

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.89 of 2013

Arising Out of PS. Case No.-58 Year-2004 Thana- SAHIYARA District- Sitamarhi

Devendra Yadav S/o Sri Nathuni Yadav, Resident of Village- Mahiyar Kala,
Police Station- Sahiyara, District- Sitamarhi.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance:

For the Appellant : Mr. Amish Kumar, Amicus Curiae
For the Respondent : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 24.06.2024

Heard Mr. Amish Kumar, the learned *Amicus Curiae* appearing on behalf of the appellant and Mr. Bipin Kumar, the learned Additional Public Prosecutor for the State.

2. This appeal is directed against the judgment of conviction dated 10.12.2012 and order of sentence dated 12.12.2012, passed by the Court of learned Ad hoc Additional Sessions Judge-II, Sitamarhi, in Session Trial No. 60 of 2005, GR No. 250 of 2004, arising out of Sahiyara PS Case No. 58 of 2004, whereby the appellant has been convicted for the offences punishable under Section 307 of the Indian Penal Code and under Section 27 of Arms Act and has been sentenced to undergo rigorous imprisonment for seven years, to pay a fine of Rs. 10,000/- (rupees ten thousand) and in default of payment of



fine, to suffer further imprisonment for six months under Section 307 of the Indian Penal Code and to undergo rigorous imprisonment for three years, to pay a fine of Rs. 2,000/- (rupees two thousand) and in default of payment of fine, to suffer further imprisonment for one month under Section 27 of Arms Act. All the sentences have been directed to run concurrently.

3. The prosecution case in brief is that in the night of 26.02.2004, the informant heard the sound of firing and saw around twenty to twenty-five persons, armed with weapons, entering his house and started looting the household articles. It is further alleged that the informant identified the appellant, co-accused Nathuni Rai, Bilas Rai and his son. It is further alleged that while fleeing, co-accused person Nathuni Rai fired and the bullet hit the informant's left thigh and the appellant also fired at the informant's chest. It is lastly alleged that the accused persons assaulted informant's uncle, namely, Gaya Singh with *lathi*.

4. The fardbayan of the informant lead to registration of Sahiyara PS Case No. 58 of 2004 under Sections 147, 307, 324, 395 and 397 of the Indian Penal Code and under Section 27 of Arms Act. The charges were framed under Sections 147, 307



and 324 of the Indian Penal Code and under Section 27 of Arms Act on 30.03.2005. However, on 21.09.2010, the charges were also framed under Sections 395 and 397 of the Indian Penal Code.

5. The appellant pleaded not guilty and claimed to be trialed. The trial commenced and prosecution examined altogether six witnesses, out of whom PW-1, PW-4 and PW-2 are respectively the uncles and father of the informant, while PW-3 is the informant himself, PW-5 is the I.O. of the case and PW-6 is the doctor, who examined the injured persons.

6. Learned counsel for the appellant submits that the judgment of conviction and order of sentence passed by the learned trial Court are bad in law as well as known facts of the case and no independent witness had supported the case of the prosecution and the witnesses examined in the case are uncles and father of the informant and the informant himself and the other witnesses are the I.O. and the doctor.

7. Learned counsel for the appellant submits that as per the FIR, the informant and his uncle (PW-4) were respectively assaulted with *Nakatwa/lathi*, but even their evidence are quite contradictory to each other and the learned trial Court has failed to take note of and passed the order of



conviction and sentence and the learned trial Court has also failed to appreciate the fact that out of two eyewitness, the informant himself and the PW-4, who have given to different accounts of allegation/assault. As per informant, Nathuni Rai fired at thigh and the appellant fired at the right chest of the informant, on the other hand, the other witness, PW-4, deposed that the appellant fired at thigh and Nathuni Rai fired on the chest of the informant. The learned trial Court further failed to appreciate the evidence in respect of appellant that informant himself had stated that on account of assault his leg fractured while he himself has stated/deposed that the appellant fired at his chest, even if taken as true, the author of the injury as stated by him is not caused by the appellant's assault and bare perusal of the statement/deposition of the informant, it appears that there is major contradiction in the statement of the informant and PW-4 and other witnesses. According to the informant, the occurrence took place inside the house of the informant and according to others the informant, when came out of his house, was assaulted by the accused persons. The learned trial Court further failed to appreciate the fact that the prosecution has failed to prove the place of occurrence, the time of occurrence, the manner of occurrence.



8. Learned counsel for the appellant has relied upon the judgment dated 28.11.2023, passed in Cr. App. No. 3619 of 2023 (Special Leave Petition (CRL.) No. 5136 of 2022), in the case of ***Sivamani & Anr. Vs. State Represented by Inspector of Police.***

9. Learned counsel for the State submits that the impugned order has been passed in accordance with law and the learned trial Court has rightly convicted the appellant under Section 307 of the Indian Penal code and under Section 27 of Arms Act.

10. Having considered the facts and circumstance of the case and submissions made by learned counsel for the parties, this Court is of the view that there are inconsistencies in the evidence of prosecution witnesses, i.e., the informant and the PW-4, who have given different accounts of the allegation/assault. As per informant, Nathuni Rai fired at thigh and appellant fired on the right chest, on the other hand, the other witness, PW-4 deposed that the appellant fired at thigh and Nathuni Rai fired on the chest.

11. In this background and taking an overall view, the appeal filed by the appellant is allowed, the impugned judgment of conviction dated 10.12.2012 and order of sentence dated



12.12.2012 and imposition of fine, passed by the learned Ad hoc Additional Sessions Judge-II, Sitamarhi, in Session Trial No. 60 of 2005, GR No. 250 of 2004, arising out of Sahiyara PS Case No. 58 of 2004, are hereby set aside. The appellant is acquitted from all the charges levelled against him in the present case.

12. The appellant is on bail. He stands discharged from the liabilities of the bail bond.

13. The assistance provided by learned *Amicus Curiae* and the State is highly appreciated. Patna High Court Legal Service Committee is directed to pay honorarium to learned *Amicus Curiae* as per rule.

(Rajesh Kumar Verma, J)

Shahnawaz/-

AFR/NAFR	NAFR
CAV DATE	05.04.2024
Uploading Date	24.06.2024
Transmission Date	24.06.2024

