

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.185 of 2013

Arising Out of PS. Case No.-71 Year-2005 Thana- AGIAON BAZAR District- Bhojpur

Ranjan Singh S/O Late Lal Babu Singh Resident Of Village - Agiaon Bazar.
Police Station - Agiaon Bazar, District - Bhojpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Akhileshwar Singh, Advocate Mr. Venkatesh Kirti, Advocate
For the Respondent/s	:	Ms. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 09-12-2024

Heard Mr. Vinay Kirti Singh, learned Senior Advocate for the appellant assisted by Mr. Akhileshwar Singh and Mr. Ventatesh Kirti and Ms. Anita Kumari Singh, learned APP for the State.

2. The present appeal has been filed under Section 374(2) of Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the judgement of conviction dated 28.02.2013 and order of sentence dated 05.03.2013 passed in Sessions Trial No. 473 of 2007 in connection with Agiaon Bazar P.S. Case No. 71 of 2005 dated 21.12.2005 passed by, Adhoc Addl. Sessions Judge Ist (FTC), Ara, whereby and whereunder the appellant have been convicted for the offence under Section 307 of Indian Penal



Code and under Section 27 of the arms act and sentenced to undergo rigorous imprisonment for a period of ten years and imposed a fine of Rs. 10,000/- for the offence punishable under Section 307 Indian Penal code and on failure of payment of fine, the appellant will further sentence to simple imprisonment for three months, and for offences punishable under Section 27 of the Arms Act he has been further sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 5000/- and in default of payment of fine he shall further undergo simple imprisonment for one month.

3. The brief facts leading to the filing of the present appeal on the basis of the *fardebayan* of informant Umashankar Singh who is injured has given statement to ASI Vijay Bharat Singh of Agiaon Bazar P.S. in Piro Primary Health Centre on 21.12.2005 at 3:00 PM, that on 21.12.2005 at about 1:00 PM, when he and his cousin Jai Prakash Singh were going to *Bazar* and reached at the east side of Middle School, they saw the appellants, namely, Ram Chela, Jaggi, Subhash, Ranjan and Santosh surrounded them and asked themselves to kill informant, upon which Ranjan took out pistol and fired at him causing injury on the upper part of his chest. At that time his cousin Kamlesh Singh raising alarm fled away and the



informant in injured state entered into the school and fell down on the ground. On hearing the sound of firing, people when came there the accused persons fled away but the accused persons were searching him for killing. The family members of the informant brought informant to Piro Primary Health Centre. for treatment. He has stated that as he had injuries on the right side of the chest, so he was unable to put his signature and due to this he put his thumb impression before Baliram Singh (his father).

4. Further on the basis of Fardbayan of informant Agiaon Bazar P.S. Case no.71 of 2005 dated 21.12.2005 under Section 307/34 IPC and under Section 27 of Indian Arms Act has been registered and after investigation chargesheet against this appellant has been submitted by the Investigating Officer and kept investigation pending against rest accused persons and accordingly cognizance against this appellant has been taken by the learned Chief Judicial Magistrate, Ara. The appellant has denied the evidence of prosecution taking plea of false implication in the case and declared himself innocent.

5. The prosecution examined altogether eight witnesses, to substantiate the charges levelled against the appellant, who are namely, PW-1 Kamlesh Singh, PW-2



Baleshwar- Singh, PW-3 Shailesh Singh, PW-4 Umashankar Singh, PW-5 Ramdeo Prasad Singh (Investigating Officer), PW-6 Indradeo Narain Chaturvedi, PW-7 Dr. Dilip Kumar Pandey (Medical Officer) and PW-8 Paras Nath Singh have been examined. Out of whom PW-6 Indradeo Narain Chaturvedi and PW-8 Paras Nath Singh have not supported the case of prosecution of their evidence, hence both these witnesses have been declared hostile by the prosecution. On behalf of defence two witnesses namely, DW-1 Sheoji Pandey and DW-2 Lal Bhushan Singh have been examined.

6. PW-1, Kamlesh Singh in his examination-in-chief stated that occurrence had taken place on 21.12.2005 between 12 to 1 PM, he was going to *Bazar* along with Umashankar. He further stated that his sister Sita Kumari, Janki and Mamta had gone to Middle School for appearing in the examination. When Umashankar went in the school, Ranjan, Santosh, Ramchela, Jaggi and Subhash started altercation with Umashankar as these five accused persons were saying that the examination could not be held whereas Umashankar Singh was said to the teacher to conduct the examination. He further said that Umashankar Singh came out of the school, the accused persons surrounded him and accused persons Jaggi, Subhash,



Ramchela and Santosh caught hold Umashankar and appellant Ranjan opened fire at Umashankar causing injuries on his chest. Thereafter Umashankar fled away inside the school and he ran towards his village and returned with uncle Baleshwar Singh, Shailash Singh and others.

