

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.187 of 2013

Arising Out of PS. Case No.-33 Year-2004 Thana- NIMCHAKBATHANI District- Gaya

Manoj Yadav, Son Of Umesh Yadav Resident Of Village Bandi Kalyanpur,
P.S. Machakbathani, District Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Kumari Sujata Sinha, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP

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

ORAL JUDGMENT

Date : 14-11-2024

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 27.02.2013 and order of sentence dated 05.03.2012 passed by learned Adhoc Additional District Judge III, Gaya in Sessions Trial No. 93 of 2009 / 581 of 2008 (S.J.) arising out of Neemchak Bathani P.S. Case No. 33 of 2004 to undergo simple imprisonment of 10 years and fine of Rs. 2,000/- under Section 307 of I.P.C, and further sentenced for 3 years under Section 324 of I.P.C, and also sentenced for one year under section 27 of the Arms Act and has to deposit fine of Rs. 1000/- and all the major sentences will run concurrently and in



lieu of deposit of fine he will have to go for further imprisonment for six months under Section 307 of the IPC and for three months under Section 27 of the Arms Act i.e. in default of fine he will have to undergo for total further imprisonment for nine months.

2. Heard Ms. Kumari Sujata Sinha, learned counsel for the appellant and Mr. Ramchandra Singh, learned APP for the State.

3. The brief fact leading to the filing of the present appeal, as per *fardbeyan* of the informant Chanddeep Devi (P.W. 6), wife of Sakaldeo Yadav is that on 27.06.2004 around 01:15 p.m she was at the house of her father Ram Chandra Singh and the land of her brother is bearing Khata number 169, plot number 733 and now Khata number 486 and plot number 2637, animals of his brother were tied there on that land. Then villagers, Umesh Yadav, Ram Khelawan Yadav, Chandradeep, Manoj Yadav, Dilip Yadav came and abused them and stated that who had dig *Khoonta* on their land to tie the animals and asked them to remove it and untied the ox and also uprooted the *khoonta*. When her brother and uncle had asked them not to do so, then all the four co-accused persons became fierce and threatened them to teach them and went to



their house. On *Hulla* the informant came outside of her house and saw that Umesh Yadav and Ram Khelawan Yadav had brought two licensed double barrel gun from their house and Manoj and Dilip had brought single barrel gun in their hands. While the informant tried to escape from the place Umesh Yadav fired upon her by his gun, which hit the right side of her head and Ram Khelawan yadav also fired on her which hit on the right thigh and on further hit she felt in front of the door. The informant tried to escape but Umesh Yadav fired on her by gun hitting the right side of her head, Ram Khelawan Yadav had also fired which hit right hand ankle and Manoj Yadav hit the right thigh of the informant. By hearing the noise of firing nearby persons started coming then after seeing this all the four persons along with their guns had gone towards their house, then his brother and uncle and other villagers brought the informant for treatment.

4. On the basis of the *fardbeyan* of the informant recorded by the police on 29.06.2004, around 9:00 A.M. Based on this, Neemchak Bathani P.S. Case No. 33/2004 was registered on 01.07.2004, under Sections 307/34, 324 of the IPC and Section 27 of the Arms Act.



5. The learned counsel for the appellant has confined his arguments to challenging 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 as during the investigation, police has found that no fire-arm used by the accused person. Therefore, informant's story is false. The learned counsel further submitted that reason behind the incident is land dispute between the informant and the appellant. He further submitted that PW-3, PW-4 and PW-7 were hostile witnesses and they denied to witness the alleged incident, rest of the witnesses are relative of PW-1 and others are also interested witnesses. He further submitted that other witnesses were not present at the place of occurrence. He further submitted that the doctor has not been examined and injury has not been proved and other independent witnesses have also not been examined i.e., the villagers who were present thereafter. He further submitted that I/O of the case has also not been examined and place and time of occurrence has not been proved. He further stated that there is delay in recording the *fardbayan* and lodging the FIR. Based on the aforementioned contentions, the counsel asserts that the trial



court's conviction and sentencing be set aside and the appellant be acquitted of all charges.

6. The learned Additional Public Prosecutor argued that both PW-6 informant, PW-1 and PW-2, who are eyewitnesses, have consistently supported the incident. Learned APP has further submitted 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.

7. Before the Trial Court, prosecution examined 8 witnesses, namely, PW-1 Nagendra Kumar, PW-2 Devendra Yadav, PW-3 Thakuri Yadav, PW-4 Shambhoo Yadav, PW-5 Rajendra Yadav, PW-6 Chandee Devi (informant), PW-7 Birendra Yadav and PW-8 Ramshraya Yadav.

8. PW-1 Nagendra Kumar has stated the occurrence as of 27.06.2004 at 12:15 PM due to land dispute and Manoj, Ram Khelawan, Umesh and Dilip were untying the ox from *Khoonta* and were uprooting *Khoonta* which was being objected by the informant party, then they had abused them and threatened them and went towards their house and then from their own house, Umesh and Ram Khelawan had brought double barrel licensed gun and Manoj and Dilip had



unlicensed country made gun and they had chased the informant party who has concealed themselves on the back pillar. Then on hearing noise her sister Chandeeep Devi had come out and accused person, namely, Umesh had fired upon hitting right rib cage of Chandeeep Devi and firing of Ram Khelawan had hit her on the right hand's ankle of her sister and firing of Manoj Yadav had hit her right thigh.

