

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.769 of 2013**

Arising Out of PS. Case No.-177 Year-1999 Thana- MANJHAGARH District- Gopalganj

Saimullah @ Sanaullah S/O Late Oli Mohammad, Resident Of Village-
Phulwaria, P.S.- Manjhagarh, District- Gopalganj

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Md. Anisur Rahman, Advocate
For the Respondent/s : Ms. Anita Kumari, APP

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

ORAL JUDGMENT

Date : 12-11-2024

The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the Judgment of conviction dated 21.11.2013 and order of sentence dated 25.11.2013, to undergo rigorous imprisonment of three years and fine of Rs. 5,000/- under Section 307 of Indian Penal Code in default of fine simple imprisonment of two months and rigorous imprisonment of one year and fine of Rs. 3,000/- under Section 324 of the Indian Penal Code and in default of fine simple imprisonment of one month by the learned Additional District and Sessions Judge IV, Gopalganj (hereinafter referred to as the learned 'trial Court') in Sessions Trial No. 73 of 2010/25 of 2012 arising out of Manjhagarh P.S. Case No. 177 of 1999, GR



No. 1886 of 1999 and all the sentences have to run concurrently.

2. Heard Md. Anisur Rahman, learned counsel for the appellant and Ms. Anita Kumari Singh, learned APP for the State.

3. The brief fact leading to the filing of the present appeal, as per *fardbeyan* of the informant Harihar Choudhary (PW-1) is that on 29.10.1999 around 7:00 PM, his nephew Surendra Choudhary visited the shop of the accused, Sainullah, to purchase vegetables. While at the shop, Sainullah, along with Guddu Mian and others, dragged Surendra to their house, where they assaulted him with fists. Surendra later returned home. On the next day, i.e., on 30.10.1999, around 10:00 PM Nathuni Sharma, a villager, came to the informant's house, asking him to accompany him to Sainullah's house under the pretext of resolving the matter through a *panchayati* (village council). At Sainullah's door, several individuals, including Aziz Mian, Guddu Mian (son of Aziz Mian), Sainullah, and five others from the village, were present. Upon informant's arrival, Aziz Mian ordered the others to attack him, uttering 'SALA'. In response, Guddu Mian fired at the informant with a country-made pistol, causing bleeding injuries to his right hand, elbow, and wrist. When the informant fell on the ground, Sainullah also fired at



him, causing further injuries to his left hand, wrist, and stomach. After witnesses arrived at the scene, and the accused fled to their houses. Severely injured, informant was taken to the Sadar Hospital in Gopalganj for treatment.

4. On the basis of the Fardbeyan of the informant recorded by the police on 30.10.1999, around 3:00 P.M. Based on this, Manjhagarh P.S. Case No. 177/99 was registered on 5.11.1999, under Sections 307, 324/34 of the IPC and Section 27 of the Arms Act.

5. The learned counsel for the appellant has confined his arguments to challenge the sentence imposed by the trial court in its judgment of conviction dated 21.11.2013 and order of sentence dated 25.11.2013. He stated that the charge has not been framed under Section 27 of Arms Act ad during the investigation, police has found no fire-arm used by the accused person. Therefore, informant's story is false. The learned counsel further stated that there was enmity between the informant and the appellant and this case was lodged due to the revenge of earlier case for kidnapping and murder of Islam Mian where the co-accused was the witness. He further stated that PWs- 2,3,4,7 and 8 were hostile witnesses and the rest of the witnesses are relative of PW-1 (Harihar Choudhary), the



informant and they are interested party. He further stated that the witnesses have not supported the incident as they were not present at the place of occurrence. He further stated that Nathuni Sharma went to the place of occurrence with the informant (Harihar Choudhary) and he has not been examined and other independent witnesses have also not been examined i.e., the villages who were present in the panchayati. He further stated that PW-9 Dr Ashok Kumar member of the medical board has stated that the injury was simple. He further stated that Investigating Officer of the case has not been examined and place and time of occurrence has not been proved. Based on the aforementioned contentions, the counsel asserts that the trial court's conviction and sentencing cannot be upheld beyond all reasonable doubt.

6. Before the Trial Court, prosecution examined nine witnesses in this case.

7. PW- 2 Manager Sharma, PW-3 Yasin, PW-4 Parma Sharma, PW-7 Habibullah Ansari and PW-8 Md. Kashim, all they have been declared hostile and denied to witness the alleged incident.

