

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.524 of 2019

Arising Out of PS. Case No.-146 Year-2002 Thana- GHOSI District- Jehanabad

Bindi Singh @ Bindi Sharma, son of late Ragho Singh, Resident of Village-
Pitambarpur, P.S-Ghoshi, District-Jehanabad.

... .. Petitioner/

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner	:	Mr. Mritunjay Kumar, Advocate Mr. Ram Ganesh, Advocate. Mrs. Shilpi Singh, Advocate. Mr. Vibhuti Kumar, Advocate.
For the State	:	Mr. Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 27-03-2025

The present Criminal Revision petition has been preferred by the sole petitioner against the impugned judgment dated 04.02.2019 whereby learned Fast Track Court – II, Jehanabad has upheld the conviction of the petitioner whereas acquitted the rest five co-appellants of all the charges.

2. The factual background is that on *Fardbeyan* of injured Rakesh Ranjan, Ghoshi (Okari) P.S. Case No. 146 of 2002 has been lodged against six accused persons including the petitioner for the offences punishable under Sections 147, 148, 149, 324, 307, 341, 329, 323 of the Indian Penal Code and Section 27 of the Arms Act. After investigation, charge sheet was submitted against all the FIR named accused persons



including the petitioner and, thereafter, after cognizance, the case was committed to the Court of Sessions and after framing of charge, trial commenced.

3. The prosecution case as emerging from the *Fardbeyan* of the informant (P.W.-6) is that when the informant was going towards the field outside the village in the evening for answering the call of nature, he was surrounded by all six accused persons including the petitioner being armed with firearms (Rifle and pistols) and on exhortation of Accused/Rajendra Sharma, co-accused Rajiv Sharma, Bindi Sharma and Sikandar Sharma fired at the informant, though he escaped from the firing of Rajiv Sharma and Sikandar Sharma, his palm was hit by firing of Bindi Singh @ Bindi Sharma who is petitioner herein.

4. During trial, altogether ten witnesses were examined on behalf of the prosecution which are as follows:-

- (i) P.W.-1 - Sudhir Kumar
- (ii) P.W.-2 - Ram Priya Kumar
- (iii) P.W.-3 - Rajendra Singh @ Nawal Singh
- (iv) P.W.-4 - Shambhu Sharma
- (v) P.W.- 5 - Sharda Devi
- (vi) P.W. - 6 - Rakesh Ranjan
- (vii) P.W.-7 - Dr. Lakshman Prasad who has conducted medical examination of the injured/informant.
- (viii) P.W. - 8 - Mathura Prasad Singh
- (ix) P.W. -9 - Raju Prasad
- (x) P.W. - 10 - Rajkishore Prasad



5. The following documents were exhibited by the prosecution during trial.

- (i) **Ext. - 1** - Signature of Rajendra Singh @ Nawal Singh, father of the informant (P.W.-6)
- (ii) **Ext. - 2** - Fardbeyan
- (iii) **Ext. - 3** - Injury report of Rakesh Ranjan (PW.- 6)
- (iv) **Ext.- 4** - letter from Dr. Laxman Prasad (P.W.- 7) addressed to I.O. of the case.

6. After hearing the parties and perusal of evidence on record, the learned Trial Court found all the accused persons including the petitioner guilty for the offences punishable under Sections 147, 148, 341 read with Section 149, 504/149 and 337/149 of the Indian Penal Code and Section 27 of the Arms Act and sentenced them accordingly and maximum punishment of 3 years is awarded under Section 27 of the Arms Act.

7. Being aggrieved by the judgment of conviction and order of sentence, all the convicts including petitioner had preferred Criminal Appeal No. 90 of 2017/08 of 2018 in the court of Sessions and appeal has been disposed of by FTC-II, Jehanabad, whereby, the judgment of conviction and order of sentence against the petitioner was upheld. However, all the co-appellants were acquitted of all the charges.

8. I heard learned counsel for the petitioner and learned APP for the State.



9. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated. He further submits that learned Appellate Court erroneously upheld the judgment of conviction and order of sentence against the petitioner passed by learned trial court.

10. Learned counsel for the petitioner also submits that out of ten witnesses, three witnesses, viz. P.W.-1, P.W.-2 and P.W.-4 have not supported the prosecution case at all and, hence, they have been declared hostile. The I.O. has not been examined at all, causing prejudice to the petitioner. As per injury report, the Doctor has not stated about the type of the firearm which has caused the injury. As per the allegation, the petitioner has caused injury by rifle, whereas as per injury report, there is only fracture in the fourth finger of left hand of the informant. Such type of injury cannot be caused by rifle. In case of the palm being hit by the rifle, the whole palm could have not destroyed.

11. He further submits that learned Appellate Court by his own finding has come to the conclusion that the prosecution case has not proved its case against the accused persons beyond reasonable doubts and hence, he has acquitted the rest accused persons. But on the same set of the evidence,



learned Appellate Court has upheld the judgment of conviction and order of sentence passed against the petitioner, which, could not be sustainable.

12. However, learned APP for the State defends the impugned judgment passed by learned Appellate Court below saying that the same has been passed after properly appreciating the evidence on record.

13. I considered the rival submission advanced by both the parties and perused the material on record. I find that out of ten witnesses, three witnesses viz. P.W.-1, P.W.-2 and P.W.-4 have already been hostile. The I.O. has not been examined causing prejudice to the petitioner because place of occurrence has not been established, nor contradictions in the statements of the witnesses could be confronted to the I.O. I further find that out of ten witnesses, three had turned hostile and two witnesses are close relatives, being father (PW-3) and mother (PW-5). I further find that except the informant, there is no eye witness examined during the trial. I further find from perusal of learned Appellate Court judgment that the prosecution has failed to prove its case against the accused beyond all reasonable doubts and other than the petitioner were acquitted of all the charges. If the learned Appellate Court has



disbelieved the case against the rest, there is no reason to believe the prosecution case against the present petitioner. As per the prosecution case, all other co-accused were also armed and had also committed *actus reas* like firing at the informant. If the case is not proved against them, there is no reason to convict similarly situated one of the accused persons on the same set of evidence.

14. In the case of **Ram Singh Vs. The State of U.P., 2024 INSC 128**, the Hon'ble Supreme Court has held that when there is similar or identical evidence of eye witnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. The relevant paragraphs of judgment is as follows:-

“32. This Court in the case of *Javed Shaukat Ali Qureshi*, has held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. This Court clarified as under:

15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination.”

15. Considering the aforesaid facts and circumstances, I find that the impugned judgment is not sustainable in the eye of law. The learned Appellate Court has



committed error of law by upholding the judgment of conviction and order of sentence against the petitioner by acquitting the rest appellants.

16. Hence, the impugned judgment is set aside and the petitioner is acquitted of all the charges.

17. Accordingly, the present petition stands allowed.

(Jitendra Kumar, J)

S.Ali/-

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