

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.153 of 2013

Arising Out of PS. Case No.-16 Year-2011 Thana- TIKAPATTI District- Purnia

Ashok Mahto @ Ashom Mahto S/O Muso Mahto Resident Pof Village-
Goriyar, P.S.- Tikapatti, District- Purnea

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajit Ranjan Kumar, Advocate

For the Respondent/s : Mr. A. M. P. Mehta, APP

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

ORAL JUDGMENT

Date : 27-11-2024

Heard learned counsel for the appellant and learned

APP on behalf of the State

2. The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') challenging the judgment of conviction and order of sentence dated 23.01.2013 passed in Sessions Trial No. 594 of 2011 / 161 of 2012, arising out of Tikkapatti P.S. Case No.16 of 2011 (G.R. No. 722 of 2011), by learned Additional Sessions Judge-VIII, Purnea by which the appellants have been convicted for the offence punishable under Sections 447, 307 and 504/34 of Indian Penal Code, where, appellant has been sentenced to undergo rigorous imprisonment for ten years and a fine of Rs. 10,000/- each for the offence punishable under



Section 307 and in default of payment of fine he has to undergo simple imprisonment for three months and one year imprisonment for the offence punishable under Section 504 of the Indian Penal Code and three year simple imprisonment for the offence punishable under Section 504 of the Indian Penal Code and a fine of Rs. 500 under section 27 of the Arms Act with a direction that all sentences shall run concurrently.

3. Heard Mr. Ajit Rayan Kumar, learned counsel for the appellant, and Mr. A.M.P Mehta, learned APP for the respondent-State.

4. The brief facts of the case are that informant gave his *fardbeyan* stating therein that in the intervening night of 28.03.2011, the informant was sleeping in his *Basa*, situated at Jamur Baihar. It is further stated that about 1 AM, Ashok Mahto (Appellant) along with three four unknown person came at his *Basa* and woke him and after awaking he searched his torch. In the meantime one person told Ashok to kill the informant. It is further stated that then Ashok fired on upon him which hit the informant/ on above his right chest and exist from the Arm pit of the back. After making firing the accused persons entered into the corn field and then informant went to the *Basa* of Chote Lal Mandal and then went towards Tikapatti,. It is



stated that after reaching home informant was taken to police station on cot by his family members and neighbours. It is claimed by the informant that he will recognize Ashok Mahto, but he does not know his name. It is further stated that Ashok Mahto (Appellant) due to enmity injured him with the intention to kill by assaulting him with firearm.

5. The police investigated the case and after investigation the police submitted charge sheet under Sections 447, 307 and 504/34 of the Indian Penal Code and Section 27 of the Arms Act, accordingly cognizance was taken by the learned Chief Judicial Magistrate, Purnea and the case was committed for trial on 01.10.2011.

6 To substantiate the charges, the prosecution has examined as many as seven witnesses in this case, out of them, PW-1 Chanak Lal Mandal, PW-2 Minu Devi, PW-3 Jagdish Pandey, PW-4 Rajendra Mandal, PW-5 Dr. Ajay Kumar, PW-6 Dr. Rafi Zubair and PW-7 Dr, Md. Tanvir Alam.

7. The prosecution has examined all together Seven witnesses to establish the prosecution case out of which PW-1 Chanak Lal Mandal was declared hostile since he has not supported the prosecution case. PW-2 Minu Devi is hearsay witness and has deposed that occurrence took place eight or nine



year ago. PW-3 Jagdish Pandey who was the investigation officer of this case has taken up charge of investigation on 15.04.2011. He went to the place of occurrence and took evidence of the witnesses. He also obtained injury report and submitted charge sheet against the appellant. During Cross examination PW-3 has admitted that seizure list has not been prepared before him and the seized articles have not been produced before the learned trial Court.

8. PW-4 Rajendra Mandal informant of this case who stated in his examination-in-Chief that the occurrence took place on the night 28.02.2011 at about 1 AM. The informant was at his BASA (KAMAT) on the relevant date Ashok Mahto (Appellant) along with 3-4 persons came there and he woke upon their call. The informant woke up and started searching torch kept in his headside upon which one person asked Ashok (Appellant) to shot him upon which the Ashok Mahto (Appellant) fired on him which hit him over the right side of the chest and exit from shoulder side. After sustaining the bullet injury the informant lit the torch and saw Ashok Mahto (Appellant) was standing there with arm. Soon after the informant lit the torch they entered into the corn field. It is further stated that after that informant went to the Basa of one



chote lal and raised alarm and the moved toward his house. It is further stated that informant after reaching his home woke up his family member and told his family member about the occurrence after that his family member took him to Tikkapatti Police Station on cot. It is further stated that the Sub inspector of Police took his statement and recorded him and took his signature and after that S. I. took him to Referral Hospital, Rupauli and he was treated there. It is further stated that during course of treatment the doctor took out the bullet from the back of his banyan. It is stated by the informant that S. I. has prepared a seizure list which was signed by his daughter Rubi Kumari and son Amit Kumar. It is also stated that the informant was referred to Sadar Hospital Purnea where he was treated from 28.3.2011 to 6.4.2011 and was discharged on 6.4.2011 from the Hospital.