8. PW-1 Harihar Chaudhary, informant of the case stated in his examination-in-chief that it was 10 AM on the



day of the alleged occurrence. At that time, he was at his door Nathuni Sharma came to him and asked to go with him because Aziz Mian, Guddu Mian and Sainullah (accused) were calling him for Panchayati. Earlier to this occurrence, nephew of the informant while he was going to purchase vegetables, these accused persons have assaulted him at their door for which a Panchayati was going to be held. At the door of Nathuni Sharma, the informant reached there, Aziz Mian, Sainullah Mian, Guddu Mian and several over persons were present there. Aziz Mian ordered the other accused persons to assault him abusing him as '*SALA*'. Whereupon Guddu Mian accused named in the *fardbeyan* fired upon the informant by country made Pistol which caused injury on his right hand. Thereafter Sainullah the accused (facing trial in the case) fired at the informant by means of country made pistol which caused injury on his left hand and on stomach. The informant sustaining Injury became senseless. He regained sense, he found himself in the hospital. In the hospital, the Police came and took his statement over which he put his L.T.I. along with his signatures of witness Shyam Dubey, in cross-examination PW-1 has further stated that a Criminal case was lodged against him regarding kidnapping and murder of Ishlam Mian which is still pending.



The accused/appellant Sainullah Hian had filed a case of kidnapping against him. Earlier to this occurrence, Aziz Mian co-accused (deceased) was a witness in the case of kidnapping of Ishlam Mian. Aziz Mian has been murdered. In that case, three accused persons have been sentenced to life imprisonment and the case is pending against the rest accused persons. At the place of the occurrence, he did not take attempt to run away when the accused persons took out their country made pistol. He was not caught by anyone. He was fired from the distance of two Lagi sustaining injury by second fired he fell down on the ground.

9. PW-1, in his cross-examination has denied the fact to depose falsely and lodged false case against the accused persons because Aziz and Sainullah were witnesses in a case of murder of Ishlam Mian filed against him and he has further denied the suggestion of defence to murder Aziz Mian because he was adamant to depose against him in a case of murder of Islam Mian.

10. PW-5 Rameshwar Choudhary stated in his examination-in-chief that at the time of the alleged occurrence at about 10 AM, he was at his door along with Harihar Choudhary (PW-1) had gone to the door of Nathuni Sharma,



Guddu, Aziz Sanaullah and others were present there. He went there in order to make enquiry while earlier occurrence had taken place, thereafter Aziz Mian ordered the other accused persons to assault Harihar Chaudhary (Informant), whereupon Guddu Mian fired at Harihar Choudhary with his gun. The accused/appellant Sainullah also fired at Harihar Choudhary which caused injury on his stomach and due to sustaining injury, he fell down on the ground. Thereafter, the witness PW-5 and other took the injured (Harihar Choudhary) to hospital for medical treatment, where the police came and his statement was recorded.

11. PW-5, in his cross-examination has stated that Harihar Choudhary is his cousin brother and his own brother Bhola Choudhary who has been convicted in the case of murder of Aziz Mian. PW-5 has further stated that the accused persons made a firing at a distance of about 20-25 step. At that time, he was also standing there with Harihar Choudhary (PW-1) but he himself did not sustain any bullet injury. He further denied the fact to depose falsely because of depositing evidence as by Aziz Mian and others in murder case filed against Harihar Choudhary (PW-1).

12. PW-9 Dr. Ashok Kumar who was posted as



Medical Officer at Sadar Hospital Gopalganj on 31.05.2000. He stated in his examination-in-chief that on the order of Civil Surgeon, Gopalganj, a medical board was constituted of which he was one of the members of the Medical Board, and it may be mentioned that the Medical Board was constituted after about six months. On 31.05.2000 at about 10 AM, the Medical Board examined the injured Harihar Choudhary (PW-1) S/O Sita Choudhary of Village Phulwaria, P.S. Manjhagarh District Gopalganj this was done under the supervision of K. C. Singh Munda, Medical Deputy Superintendent, Gopalganj. The following injuries were found on the person of injured Harihar Choudhary—

(1) Pea size elevated spot on the dorsum of left index finger, on the dorum of Second metacarpophalangeal joint, posterior aspect of left Wrist joint above steloid process of ulna, on front of middle of right forearm, lower fourth of right forearm and anterolaterally, on palmar aspect of right thumb and on front of upper abdomen.

