

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.667 of 2013**

Arising Out of PS. Case No.-110 Year-2011 Thana- KHANPURA District- Samastipur

Munchun Rai @ Sunil Rai Son Of Ram Pukar Rai Resident Of Village
Dharampur P.S. Khanpur Distt Samastipur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bijay Bhushan Prasad, Advocate
For the Respondent/s : Mr. S.N.Prasad, APP

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

Date : 11-11-2024

The appellant has been convicted on 26.08.2013 for the offence punishable under Sections – 342 & 324 of I.P.C and 27 of the Arms Act and accordingly, he has been sentenced on 26.08.2013 to undergo rigorous imprisonment of 2 years under Section 324 of I.P.C, rigorous imprisonment of 1 year under Section 342 of I.P.C & rigorous imprisonment of 3 years and fine of Rs. 1,000/- under Section 27 of the Arms Act in default of payment of fine he shall go further undergo simple imprisonment for 1 month by learned Adhoc Additional Sessions Judge - II, Samastipur, in connection with Sessions Trial No. 208 of 2012 arising out of Khanpur P.S. Case No. 110 of 2011



(G.R. No. 1503 of 2011) and all the sentences shall run concurrently.

2. Heard Mr. Bijay Bhushan Prasad, learned counsel for the appellant and Mr. S.N.Prasad, learned APP for the State is present.

3. The brief facts leading to the filing of the present appeal, as per *fardbeyan* of the informant, are that victim Ram Kripal Rai of Khanpur P.S. Case No. 110 of 2011(G.R. No. 1503 of 2011) dated 18.07.2011. On 18.07.2011, Suresh Rai, the driver of the informant's tractor, reported a breakdown while ploughing the field in Ratrash Chaur. The informant and his uncle, Durgesh Rai, set out on a motorcycle to assist him. As they approached a bridge near Nasovar village around 10:30 PM, they encountered four individuals namely Kedar Rai, Ram Pukar Rai, Munchun Rai, and Mintu Rai, armed with weapon and firearms. Accused persons and Munchun Rai confronted them with a pistol, threatening Durgesh. In the ensuing struggle, Munchun fired at the informant, injuring his right hand. Despite being shot multiple times as they escaped, both managed to reach Gangauli village. Due to significant



blood loss, the informant collapsed near Ali Hasan's house. Local villagers assisted him before he was taken to Sadar Hospital in Samastipur for treatment. The police recorded the informant's statement on 19.07.2011, leading to an FIR against the accused persons.

4. Following an investigation, the police submitted a charge sheet against Munchun Rai alone on 31.01.2012. The case was transferred to the Sessions Court for trial after cognizance was taken on 12.03.2012.

5. The learned counsel for the appellant has confined his arguments to challenge the sentence imposed by the trial court in its judgment dated 26.08.2013. He further submitted that the conviction and sentence order passed by the trial court is primarily based on the evidence provided by the informant and P.W. 4, Durgesh Rai. It is contended that both of these individuals are not impartial witnesses specifically, P.W. 4 is an interested witness due to existing enmity with the appellant. Further, the counsel submitted that out that the 1st Investigation Officer, who was involved in the case was not examined during the trial. He further submitted that the doctor who provided treatment to



the informant was also not examined, and his report was largely based on his personal experience without reference to any formal injury report. The counsel further asserts that the trial court's conviction and sentencing cannot be upheld beyond a reasonable doubt. The counsel further brought to the Court's attention that the informant and his uncle, who are the sole witnesses to the incident, both have prior cases filed against them and maintain an antagonistic relationship with the appellant, further questioning the objectivity of their testimonies. The counsel further emphasizes that the appellant has been in jail since 19.12.2011, which constitutes a substantial period of detention, and thus the appellant has already undergone considerable punishment. Consequently, it is submitted that the conviction and sentence order dated 26.08.2013 should be set aside. The appellant, while awaiting the final disposal of his appeal, seeks to be granted bail in light of the arguments presented.

6. The learned Additional Public Prosecutor argued that both the informant and his uncle, who are eyewitnesses, have consistently supported the incident. He further stated that the doctor classified the injury as minor,



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 10 witnesses.

