. and 342/34 IPC against the appellant. Trial court explained the charges to the appellant to which he pleaded not guilty and claimed to be tried.

6. To substantiate the charges leveled against the appellant, altogether seven witnesses have been examined by the prosecution. P.W.-1, Shyam Sundar Das (independent witness), P.W.-2 Rajesh Kumar Yadav (brother of the informant), P.W.-3 Navita Kumari (sister of the informant), P.W.-4 Shobha Nath Mishra (independent witness), P.W.-5 Arjun Prasad Yadav (uncle of the informant), P.W.-6



Mukesh Kumar (informant) and P.W.-7 Prahlad Kumar Ray (independent & hostile witness). Doctor and Investigating Officer were not examined by the prosecution.

7. P.W. 1, Shyam Sundar Das is independent witness. On the alleged date of occurrence he had heard the sound of firing and hulla raised by the informant thereafter he came out of his house and found that informant had sustained gunshot injury at his back and was lying on the ground. He further stated that informant's uncle, namely, Arjun Yadav with others took him to hospital for treatment. He has further stated that he had seen that four accused persons including accused Neero Mandal (deceased) and appellant were fleeing from the place of occurrence towards Ganga. He stated in para 2 of his examination-in-chief that accused Neero Mandal died.

8. P.W. 2. Rajesh Kumar Yadav (brother of the injured/informant) supported the prosecution case at length as well as evidence of P.W.-1. In para-3 of his examination-in-chief he also disclosed that accused Neero Mandal died. P.W.-3 Navita Kumari (sister of the injured/informant) is heresay witness and supported the prosecution story.



9. P.W. 4 Shobha Nand Mishra is an independent witness. He has stated that on hearing the sound of firing, he came out of the house and saw in electric light that Neeru Mandal and the appellant were fleeing from the place of occurrence. He went to injured/informant, who disclosed him that Neeru Mandal had opened fire upon him.

10. P.W. 5 Arjun Prasad Yadav is uncle of the injured/informant and he stated that it was about 8:00 P.M., he heard the sound of firing thereafter he came out of the house and saw that his nephew was lying on the ground in injured condition and he saw that accused Neeru Gangot and the appellant were fleeing from the place of occurrence. He further stated that Neeru Gangot was holding pistol in his hand. He took the injured/informant to hospital with the help of other villagers for his treatment.

11. P.W. 6 is the injured/informant and in his examination-in-chief he has fully corroborated the prosecution story. P.W.-7 Prahalad Kumar Rai is an independent witness. In his examination-in-chief he has stated that after hearing the sound of firing, he came out of the house and saw that informant was injured by gun shot.



He has not seen any accused fleeing from the place of occurrence. He has also denied his statement before the police and was declared hostile by the prosecution.

12. Fardbeyan is exhibited as Ext-1 and injury report is exhibited as Ext-2. Dr. J. Hemrom had treated the injured/informant and found two lacerated wounds caused by fire arm. Multiple gunpowder was sprinkled all around his neck and face. Opinion was reserved for want of X-ray and other reports.

13. Learned counsel appearing on behalf of the appellant has submitted that learned trial court wrongly drawn the inference that the prosecution has established the charge leveled against the appellant and illegally relied upon the evidences of here-say witnesses. No any witness is the eye witness except the injured/informant himself. Neither doctor nor the Investigating Officer were examined by the prosecution. Learned trial court has failed to consider that the allegation of firing was only against accused Neeru Gangot. No evidence has come on record to suggest that appellant was present with fire arms at the place of occurrence. P.W. 5, uncle of the informant, has stated in



para-2 of his examination-in-chief that he had seen the accused Neeru Gangot fleeing from the place of occurrence having pistol in his hand. Injured/informant has also disclosed at the place of occurrence to his uncle that Neeru Gangot had opened fire. It is further submitted that allegedly, occurrence took place at 8 P.M. and in darkness, possibility of mistaken identification could not be ruled out. In view of the evidence on record, learned court below ought to have given a reasonable benefit of doubt to the appellant. The court below acted illegally in relying upon the evidence of the prosecution witnesses in convicting the appellant and reasons given are entirely erroneous, unsound and illegal. Doctor and Investigation Officer of the case was not examined and due to non-examination of I.O. the defense has caused prejudiced at all. It is desirable that prosecution has to examine the Investigation Officer. Defense has lost the opportunity to raise the question in respect of contradictions elicited in the prosecution evidence. During cross-examination made by the defense, informant did not disclose the name of the appellant as the assailant. The learned trial Court's findings lack material



evidences, reasoning and merit. Therefore, the impugned judgment of conviction and order of sentence should be set aside. Informant has stated in para 14 of his cross-examination that Neeru Gangot had opened fire upon him, who died. In para 5 and 6 of examination-in-chief informant/injured asserted in that he was taken to Bhagalpur Hospital from where he was referred to Patna and thereafter to Vellore and then to Orissa but surprisingly save and except injury report from Bhagalpur Hospital, no other injury reports are brought on record to support the prosecution. It is submitted by learned counsel for the appellant that no any prosecution witnesses have supported the fact that the firing was done by the appellant and as such his conviction and sentence is bad in law and liable to be set aside.

14. 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 judgment of the conviction and the order of sentence is fit and proper and there is no need for interference in it. The judgment was based on consistent and



cogent evidence. Prosecution has been able to proof its case beyond all reasonable doubts, and therefore, learned trial court has rightly convicted the appellants by relying upon the evidence brought on record. Therefore, the judgment and order assailed in this appeal requires no interference and appeal is liable to be dismissed. In cross-examination, all the prosecution witnesses have stated that this appellant was also seen with the main assailant while fleeing away from the place of occurrence. As per seizure list, front metallic part of bullet was recovered from the injured at operation table while his sweater was being put off. Medical report corroborates the prosecution story as injured had received two lacerated wounds caused by gunshot.

15. I have gone through the entire prosecution evidence, documents and exhibits. Learned trial court ignored the fact that all the prosecution witnesses have reached to the place of occurrence after commission of crime and they are not the eye witness except the injured/informant, who has clearly stated in para-2 of his deposition that accused Neeru Gangot had opened fire upon him. The evidence made by the injured P.W.-6 is not



corroborated by any independent eye witnesses. Without its corroboration, conviction of the appellant is not safe. It is a prudent law that evidence for conviction should be corroborated by independent witnesses as well as eye witnesses. Doctor as well as Investigating Officer of the case was not examined by the prosecution, whose evidence was vital for determination of the case. In such situation, benefit of doubt goes in favour of the appellant. Entire medical reports are not available on record save and except report of primary treatment at Bhagalpur Hospital. The prosecution has failed to prove the charges levelled against the appellant by the consistent and cogent evidence, the appellant is entitled to get the benefit of doubt.

16. The ordeal of trial faced by the appellant since beginning of the case and considering that the prosecution has failed to prove the charges levelled against the appellant by the consistent and cogent evidence as well as defense has succeeded to raise the doubt in the prosecution version so appellant is entitled to get the benefit of doubt. The impugned judgment of conviction and order of sentence is hereby set aside and the instant criminal



appeal is allowed. The appellant is acquitted after getting the benefits of doubt and he is discharged from the liabilities of the bail bonds.

17. Mr. Vipul Sinha, learned *Amicus Curiae* was appointed to represent the appellant/accused. I put on record the words of appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 6,000/- (rupees six thousand only) to Mr. Vipul Sinha

(Sunil Kumar Panwar, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	NA
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