7. PW-2, Baleshwar Singh has stated in his examination-in-chief stated that the occurrence took place on 21.12.2005 at 12:30 AM and at that time he had gone near Middle School to get his cloth ironed. At that time, altercation started in examination hall between Umashankar and Santosh while examination was going on. He further stated that Ranjan and Santosh were saying that the examination won't be continued upon which Umashankar said that examination will be held, upon which Santosh caught Umashankar and Ranjan fired at him causing injuries on his chest. He further stated that on hearing the sound he rushed there and saw Umashankar fleeing inside the school and in the meantime many people came there and accused persons fled away.

8. PW-3, Shailesh Singh in his examination-in-chief has stated that the occurrence took place on 21.12.2005 at 12 AM and when he was in his house, Kamlesh came there saying that Ranjan and Santosh were quarreling near Middle



school. He further said that he went there and saw Santosh and Ranjan had caught hold Umashankar with his hand, upon which he objected but, in the meanwhile, Ranjan fired at Umashankar causing injury on his chest. He further stated that he and other persons brought Umashankar to Piro Hospital from where Umashankar was referred to PMCH for better treatment. He has further stated that Ranjan and Santosh were adamant to stop the examination whereas Umashankar and Kamlesh were opposing, due to which the occurrence took place and accused Ram Chela, Jaggi and Subhash were abetting Ranjan.

9. PW-4, Umashankar Singh informant-cum-injured in his examination-in-chief has stated that the occurrence had taken place on 21.12.2005 at 1:00 PM when he along with his cousin Kamlesh Singh were going to *Bazar* and reached near Middle School. He further stated that Subhash, Jaggi, Ram Chela, Santosh and Ranjan were objecting upon which he said that the examination would continue as his sister was also an examinee then he came out of the school, Subhash and Ram Chela abetted and Santosh caught him hold with his hand and Ranjan fired at him which hit at the right side of the chest and he fled away in the school and the accused persons were searching him for causing his death and in meantime alarm



raised and people of surrounding came there, accused persons fled away. He has further stated that he was brought to Piro Hospital for treatment where his statement was taken down by the Police, as due to injury his hand was not working, therefore he put his thumb impression in place of signature, in presence of his father Baliram and his father Baliram also put his signature on the Fardbeyan. He has identified his signature as Ext.1.

10. PW-5 Ramdeo Prasad Singh (Investigating Officer) who had investigated the case in his examination-in-chief had stated that on 21.12.2005, he was posted as ASI in Aglaon Bagar P.S. and on that day he received *fardbeyan* of Umashankar Singh which was recorded by Vijay Bharat Prasad in Piro Hospital and he has identified the writing and signature of Sri Vijay Bharat Prasad as Ext. 1/1. He has further stated that the then officer-in-charge handed over the investigation of the case and after receiving, he started investigation and he reached at the place of occurrence on 22.12.2005 and recorded the statement of witness Kamlesh Singh and inspected the place of occurrence. He further stated that according to him the place of occurrence is situated at Village Tar in the ground of Government Middle School which is situated 20 yards west to the temple and adjacent to the temple there is vacant field upon



which villager kept the bundle of paddy crops and adjacent to the school there is public road which runs east to west and adjacent to place of occurrence at north residential house of Santosh Kumar and at west village Tar, at south temple of Lord Shiva is situated. He further stated that the examination was going on in the school and owing to the examination the occurrence took place. He has further stated that he recorded the statement of Baleshwar Singh and statement of independent witnesses Dharikshan Singh (Head Master), Indradeo Narain Singh (Asst. Teacher), Paras Singh, Shailesh Singh and Ajit Kumar Singh. He has further stated that on 31.01.2006 he recorded restatement of the informant and after receiving supervision notes of S.P. and injury report on 02.05.06. he submitted chargesheet against Ranjan Kumar Singh keeping further investigation continued against rest accused persons.

11. PW-7 Dr. Dilip Kumar Pandey who examined the injuries of the informant had stated that on 21.12.2005, he was posted as Medical Officer in Piro Primary Health Centre, Ara and on that day at 02:30 P.M. he examined Umashankar Singh son of Sri Baliram Singh of Village Tar, P.S. Piro, District- Bhojpur and found the following injuries on the person:



i. *Penetrating wound on right upper chest associated with charring around the entrance wound was detected.*

For the mark of identification, he has found injuries- it is an old scar mark on right palm and the injuries would have been caused in his opinion within six hours by gunshot but he could not opine the nature of injury as the injured was referred for further investigation and treatment. He has identified injury report to be in his pen and signature as Ext.2.

12. On behalf of defence, DW-1 Shivji Pandey in his examination-in-chief had stated that in the month of December 2005, he was in his house and the Middle school is at the distance of 10-12 steps from his house and he has declined to know about the occurrence of firing at 12-12:30A.M. in the school and he has further declined to have any knowledge regarding firing done by Ranjan at Umashankar.

13. DW- 2 Lal Bhushan Sah has stated that the Middle School has situated adjacent to his house at south partitioned by a road seven years ago the occurrence of firing in the school had taken place or not, he had no knowledge as he had not heard any *Hullah-Gulla* and sound of firing.

14. After closure of the prosecution evidence, the



appellants were examined under Section 313 of the Cr.P.C confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any circumstance, though they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated.