8. P.W. 1, Md. Abbas, along with P.W. No. 2, Darpaniya Devi, P.W. No. 3, Naresh Rai, and P.W. No. 6, Mandul Rai, each stated in their examination-in-chief that they possess no knowledge of the alleged incident and did not provide any statement to the police regarding the same. Due to their testimonies being unhelpful to the prosecution's case, they have all been declared hostile. Subsequently, these witnesses were cross-examined by the prosecution; however, even during cross-examination, they failed to corroborate the prosecution's version of events and continued to refrain from supporting the incident in question.

9. P.W. No. 4, Durgesh Rai, an eyewitness to the incident and he has stated in his examination-in-chief that approximately one year prior, at around 8:00 P.M., he has stated that he was at his residence when he was informed that Ram Kripal Rai's tractor had broken down in a nearby



pasture. Accompanying him on a motorcycle to assist with repairs, they finished their work and began returning home. When they reached near a palm tree at Gangauli Ghat at approximately 10:30 P.M., PW stated that, by the motorcycle's headlight, he saw Kedar Rai, Ram Kumar Rai, Mindu Rai, and Munchun Rai, all visibly armed with rifles and pistols. He further stated attempted to turn the motorcycle and run away, Munchun Rai allegedly pointed a pistol at Durgesh Rai. When Ram Kripal Rai attempted to disarm Munchun Rai, accused fired a shot, hitting the palm of Ram Kripal Rai's right hand. PW managed to flee with the motorcycle, during which several shots were reportedly fired at him. They proceeded toward the residence of Ali Hasan in Gangauli village, but upon reaching there, Ram Kripal fainted, causing the motorcycle to lose balance and fell. Subsequently, the injured party was taken to Sadar Hospital in Saharsa and later referred to Darbhanga, where an operation was conducted to remove the bullet. P.W. 4 further stated that the underlying cause of this incident was a prior altercation related to a stolen motorcycle, where he had assisted an inspector in its recovery, implicating



Munchun Rai.

10. P.W. 4, in his cross-examination has stated that there had been a prior altercation between Munchun Rai and Ram Kripal's brother concerning the tractor. He further explained that the tractor driver, Suresh Rai, had informed them that the tractor had broken down, leading them to the location. He further stated that the place of occurrence was slightly over a kilometer from his village with no nearby residential areas. P.W. 4 further stated that, upon Ram Kripal's request, he was the one driving the motorcycle. He observed the accused individuals from approximately 50 feet away. While they were attempting to turn the motorcycle, Munchun Rai allegedly approached, placing a pistol, at which point Ram Kripal attempted to grab the weapon, resulting in a shot. P.W. 4 did not witness the firing itself, he recalled hearing 4-6 additional shots, none of which hit him. He noted that Ali Hasan's house was around 100-125 feet from the location where the motorcycle fell and that they transported the injured party to Samastipur Hospital for treatment.

11. P.W. No. 5, Ram Kripal Rai, the informant and



injured party in this case, stated in his examination-in-chief that on the night of 18.07.2011 at approximately 8:00 P.M., he received a call from his tractor driver, Suresh Rai, informing him that the tractor had broken down. In response, he, along with Durgesh Rai, proceeded to the tractor's location on a motorcycle. After inspecting the tractor, both began to return, with Durgesh Rai by motorcycle. Around 10:00 P.M., as they approached an area near Nasovar Nasi, he observed four individuals, Munchun Rai, Kedar Rai, Mintu Rai, and Ram Pukar Rai standing with weapons and firearm. When Durgesh attempted to turn the motorcycle to retreat, Munchun Rai allegedly ran toward them, held pistol at Durgesh. At this point, P.W. 5 stated that he attempted to seize the weapon, during which Munchun Rai fired a shot, striking P.W. 5 in the right hand. Durgesh then accelerated the motorcycle to escape, during which additional shots were fired, but no further injuries were sustained. Due to substantial blood loss, P.W. No. 5 began to faint. Ali Hasan's brother administered a bandage to his injured hand. He further stated that this incident was driven by a prior enmity, as Munchun Rai had previously



stolen a motorcycle, and his uncle had assisted the police in its recovery. PW 5 was subsequently transported to Samastipur for medical treatment, where Sub-Inspector Shri S.K. Baitha from City Police Station recorded his *Fardbayan* statement.

