

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.969 of 2019

Arising Out of PS. Case No.-324 Year-2015 Thana- PARBATTa District- Khagaria

SANJAY SINGH, Son of Late Mahadeo Singh @ Mahdi Singh, Resident of
Village-Sri Rampur Thuthi, Police Station-Parbatta, District-Khagaria.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar, Advocate
For the Respondent/s	:	Mr. Mohammed Arif, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 06-03-2024

The instant revision is directed against the judgment and order of affirmation passed by the learned Additional Sessions Judge, Khagaria in Criminal Appeal No. 26 of 2017 on 26th June 2019, whereby and whereunder, the judgment of conviction and the order of sentence passed by the learned Assistant Sessions Judge II Court, Khagaria on 12th July 2017 in Sessions Case No. 240 of 2016 arising out of Parbatta P.S. Case No. 324 of 2015, convicting the petitioner and sentencing him to suffer rigorous imprisonment for 7 years for the offence punishable under Section 307 of the IPC with a fine of Rs. 5,000/- and rigorous imprisonment for 3 three years with a fine of Rs. 5,000/- and in default of payment of fine, further simple imprisonment of one year for the offence punishable under Section 27 of the Arms Act.



2. In the instant revision, legality, validity, and propriety of the order dated 27th June 2019 is under challenge.

3. Since, the impugned order is passed, affirming the judgment of conviction and order of sentence, it is necessary to state the factual background. On 21st October 2015 at about 07:30 pm, there was a get-together (*Bhoj*) in the house of one Rajiv Singh. The informant and the victim Guddu Singh and his brother were invited to the said get-together. They were waiting for their turn to take food. In the meantime, Sanjay Singh, the petitioner herein along with Shambhu Singh and Raushan Singh came to the spot. Raushan Singh caught hold of the informant from behind and the petitioner opened fire at the informant, aiming at his chest. He received a gunshot injury and fell down. Accused Shambhu Singh snatched away *Hanumani* from the neck of the informant. Then, the offenders fled away from the spot and Guddu Singh was shifted to the hospital for medical treatment, on 24th October 2015, Guddu Singh lodged the information at the local police station. It is alleged that no explanation was offered by the informant as to the delay in lodging the FIR. Based on the FIR, police registered Parbatta P.S. Case No. 324 of 2015 under Section 307 of the IPC read with Section 27 of the Arms Act and commenced investigation of the case. On completion of the



investigation, police submitted a charge sheet against the accused persons. The learned Magistrate took cognizance of the offence and the case was committed to the Court of Sessions on 02.08.2016.

4. The case was subsequently transferred to the Assistant Sessions Judge-II Court at Khagaria. The petitioner duly appeared before the trial court. The charge was framed against him under Section 307/504 of the IPC as well as Section 27 of the Arms Act. The petitioner pleaded not guilty and claimed to be tried. The trial of the case commenced.

5. During the trial, the prosecution examined 8 witnesses. Amongst them, the injured cum the defendant complainant is PW-1 (Guddu Singh), PW-2 (Vishwakarma Singh), PW-3 (Vijay Singh), and PW-4 (Raj Kishore Singh) all are the resident of the same village where the alleged incident took place. The Investigating Officers, namely, Sanjeev Kumar as PW-5 and Pramod Kumar as PW-6. PW-7 and PW-8 are the medical officers. PW-3 (Vijay Singh) did not support the prosecution's case and he was declared hostile. PW-4 (Raj Kishore Singh, the father of the informant i.e., PW-1 Guddu Singh) is the person in whose house the get-together was held. PW-2 and PW-4 are the family members of the informant PW-1 and they supported the prosecution's case.



The Investigating Officers of the case were not examined. Thus, it is contended on behalf of the petitioner that except for PW-1, PW-2, and PW-4, who are interested in the outcome of the case, no independent witness supported the prosecution's case. It is also submitted that there was long standing enmity between Guddu Singh and the petitioner Guddu Singh was made accused in number of cases. He has adverse criminal antecedents. The independent witnesses did not support the prosecution's case. Therefore, both the trial court as well as the court of appeal committed illegality and material irregularity in convicting the petitioner for the offence under Section 307 IPC read with Section 27 of the Arms Act.

