

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.536 of 2011

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Birendra Singh S/O Rajendra Singh R/O Vill. Abbupur, P.S. Janipur, Distt.
Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vipul Sinha, *Amicus Curiae*
For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 21-02-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae*
and Mr. Abhay Kumar, learned A.P.P for the State.

2. The present appeal has been filed against
the judgment and order dated 22.02.2011 passed by
learned Additional Sessions Judge-II, Patna in
connection with Sessions Trial No. 70 of
2002/286/2010, arising out of Phulwari (Janipur) P.S.
Case No. 103 of 1998, whereby and whereunder,
though the appellant was found guilty for the offence
punishable under Section 323 of the Indian Penal Code
but he had been released after admonition under Section
3 of the Probation of Offenders Act, keeping in view the



old age and the trauma he had been facing for the last 13 years after lodging of the case.

3. The prosecution case as per the F.I.R is that on 26.03.1998, the informant Lalita Devi was sleeping in her room with her three children. In the intervening night, when she wake up for urinate, she found a person with pistol in the courtyard of the informant. The said person tried to enter into the room forcefully but somehow the informant managed to close the door from inside and started raising alarm from inside and on her alarm, the villagers assembled and tried to caught the accused persons but they fled away by making firing. The informant raised suspicion against the appellant that he might be involved in the occurrence since there is long standing enmity of the informant with the appellant.

4. On the basis of the aforesaid fardbeyan of the informant, Phulwari (Janipur) P.S. Case No. 103 of 1998 was registered against unknown under Sections 458, 307, 324/34, 120(B) of the Indian Penal Code and



Section 27 of the Arms Act.

5. After completion of the investigation, charge-sheet was submitted against the appellant, whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

6. The learned Trial Court, after examining four witnesses on behalf of the prosecution and none on behalf of the defence has found guilty of the appellant under Section 323 of the Indian Penal Code but thereafter released him after admonition under Section 3 of the Probation of Offenders Act.

7. P.W. 1 Chandra Singh in his examination-in-chief has stated that in the alleged date and time of occurrence, he was sleeping when he heard the informant shouting *chor chor*. He went to the courtyard of the house and found a person armed with pistol. He saw that this appellant was giving hint to that person.

8. P.W. 2, Lailesh Sharma in his examination-in-chief has stated that on the alleged date and time of



occurrence, he was on the roof-top of the house when he heard sound of Chandra Singh (P.W. 1) shouting *chor, dacoit*. He went after hearing firing and saw that informant/Lalita Devi was injured as iron rod was hit on her head. He has identified the appellant and told that iron rod blow was given to the informant by the appellant.

9. P.W. 3 Lalita Devi is the informant and she has stated in her examination-in-chief that on the alleged date of occurrence, she was sleeping and awoke to meet her call of nature. She saw that 4-5 persons including the appellant were standing in the courtyard of the house armed with pistol. The appellant gave iron rod on her head. On raising alarm by the informant, her father-in-law came there whereupon the appellant fired on him but it could not cause any injury to him. The informant and other family members thereafter raised alarm, whereupon the accused persons fled away from the place of occurrence. The informant has proved her



fardebayan which has been marked as Ext.1.

10. P.W. 4 Kameshwar Sharma has been declared hostile.

11. Mr. Vipul Sinha, learned *Amicus Curiae*, in defence of the appellant has submitted that there was previous enmity between the informant and the appellant. The informant is the sole eye witness for causing injury to her by the appellant, but due to non-examination of the doctor and Investigating Officer, charges under Sections 307 and 324 of the Indian Penal Code cannot be proved.

12. Mr. Sinha, further contended that the informant P.W.3 in her evidence has stated that appellant fired upon her father-in-law (P.W.2) with pistol but P.W.2 in his evidence has simply stated that firing was made. He has not specifically stated that firing was made by the appellant. Hence, the prosecution has not been able to prove the charge under Section 27 of the Arms Act beyond shadow of all reasonable doubts



against the appellant. So far as charges under Sections 458, 120B of the Indian Penal Code are concerned, the prosecution has not been able to prove the charge against the accused beyond reasonable doubt, as there is contradiction in the evidence of the prosecution side with regard to the manner of entering into the house of the accused persons as P.W. 3, the informant has stated that accused persons fled away through western door whereas P.W. 1 has stated that accused persons fled away through eastern door.

13. Considering the rival submissions of the parties, this Court is of the view that learned Trial Court has rightly observed and held that informant P.W. 3 is the sole eye witness for causing injury to her by the appellant as P.W. 2 and 3 are not eye witnesses but they have seen the injury on the head of informant. However, since the Doctor and Investigation of this case have not been examined by the prosecution, hence, the charges for the offence under Sections 307 and 324 of



the Indian Penal Code could not be proved. So far as charges under Section 27 of the Arms Act is concerned, the informant P.W. 3 has stated that the appellant had fired with pistol to her father-in-law but P.W. 2 has not stated that firing was made by the appellant. He has simply stated that firing was made. Hence, the prosecution was not able to prove the charges under Section 27 of the Arms Act. The learned Trial Court has further observed that so far as charges under Sections 458, 120(B) of the Indian Penal Code are concerned, the prosecution has not been able to prove the charge against the accused beyond reasonable doubt, as there is contradiction in the evidence of the prosecution side with regard to the manner of entering into the house of the accused persons as P.W. 3, the informant has stated that accused persons fled away through western door whereas P.W. 1 has stated that accused persons fled away through eastern door.

14. This Court does not find any infirmity in



the order impugned. No fault could be found with the judgment of the trial court in convicting the appellant under Section 323 of the Indian Penal Code. The conviction of the appellant under Section 323 of the Indian Penal Code is therefore sustained and upheld.

15. This Court expresses the appreciation for the efforts taken by Mr. Vipul Sinha, learned *Amicus Curiae* who had insisted for assisting the Court in the matter. This Court directs the Patna High Court Legal Services Committee to pay to Mr. Vipul Sinha a sum of Rs. 6000/-(Six Thousands) towards his professional fee for extending valuable assistance to this Court in deciding this appeal.

16. Accordingly, the appeal stands dismissed.

(Sunil Kumar Panwar, J)

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