8.1 In cross examination he has stated that the accused persons had come with arms and then they have concealed themselves and they had started firing on the disputed land. There were four injuries to his sister. Altogether six firing was made. He has further stated that the entire occurrence was seen by him, his brother and uncle and police has interrogated them at the hospital.

9. P.W. 2 Devendra Yadav in his examination-in-chief stated that he was at his house and accused persons were seen uprooting the Khoonta, then this witness had come outside the house and asked them not to do so along with his brother Narendra and uncle Rajendra Yadav, then they had threatened them, and when her sister was fleeing away when firing was started then, she had fallen in *Angan* and became unconscious who was treated at medical.



9.1 In the cross-examination he has stated about firing which was being made then villagers had gathered. Accused persons are claiming the land in question, but no Panchayati was there for it and at first at the place of occurrence of uprooting they had no object in their hands he was watching all these incident from the back of a pillar and three firing had hit his sister at three places of the body who had fallen and none of the informant party has tried to rescue her and at the time of occurrence villagers had not gathered and till reaching at Medical college no treatment was done on the victim.

10. PW-3 Thakuri Yadav and PW-4 Shambhoo Yadav, they have been declared hostile and denied to witness the alleged incident.

11. PW-6 Chandeeep Devi, informant of the case stated in her examination-in-chief that occurrence is of 12:00 to 12:15 hours and she was at her *Naihar*, she heard the noise and came out of the house and saw double barrel gun in hands of Umesh Yadav and Khelawan Yadav and single barrel gun in the hands of Manoj and Dilip. hands of Manoj and Dilip. Umesh Yadav had fired upon hitting hand, Khelawan had assaulted near ankle and Manoj had caused injury on the thigh



portion. She has fallen and became unconscious and became conscious at Magadh Medical Hospital. Police Inspector had taken statement after two days there. She further submitted that incident occurred between her brother Devendra and uncle Rajendar had dug *Khoonta* for animals on their own land and accused persons were uprooting it. There is no dispute about Identification.

11.1. PW 6 in her cross-examination stated that she had also seen the villagers, before she became unconscious. She had no chance to flee away after seeing the gun and accused persons were firing one-by-one. She had fallen on the gate of the house. She further stated that she has no knowledge about the land dispute between the two sides. She has come to her *Naihar* as one hand of her mother was fractured.

12. P.W. 5 Rajendra Yadav in his examination-in-chief has fully supported the prosecution story and also stated the manner of occurrence and name of assailants, He has also stated that after preliminary dispute about uprooting of *Khoonta* they had brought arms. He has also detailed about double barrel gun and single barrel gun and firing by them hitting Chandeev Devi and he has given detail about the



particular part of the body as by firing of particular accused and on noise some villager had gathered then they left. In his cross-examination he has stated that he was on the spot at the time of occurrence. When the accused persons returned informants were also chased and he had concealed himself and none except Chandeeep Devi had come out of the house. They were not within the site of the accused persons otherwise they could have been killed and when Chandeeep Devi was coming out of the house, then she was fired upon and this witness had not tried to rescue her, Chandeeep Devi was hospitalized for about 8-10 days. He has also stated about Khata number and plot number of the land in question. There was no hole on the wall by firing.

13. P.W. 7 was declared hostile by the prosecution.

14. P.W. 8 Ramashray Yadav is hearsay evidence.

15. After going through the entire evidence and materials available on record. It appears that the place of occurrence where the ox was used to keep is the main cause of the dispute and when the informant protested to it, accused/appellants started assaulting the informant and also



fired gunshot. Coming to the point that a gunshot was fired, the learned trial court has failed to establish the charge of Arms Act under Section 27 and acquitted the appellants from such charge. Further, considering the fact that no injury report was submitted to show that injury sustained by the informant and the doctor was also not examined, the hospital where the sister of the informant was kept was also not proved. Neither there was any injury found or treated at any hospital or clinic. Further, it is evident from the records that there are no independent witnesses or eye witness to the occurrence of the incident, other than the informant and his family members who were already having a dispute with regards to the land in question.

16. Considering the fact that only the informant and the family members of the informant were made witnesses and I/O as well as doctor was also not examined and non-examination of I/O concerned and doctor concerned is fatal to the case of the prosecution and FIR-cum-*fardbeyan* is also not proved. Furthermore, there was no independent witness or any witness who has seen the occurrence of the incident other than the informant and the family members of the informant. This case is not proved beyond all reasonable



doubts. It creates a cloud of doubt with regards to the whole incident as there was already a dispute with regards to the said land, and the order of conviction and order of sentence against the present, appeals is fit to be set aside.

17. In view of the above, the judgment of conviction dated 27.02.2013 and order of sentence dated 05.03.2012 passed in Sessions Trial No. 93 of 2009 / 581 of 2008 (S.J.), arising out of Nimchak Bathani P.S. Case No.33 of 2004, by learned Adhoc A.D.J.-III, Gaya 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.

18. Accordingly, the present appeal is allowed.

(Ramesh Chand Malviya, J)

S.Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.11.2024
Transmission Date	25.11.2024

