

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.270 of 2013

Arising Out of PS. Case No.-34 Year-2001 Thana- SIMRA District- West Champaran

1. Rajesh Uraon and Ors S/O Hari Lal Uraon R/O Village-Dhokni Chullahani Top Done, P.S.-Borahiya, Distt.-West Champaran
2. Surendra Uraon S/O Sumer Uraon R/O Village-Dhokni Chullahani Top Done, P.S.-Borahiya, Distt.-West Champaran
3. Raju Uraon S/O Paras Uraon R/O Village-Dhokni Chullahani Top Done, P.S.-Borahiya, Distt.-West Champaran
4. Vijay Uraon S/O Nathu Uraon R/O Village-Dhokni Chullahani Top Done, P.S.-Borahiya, Distt.-West Champaran

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Mira Kumar, Amicus-Curiae
For the Respondent/s : Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date : 26-11-2024

Heard learned counsel for the appellants and learned APP for 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 dated 21.02.2013 and order of sentence dated 26.02.2013 passed in Sessions Trial No. 108 of 2005, arising out of Semra P.S. Case No. 34 of 2001, by learned Additional District and Sessions Judge-II, Bagha, West Champaran



(hereinafter referred to as 'trial Court') by which the appellants have been convicted for the offence punishable under Sections 148, 307 and 149 of Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for 1 ½ years for the offence punishable under Section 148 of Indian Penal Code and further sentenced to undergo rigorous imprisonment for 5 years and fine of Rs. 1000/- each for the offence punishable under Section 307 of the Indian penal Code. Moreover, in default of payment of fine, they will have to suffer additional 6 months rigorous imprisonment and for offence under Section 27(1) Arms Act minimum 3 years sentence is given with a direction that all sentences shall run concurrently.

3. Heard Ms. Mira Kumari, *Amicus Curiae* for the appellant, and Mr. Abhay Kumar learned APP for the State.

4. The brief facts leading to the filing of the present appeal are that the informant Tiwari Uraon (PW-8) gave a written report to Officer-in-charge Chitaha O.P. (Simra P.S.) stating therein that on 15.11.2001 at about 8.15 PM, he was going to the house of his cousin and at about 8:20 PM in night five-six persons armed with gun came near informant's house and started firing indiscriminately causing injury to the informant on both thighs, shoulder and neck. When informant



cried, several villagers including cousin Harsh Uraon came there and in the light of torch, informant identified criminals as Rajendra Uraon, Rajeev Uraon @ Raju Uraon (Appellant no.3), Vijay Uraon (Appellant no.4), Surendra Uraon (Appellant no.2), Rajesh Uraon (Appellant no.1), and Nagendra Uraon. Further case of the prosecution is that criminals had come with the intention to kill informant and Harsh Uraon due to previous enmity with Harsh Uraon because Harsh Uraon had helped police in arresting the accused persons in Narayan Uraon murder case. The accused persons have earlier threatened to kill them.

5. On the basis of aforesaid written report of the informant, the case under reference Simra P.S. Case No. 34 of 2001 was registered and the police took up investigation and after completion of investigation, submitted charge-sheet under Sections 147, 148, 149, 324 and 307 of the Indian Penal Code and Section 27 of the Arms Act showing investigation pending against Nagendra Uraon and Rajendra Uraon. Accordingly, cognizance was taken by the A.C.J.M. Bagha and the case was committed of the sessions for trial on 22.12.2004. Further the charges were framed against all the four appellants under Sections 147, 148, 324 and 307 Indian Penal code and Section



27 of the Arms Act.

6. The prosecution examined altogether 8 prosecution witnesses in this to substantiate the charges levelled against the appellants. Out of them PW-1 Ram Kishun Uraon, PW-2 Narain Uraon, PW-3 Amrendra Uraon, PW-4 Nagraj Uraon, PW-5 Harendra Uraon, PW-6 Shesh Nath Uraon, PW-7 Haresh Uraon and PW-8 Tiwari Uraon. Prosecution has also brought on record written application (F.I.R) as Ext.1, statement of Haresh Uraon marked as Ext. 1/B and Tiwari Uraon has identified his signature over written report which has been marked as Ext. 1/C. Further PW-1, PW-2, PW-3, PW-4, PW-5 and PW-6 have been declared hostile and they have not supported the prosecution case.

7. PW-7 Harsh Uraon in his examination-in-chief stated that he is the cousin (s/o maternal uncle of informant) and at 8.00 P.M. in the night of occurrence he was at his house. He further stated that he heard the sound of firing from outside of his house and also heard cry of Tiwari Uraon, thereafter, he came out with torch and found Tiwari Uraon in the injured condition. He further stated that PW-8 had received fire arm injury and blood was oozing out from his thigh. He identified the appellants Rajendra, Rajesh, Nagendra, Surendra Uraon in



the torch light and he saw that they were armed with gun, so he did not chase them. He further stated that he took Tiwari Uraon to Police station where he gave written application over which PW-8 and Tiwari Uraon had signed. He further stated that he had identified his signature which has been marked Ext.-1/A and he has also identified his signature over his statement recorded under section 164 Cr.P.C. which has been marked Exhibit-1/B. In his cross-examination, he stated that informant is his maternal brother and his house is at the distance of approx 100 feet from the house of PW-8 and in between both the houses, there are houses of Surendra, Narain, Ganga Uraon, Saheb Uraon. He further stated that Tiwari Uraon was coming to his house and this occurrence took place near the house of Narain Uraon. On *hulla*, P.W.-7 ran to the place of occurrence and found Tiwari Uraon was lying on the ground. Villagers had not reached there. He further stated that he was the first person to reach place of occurrence, thereafter, other persons came there. When villagers arrived at place of occurrence, accused persons were fleeing. He further stated that there was enmity with accused persons with regard to land. He further stated that Tiwari Uraon (informant) has also told him the names of accused persons and he along with Tiwari Uraon had also seen them in the torch light.