9. PW-5 Dr. Ajay Kumar who was posted at Refferal Hospital Rupauli as in charge medical officer who examined the injured namely Rajendra Mandal stated that, on 28.3.2011 he examined the injured and found following injury on his person

(I) lacerated wound "on chest Right side,

(II) lacerated wound on the back Right side".

Both the injuries were simple, caused by



hard blunt substance, Age of injury more than three hours. This witness reserved the opinion for the opinion for Surgeon opinion. He proved injury report in his hand- -writing and signature and marked as Ext-4.

10. PW-6 Dr. Rafi Zubair has deposed in his examination in Chief that the discharge be ticket belongs to Rajendra Mandal, issued from Sadar Hospital, Purnea on 06.4.2011. Prescribed Medicine is mentioned therein and he proved the discharged bed ticket and marked as Ext.4/1. In his Cross-Examination, he deposed that the discharged bed ticket is not written in my presence.

11. PW-7 Dr. Md. Tanvir Alam has stated in his examination in-Chief that on 28.3.2011, he was posted at Sadar Hospital, Purnea as Specialist Surgeon/Medical Officer. On same day, he treated Rajendra Mandal, 50 years male referred from P.H.C. Rupauli He found bullet injury on Right chest that was passed through and through with entry wound from the chest and exit wound back of the chest. He was under his treatment from 28.3.2011 to 6.4.2011. The discharge ticket is in his own handwriting and signature and at the time of discharge of Patient, he has prescribed Medicine, He proved his



handwriting and signature which is marked as Ext-5.

12. 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.

13. Learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence from the perusal of the evidences adduced on behalf of the prosecution it is crystal clear that informant was alone at the place of occurrence and after the occurrence he was accompanied by one Chote Lal, whose BASA was east of the informant's BASA. Non examination of Chote Lal raised serious doubts about the genuine version of the prosecution since the informant was assaulted with firearm as alleged. For a conviction under



Section 307 of the Indian Penal Code the injury, nature of injury and the weapon used for inflicting the injury are the only consideration for convicting a person for the offence under Section 307 of the Indian Penal Code. In the present case injury report does not support the allegation with regard to assault as well as the injury found by the doctor who examined the informant first. After the occurrence the informant was examined by the doctor posted at referral Hospital, Rupauli who had found two injuries on the person and further said that both the injuries were simple and caused by hard blunt substance and reserve the opinion for surgeon opinion. The PW-7 the doctor who was posted at Sadar Hospital Patna as specialist surgeon/Medical Officer he stated that he found bullet injury on right chest that was passed through entry wound through the chest and exit wound through the back but did not mention the size of the injury. These versions regarding injuries are self-contradictory and most unreliable reports regarding the injury. It is pertinent to mention here that the informant during course of his examination stated that he received fire arm injury above the right chest and that it went through the shoulder meaning thereby in fact there was no injury on the chest according to the statement of the informant. The Learned trial Court below has



failed to appreciate the evidence it's right perspective and impugned judgment of conviction is bad in law as well as on fact and such to set aside.

14. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellants beyond all reasonable doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

15. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record and given thoughtful consideration to the submissions advanced by both the parties.

16. As per the Criminal jurisprudence, the burden is always on the prosecution to prove the guilt of the accused beyond reasonable doubt and the accused shall be presumed to be innocent till the guilt is proved.

17. On deeply studied and scrutinized all evidences, it is evident to note that the learned trial Court rightly



convicted the appellant under Sections 307, 447 and 504 of the Indian Penal Code and Section 27 of Arms Act. From the bare reading of the F.I.R., it appears that the offence has been committed at 1' AM and after three hours i.e., at 4' AM morning of the occurrence, informant's *Fardbeyan* was recorded at Police Station soon after occurrence which eliminates the scope of suspicion regarding prosecution story. It further appears from perusal of deposition of PW-7, Dr. Md. Tanvir Alam has stated in his in-chief that on 28.03.2011, he was posted at Sadar Hospital, Purnia as Specialist Surgeon/Medical Officer and he found bullets injury on right chest of the informant/victim that passed through entry wound and exist wound of the chest, where, entry wound at frontal side of chest and exist wound at back side of chest and he was under his treatment from 28.03.2011 to 06.04.2011 and as the informant is sole witness of the present case, who stated in his deposition that after identifying the sound of accused Ashok Mahto, while turning on torch light appellant shot upon him. Thus, the accused/appellant is completely identified by the evidence of the witnesses and it has come in the deposition of the informant that he identified the appellant while turning on torch light after the sound of appellant/accused.



18. Hence, the judgment of conviction dated 23.01.2013 passed in Sessions Trial No. 594 of 2011 / 161 of 2012, arising out of Tikkapatti P.S. Case No.16 of 2011 (G.R. No. 722 of 2011) by learned Additional Sessions Judge-VIII, Purnea is hereby upheld and affirmed and the charges against accused person/appellant is confirmed under Sections 307, 447 and 504 of the Indian Penal Code and Section 27 of Arms Act. Further, it is evident that the appellant has got sufficient judicial custody of about three years. There is no adverse report against the appellants about their conduct otherwise the same would have been brought to our notice by learned counsel for the State and the sentence of the appellant is reduced to period undergone and the appellant stands discharged of the liabilities of his bail bonds, if any.

19. Accordingly, this appeal is partly allowed.

(Ramesh Chand Malviya, J)

S.Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.11.2024
Transmission Date	28.11.2024