15. The learned counsel appearing on behalf of the appellant submitted that the motive of the alleged occurrence was not initially mentioned in the Fardbeyan, but it was later created by PW-1 Kamlesh Singh, PW-2 Baleshwar Singh, PW-3 Shailesh Singh and PW-4 Umashankar Singh with mala fide intention in order to falsely frame the accused/appellant in this case. He further submitted that PW-2 Baleshwar Singh stated in para 8 of his cross-examination that the place of occurrence is the Khalian of Radha Rai whereas PW-4 Umashankar Singh stated that the place of occurrence is outside the school and according to Fardbeyan of informant, the place of occurrence is at east side of the Middle school and PW-1 Kamlesh Singh who was with the informant-cum-injured at the time of occurrence stated in para 7 of his cross-examination



that the place of occurrence is the Khalihan. Thus, Failure to conclusively establish the place of occurrence significantly undermines the prosecution's case. The learned counsel further submitted that the *Fardbeyan* states the accused surrounded the informant, and appellant Ranjan fired without any accused holding him. However, PW-1 to PW-4 testified in court that all accused, except Ranjan, held the informant while Ranjan fired. This contradiction regarding the manner of occurrence undermines the prosecution's case. He further submitted that the prosecution failed to produce any documentary evidence of the examination allegedly taking place at the Government Middle School, Tar. Moreover, school teachers PW-6 Indradeo Narain Chaturvedi and PW-8 Paras Nath Singh denied the occurrence.

16. He further submitted that PW-1 to PW-4, being family members, lack independent corroboration of the informant's statement. The prosecution failed to prove whether the injury was simple or grievous, and no blood was found at the scene despite the alleged gunshot wound. Additionally, PW-2 and PW-3, who were not eyewitnesses, have incorrectly testified as such, further highlighting contradictions in the prosecution's evidence. Hence, further weakening the prosecution's case. It has been contended that on this basis the



case has not been established beyond all reasonable doubt.

17. On the other hand, learned Additional Public Prosecutor has vehemently opposed these appeals and submits that there is direct allegation against the present appellant, for committing an offence under Section 307 Indian Penal code i.e., Attempt to murder on the informant Umashankar Singh. She further stated that in view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeals should not be entertained.

18. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

19. The **Hon'ble Apex Court**, in the case of ***Shivaji Genu Mohite v. State of Maharashtra, AIR 1973 SC 55***, it was held that:

“in criminal jurisprudence, it is well established that when ocular testimony is credible and instills confidence in the court, the prosecution is not obligated to prove motive. The absence of motive does not undermine the reliability of a trustworthy eyewitness. While motive holds significance



in cases relying on circumstantial evidence, it becomes less relevant when there is direct eyewitness testimony.”

20. The **Hon’ble Apex Court**, in the case of ***Sadakat Kotwar and Anr. V. The State of Jharkhand, LL 2021 SC 643***, it was held that:

“as the deadly weapon has been used causing the injury near the chest and stomach which can be said to be on vital part of the body, the appellants have been rightly convicted for the offence under Section 307. Further, it was held that nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused.”

21. On deeply studied and scrutinized all evidences, it is evident to note that in view of the judgment ***Shivaji Genu Mohite v. State of Maharashtra, AIR 1973 SC 55*** passed by the Hon’ble Apex Court, in this present case, there is adequate eyewitness testimony to establish the offence against



the accused/appellant. Hence, the learned counsel's argument that the prosecution's failure to prove motive weakens its case and the same is rejected, as the absence of motive does not affect the prosecution's case when supported by credible eyewitness. In view of the ***Sadakat Kotwar and Anr. V. The State of Jharkhand, LL 2021 SC 643*** passed by the Hon'ble Apex Court, in this present case, A knife, was used to stab the victim in the right upper chest, as documented in the injury report marked as Exhibit 2. Since there was a single bullet injury which was inflicted on a vital part of the body and there was no sign of repeated blow on informant, the prosecution has been completely successful in proving the date of occurrence, genesis of occurrence, manner of occurrence, motive of occurrence and place of incident in this case and proving the allegations levelled against beyond all reasonable doubt.

22. The Hon'ble Apex Court, in the case of ***State of U.P vs Tribhuwan, (2018) 1 SCC 90*** has laid down that, time spent in custody by a convicted persons, both as an under-trial and as a convicted person, may be considered as jail sentence awarded to him and he may get the advantage of set off under Section 428 of Cr.P.C.

23. Hence, keeping in view all the materials on



record and observation of the Hon’ble Apex Court, it is observed that in the instant case the appellant has been in judicial custody for approximately two years and the appellant has been struggling since nineteen years. The conviction of the appellant is hereby upheld and affirmed but given the long pendency of the trial and the ordered suffered by the appellant, moreover, there is no adverse report against the appellant about his conduct otherwise the same would have been brought to our notice by learned counsel for the State, so sentence of the appellant is reduced to period undergone and the appellant stands discharged of the liabilities of his bail bonds, if any.

24. Accordingly, this appeal stands partly allowed.

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.12.2024
Transmission Date	10.12.2024