12. P.W. No. 5, in his cross-examination, stated that the accused persons are residents of his own village. He further stated that he was seated on the back of the motorcycle at the time of the incident and noted the presence of trees along the banks of Nasovar. Upon sighting the accused, he and his companion attempted to flee toward the east. He sustained a single injury, specifically to his hand, which caused bleeding that stained both his body and clothes. He further stated that he was transported to the hospital by tempo, arriving there later that night. P.W. No. 5 further stated that he remained in Samastipur Hospital for one night and day before being referred by the doctor to Darbhanga, where he was admitted for a month. His statement was subsequently recorded by the Inspector of the City Police Station.

13. P.W. No. 7, Prem Kumar Sah, the investigating



officer, stated in his examination-in-chief that he was stationed at Khanpur Police Station on 25.11.2011. On the date of incident, he assumed responsibility for the ongoing investigation of Khanpur P.S. Case No. 110/11 from Station In-Charge, Vinay Kumar. P.W. No. 7 proceeded to submit a remand application for Munchun Rai in court. The PW has subsequently stated about the formalities of investigation and this witness was not cross-examined by the defense.

14. P.W. 8, Dr. Ashok Vardhan Sahay, testified in his examination-in-chief that he was serving as the Medical Officer at Sadar Hospital, Samastipur on 19.07.2011. On that date, at approximately 2:50 a.m., he examined the injuries of the injured person, Ram Kripal Yadav, son of Asharfi Yadav, and documented the following injury:

A lacerated wound on the dorsal side of the right hand, with muscle-deep penetration, measuring 1x1.

15. P.W. 8 has stated that this injury was caused by a firearm, the injury was sustained approximately within 12 hours and categorized it as simple in nature. He referred the patient to D.M.C.H. Darbhanga/PMCH Patna for further



treatment.

16. In his cross-examination, P.W. 8 clarified that he had not received any follow-up medical report from the hospital to which the patient had been referred for advanced care. He was unable to specify the distance from which the gunshot was fired. However, based on his professional experience, he affirmed that the injury appeared to be caused by a firearm and was of a simple nature.

17. PW 4, Durgesh Rai, and PW 5, Ram Kripal Rai (the informant and injured person), did provide substantive testimony. It is true that P.W. No. 8, Dr. Ashok Bardhan Sahay, identified one lacerated wound caused by a firearm, but described it as simple which is also not on the vital part of the body. Therefore, the charge under Section 307 of the IPC is not been proved; however, the injury caused to the victim establishes the charge under Section 324 of the IPC against the appellant.

18. Considering all relevant facts, the prosecution has substantiated the charges under Sections 342 and 324 of the IPC and Section 27 of the Arms Act against the accused, Munchun Rai.



19. The Hon'ble Apex Court, in the case of State of Maharashtra & Anr. vs. Najakat Alia Mubarak Ali, (2001) 6 SCC 311 has held that:

"We may now decipher the two requisites postulated in Section 428 of the Code:

(1) During the stage of investigation, enquiry or trial of a particular case the prisoner should have been in jail at least for a certain period.

(2) He should have been sentenced to a term of imprisonment in that case.

16. If the above two conditions are satisfied then the operative part of the provision comes into play i.e. if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of investigation, enquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded. The words



“if any” in the section amplify that if there is no balance period left after such deduction the convict will be entitled to be set free from jail, unless he is required in any other case. In other words, if the convict was in prison, for whatever reason, during the stages of investigation, enquiry or trial of a particular case and was later convicted and sentenced to any term of imprisonment in that case the earlier period of detention undergone by him should be counted as part of the sentence imposed on him.”

20. The accused has been in jail since 19.12.2011 and he was sentenced on 26.08.2013 for the offence punishable under Sections 342 & 324 of I.P.C and 27 of the Arms Act and accordingly, he has been sentenced to undergo rigorous imprisonment of 2 years under Section 324 of I.P.C, rigorous imprisonment of 1 year under Section 342 of I.P.C & rigorous imprisonment of 3 years with under Section 27 of the Arms Act in default of fine simple imprisonment for 1 month with all the all the sentences



have to run concurrently by learned Adhoc Additional Sessions Judge - II, Samastipur.

22. The appellant has, approximately been under custody for two years of sentence for the maximum punishment given to the appellant. Thus, accordingly, the judgment of conviction dated 26.08.2013 passed by the learned Adhoc Additional Sessions Judge - II, Samastipur is upheld and affirmed. Since the appellant has already served approximately two years of custody, the sentence of the appellant is reduced to period already undergone and the appellant stands discharged of the liabilities of his bail bonds, if any.

23. The appeal stands partly allowed under period undergone.

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
CAV DATE	NA
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