8. PW-8 Tiwari Uraon in his examination-in-chief stated that when he was going to his cousin Harsh Uraon house, suddenly firing started causing gunshot injuries on his both thigh, shoulder and neck, having heard his cry, his neighbors came there. He identified Rajendra Uraon, Raju Uraon, Vijay, Surendra Uraon, Rajesh Uraon and Nagendra Uraon. He has identified his signature over his written application given to police. In the cross-examination, he stated that he had clearly denied any enmity with the accused persons. Firing was being done upon him from the distance of 10 yards. Three shots were fired and all the three shots hit him. There were six persons armed with guns. There was no one to save him. Appellants fled towards open field, informant ran to his house and came to his doors where villagers Amrendra, Harsh, Saheb, Negai came and took him to the police station where he gave his statement which was written by some police official.

9. 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.

10. Learned *Amicus-Curiae* submitted that the prosecution is not able to prove its case beyond all reasonable doubts. She further submits that the accused persons are innocent and they have not committed no offence and the trial Court erred in convicting the appellants for the charges, despite having no material available on record, except for the oral evidence of prosecution witnesses. She next argued that he has falsely been implicated by the informant in a criminal case. There is vital contradictions in manner of occurrence and genesis of the case has not been proved by the informant as PW-1, PW-2, PW-3, PW-4, PW-5 and PW-6 as they have been declared hostile and the Investigating Officer nor the doctor who had examined the victim have been examined in this case by the prosecution. She further stated that injury report has also not been brought on the record by the prosecution. She further stated that PW-7 supported the prosecution case but it would be relevant to submit that he is interested witness having enmity with the appellants and prosecution has failed to prove its case beyond all reasonable doubt against the appellants and



therefore, the conviction of the appellants is bad and not sustainable in the eyes of law. Therefore, prayed to set aside the conviction and sentence of the trial Court and to acquit the accused extending benefit of doubt. However, a compromise petition has also been filed by the parties which is on record.

11. Learned *amicus-curiae* has relied upon the judgments of the Hon'ble Apex Court in the case of ***Munna Lal Vs. State of Uttar Pradesh***, reported in ***2023 SCC OnLine SC 80*** has held that:

“Non-examination of investigating officer creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.”

12. She further relied on one more judgment passed by Hon'ble Supreme Court in ***Habeeb Mohammad vs The State of Hyderabad 1954 AIR 51, 1954 SCR 475*** which states that:

“It was the duty of the prosecution to examine all



material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officers in the circumstances of this case and his conviction merely based on the testimony of the police jamadar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this



omission.” Police Jamadar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”

13. On the other hand, learned Additional Public Prosecutor has vehemently opposed the appeal and submits that there is direct allegation against the present appellants, for firing gunshot on informant. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeals should not be entertained.

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

15. On deeply studied and scrutinized all the facts and materials available on record, total eight witnesses have been examined and out of eight witnesses six witnesses have become hostile and PW-7 saw back side of all the accused



persons fleeing away in the torch light. PW-8 in his deposition stated that when he was going, the accused persons suddenly came and started firing upon him which caused gunshot injuries on his thighs shoulder and neck and when accused persons started fleeing he saw back side of all the accused persons in the torch light. So it is not clear that who fired gunshot on PW-8 and what type of arms were used. Further prosecution has failed to prove the injury sustained by the victim as neither any medical report has been exhibited nor any medical practitioner has been examined during the course of the trial. Investigating Officer has also not been examined during the course of trial as it was vital since he could have adduced the expected evidence and his non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case and the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence. Moreover, there are discrepancies regarding the sequence of events and the presence of individuals at the place of occurrence. Further, there is not eyewitnesses to the said occurrence and all the PWs are hearsay witnesses and



have not seen the occurrence.

16. Considering this fact, prosecution has failed to establish this case beyond all reasonable doubt, therefore, in such circumstances, it may not be proper to convict the appellants/accused on the materials available on record, the judgment of conviction and order of sentence in this present matter is fit to be set aside.

17. Hence, the the judgment of conviction dated 21.02.2013 and order of sentence dated 26.02.2013 passed in Sessions Trial No. 108 of 2005, arising out of Semra P.S. Case No. 34 of 2001, by learned Additional District and Sessions Judge-II, Bagha, West Champaran is set aside and the appellants are acquitted from the charges leveled against them. As the appellants are on bail, they are discharged from their liability of bail bonds.

18. Before parting with this appeal, Secretary, Patna High Court Legal Services Committee is directed to pay Rs. 10,000/-(ten thousand) to the learned Amicus-Curiae Ms. Mira Kumari towards honorarium for assisting this Court in the present appeal.

19. Let a copy of the first and last page of this judgment be handed over to the Advocate Ms. Mira Kumari,



learned Amicus-Curiae and Office is directed to proceed further
in granting honorarium to her which is to be paid by Patna High
Court legal services committee.

20. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	NAFR
CAV DATE	NA
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