Advised - (i) X-ray A.P. view of abdomen
(ii) X-ray A.P. and lateral view of left forearm including hand.
(iii) X-ray A.P. and lateral view of right forearm including hand.

Radiological findings-



X-ray plates no. 10, 11 and 12 dated 31.5.2000 held at Mahabir X-ray at Gopalganj showed two shots on middle of right forearm and one shot near proximal phalanx of right thumb, two shots on lower fourth of left forearm, one at dorsum of left hand and one at metacarpo phalangeal joint of second finger and one at Proximal enter phalangeal joint of left index finger, one shot on front of second lumber spine.

Nature of injuries- simple in nature caused by firearm.

Age of injury- Can not be ascertained at wound already healed up.

13. PW-9, in his cross-examination, stated that in his evidence that one pillet was in danger portion of body of the injured informant. Although it was not in a position to take away the life.

14. The learned counsel for the appellant has submitted that no independent witnesses have supported the case of the prosecution and that the primary evidence came solely from PW-1 (informant) and PW-5 (Rameshwar Choudhary) who failed to establish the place of occurrence. He further contended that the testimony of the doctor (PW-9) described the injury on the informant as simple and not in a position to take away the life, thus failing to substantiate a charge under Section 307 of the Indian Penal Code. It has been contended that on this basis, the case has not been established



beyond all reasonable doubt.

15. The learned Additional Public Prosecutor argued that both PW-1 (informant) and PW-5 (Rameshwar Choudhary), who are eyewitnesses to the occurrence, have consistently supported the incident. He further stated that the doctor classified the injury as simple but he affirmed that it was caused by a firearm. Thus, the case is sufficiently proven against the accused.

16. It was observed that all the independent witnesses did not support the incident. Witnesses No.1, Harihar Chaudhary (informant cum injured), and PW-5 Rameshwar Choudhary failed to prove the genesis of occurrence. Additionally, there was no evidence of animosity between the appellant and the informant. It is also crucial to note here that the Investigating Officer of this case has not been examined which deteriorates the credibility of the prosecution story. It is true that PW- 9 who is the doctor has described the injury on the informant as simple which is not in position to take away the life, but the report of the doctor cannot be relied upon as the doctor has examined the injured Harihar Choudhary (PW-1) on 30.05.2000, six month after the date of occurrence i.e., 30.10.1999, thus the doctor's report lacks credibility as the



wounds, generally, would be healed within the period of six months leading to uncertainty regarding the age of injury. This discrepancy ultimately prejudices the prosecution case and the doctor's examination cannot be relied upon any further.

17. The **Hon'ble Apex Court**, in the case of **Gaurav Maini Vs The State of Haryana 2024 INSC 488** held that the prosecution's case would be destroyed if the primary witness who provided information about the crime was not questioned. The Court stated that in order to reach the correct conclusion, trial courts must be careful to summon such witnesses for examination whose deposition is necessary for establishing the incident's facts.

18. In view of the aforesaid judgment of the **Hon'ble Apex Court**, in this present case the indispensable witness, namely, Surendra Choudhary, the nephew of Harihar Choudhary PW-1 (informant) was not examined whose testimony was necessary to establish the incident. The examination of this witness was a crucial part of the prosecution case to prove the genesis of the occurrence but the same has not been done, causing prejudice to the prosecution and, hence, affecting the trial as a whole.

19. This court is of the view that the prosecution



has not proved its case beyond all reasonable doubt and in such circumstances, it may not be proper to convict the appellant/accused on the materials available on record.

20. In view of the above, the judgment of conviction dated 21.11.2013 and order of sentence dated 25.11.2013 by the learned Additional District and Sessions Judge IV, Gopalganj (hereinafter referred to as the ‘learned trial Court’) in Sessions Trial No. 73 of 2010/25 of 2012 arising out of Manjhagarh P.S. Case No. 177 of 1999, GR No. 1886 of 1999 is set aside and the appellant is acquitted of all the charges. The appellant is set at liberty. Bail bond executed, if any, shall stand cancelled.

21. Accordingly, appeal is allowed.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.11.2024
Transmission Date	19.11.2024