6. It is submitted by the learned advocate for the petitioner that the Investigating Officers did not find any blood stain in or around the place of occurrence. The father of the informant was examined as PW-4 in the trial court. From his cross-examination, it is ascertained that he gave a statement about the incident to the police at Parbatta Hospital. The said statement was not considered as the First Information Report of the case. On the other hand, a subsequent statement was taken on 24th October 2015, from the victim, and based on the said statement, a *fardbeyan* was recorded. There is no explanation for the delay in



lodging the FIR. It is submitted by the learned advocate for the petitioner that in view of the contradictions noted above, the order of conviction and sentence ought to be reversed by this Court.

7. The learned public prosecutor in-charge submits that PW-1, PW-2 and PW-4 supported the prosecution's case. PW-5 and PW-6 are the Investigating Officers. PW-7 is the medical officer who treated the injured at the primary health center, Parbatta. PW-7 found two injuries at the right chest of the injury of the injured Guddu Singh. He also opines that the said injury was caused by gunshot. PW-8, Dr. Ashok Kumar Sharma medically treated the injured at Begusarai. He stitched the wound. He also advised an X-ray of the chest. The X-ray report shows the existence of a bullet on the left side of the chest. The said bullet was extracted from the chest and the wound was repaired.

8. The learned advocate for the petitioner especially draws my attention to the evidence of PW-1, PW-2, and PW-4. It is submitted by him that PW-1 is the injured, PW-2 is his brother and PW-4 is the father of the injured. All of them are interested in the outcome of the case, therefore, their evidence ought to be considered with a pinch of salt.

9. On perusal of the impugned judgments as well as the lower court's records, this Court does not find any reason to



disbelieve the evidence of PW-1, PW-2, and PW-4. True it is that they are the close relatives of the injured. At the same time, the defence could not produce any evidence to show as to why an injured person and his relatives person and his relatives would implicate the wrong person living aside the real offender.

10. It is found from their evidence that the accused Sanjay Singh opened fire at Guddu Singh from the evidence of PW-7 and PW-8. It is crystal clear that the injured Guddu Singh received gunshot injury. The bullet was recovered from the left side of the chest. A lacerated injury with burning around the injury was found on the right side of the chest. Thus, from the medical evidence, it is clear that the victim received gunshot injury and the bullet struck on the right side of the chest and got stuck on the left side of the chest. The nature of the injury seemed to be grievous.

11. It is needless to say that in order to prove a charge under Section 307 of the IPC, the court should judge the murderer's assault from the act of the accused, the manner in which it was executed, the surrounding circumstances as also the result achieved together with the intention of the accused. The primary test is to determine the murderer's intent on the accused. The intention can be gathered from the nature of the weapon, the place of the body where the injury is inflicted, the nature of injury



inflicted, and the opportunity available which the accused gets. In the instant case, there was a get-together (*Bhoj*) and some witnesses stated that there were about 200 people assembled at the time of occurrence while other witnesses said that there were 300-400 people assembled at the time of the incident. The accused took the opportunity of the gathering and by taking advantage of the crowd, he came close to the victim, fired at him, and then fled away. The intention of the petitioner to commit murder of the victim could be gathered from the fact that the victim was assaulted at the most vital part of the body.

12. The idea underlying the offence punishable under Section 307 of the IPC seems to be that by his act, the accused should be deemed to have done all that was necessary to commit the offence of murder, and the commission of that offence has not been prevented by some event unknown to the accused and beyond his control where the injury was actually caused to the victim and it is proved that the injury was caused on the right side of the chest by firing and the bullet stuck on the left side of the chest. The intention of the accused can be asserted from the fact that the nature of the injury was such that it was sufficient in the ordinary course of nature to cause death or was so eminently dangerous that it would cause death. In the instant case, the prosecution has been



able to establish the ingredients of the offence under Section 307 of the IPC as well as Section 27 of the Arms Act.

13. In view of the above discussion, I find no reason to take a contrary view to the impugned judgment and order passed in Criminal Appeal no. 26 of 2017, affirming the judgment of order and conviction of sentence for the offence punishable under Section 307 of the IPC and Section 27 of the Arms Act by the trial court in Sessions Trial Case No. 240/16, arising out of Parbatta P.S. Case No. 324/15.

14. For the reasons stated above, the instant revision is dismissed on contest. Accordingly, the order passed by the trial court and confirmed by the appellate court is affirmed.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
CAV DATE	22.02.2024
Uploading Date	06.03.2024
Transmission Date	06.03.2024

