

(2013) 01 PAT CK 0075

Patna High Court

Case No: Criminal Appeal (SJ) No. 74 of 1998

Chandrika Yadav, Dularchand
Yadav and Jagdish Prasad @
Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Jan. 30, 2013

Acts Referred:

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313, 360
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307, 323

Hon'ble Judges: Hemant Kumar Srivastava, J

Bench: Single Bench

Advocate: Anjani Kumar, for the Appellant; Sujit Kumar Singh, (, Assistant Public Prosecutor) for the State, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Kumar Srivastava, J.

This criminal appeal has been preferred against the judgment of conviction and sentence order dated 19.01.1998 passed by 5th Additional Sessions Judge, Nalanda in Sessions Trial No. 528 of 1992 by which and whereunder he convicted the appellants for the offence punishable u/s 324 of the Indian Penal Code and after giving benefit of Section 360 of the Cr. P.C., he directed to release the appellants on execution of probation bond of rupees ten thousand with two sureties of like amount each for maintaining peace and be of good behaviour during the period of one year and if during that period any complaint is heard against them, they may be called upon to serve out the sentence. The prosecution case, in brief, is that P.W. 4., Udal Gope gave his Ferdbeyan to officer in charge of Karai Police Station on 01.12.1990 at about 07:30 A.M. at his residence to this effect that on the same day at about 07:00 A.M., while he was standing in front of his house, appellant no. 1,

namely, Chandrika Yadav being armed with illegal gun, Rampravesh Yadav being armed with illegal gun, appellant no. 3, namely, Jagdish Prasad @ Yadav being armed with bhala, appellant no. 2, namely, Dularchand Yadav being armed with bhala and Sudhir Prasad being armed with gun came at his door and appellant no. 2, namely, Dularchand Yadav ordered the others to shoot him whereupon appellant no. 1 opened fire of his gun as a result of which he sustained firearm injury on the wrist of his right hand, left thumb, left shoulder and below his neck and blood started oozing out. He fell down on the earth out of fear. Thereafter, accused, Rampravesh Yadav and Sudhir Prasad started making firings towards his family members who started fleeing away but appellants Jagdish Prasad @ Yadav and Dularchand Yadav chased them and they hurled bhala blow to Nawal Gope which hit below his left eye, on left side of his forehead and on eyebrow of left eye and blood started oozing out. He further stated that appellants and other accused entered his house and took away three mounts grain and tin boxes and after that they fled away from there. The boxes contain clothes and ornaments. The appellants and other accused had committed a murder in the year 1987 for which a case was pending in the court. He further stated that there was land dispute between him and appellants as well as other accused persons and that was the reason the appellants and other accused committed the above stated occurrence.

2. On the basis of aforesaid ferdbeyan, Hilsa (Karai) P.S. Case No. 340 of 1990 under Sections 147, 148, 149, 323, 324, 307, 448 and 379 of the Indian Penal Code was registered and accordingly, formal first information report was drawn against the appellants and others for the offences of above stated sections. The matter was investigated by the Investigating Officer and after completion of investigation, Investigating Officer submitted charge sheet under Sections 147, 148, 149, 307, 324, 323, 448, 379 of the Indian Penal Code and 27 of the Arms Act.

3. On being receipt of the charge sheet, the cognizance for the above stated offences was taken and the case was committed to the court of Sessions, in usual way.

4. The appellants and other accused were put on trial. Appellant no. 2, namely, Dularchand Yadav and appellant no. 3, namely, Jagdish Prasad @ Yadav were jointly charged for the offence punishable u/s 324 of the Indian Penal Code and the aforesaid two appellants along with accused Sudhir Yadav and Rampravesh Yadav were again charged for the offences punishable under Sections 307/ 149, 448 and 380 of the Indian Penal Code. Appellant no. 1, namely, Chandrika Yadav was, separately, charged for the offences punishable under Sections 307, 448, 380 of the Indian Penal Code and 27 of the Arms Act and similarly, accused Sudhir Prasad and Rampravesh Yadav were jointly charged for the offence punishable u/s 27 of the Arms Act. The appellants and other accused denied the charges and claimed to be tried.

5. In order to prove its case, the prosecution examined, altogether, seven witnesses and also got exhibited injury report of injured persons of this case as Exhibit-1 series, ferdbeyan as Exhibit-2, the requisitions of injured persons as Exhibit-3 series, formal first information report as Exhibit-4 and judgment dated 23.05.1995 passed in G.R. No. 1269 of 1990 as Exhibit-5.
6. The statements of appellants and other accused were recorded u/s 313 of the Cr. P.C. in which they completely denied the prosecution story.
7. No oral evidence was adduced on behalf of the appellants or other accused but certified copy of first information report of Hilsa P.S. Case No. 345 of 1983 and certified copy of Ferdbeyan of Hilsa (Karai) P.S. Case No. 341 of 1990 were got exhibited as Exhibit A and Exhibit-B, respectively.
8. The learned trial court having analyzed and considered the materials available on the record acquitted the appellants and other accused of the charges framed under Sections, 307, 307/ 149, 448, 380 of the Indian Penal Code and 27 of the Arms Act but convicted the appellants for the offence punishable u/s 324 of the Indian Penal Code and sentenced them in the manner as stated above.
9. The impugned judgment of conviction shows that the learned trial court has relied upon the testimony of P.W. 2, P.W. 4, P.W. 5 and P.W. 7 and passed the impugned judgment of conviction and sentence order.
10. Learned counsel appearing for the appellants submitted that prosecution witnesses made contradictory statements and prosecution could not succeed to prove the manner of occurrence as well as place of occurrence and furthermore, the prosecution witnesses admitted that there was land dispute between the parties and, therefore, the appellants were entitled to get the benefit of doubt but learned trial court failed to appreciate the materials available on the record and committed error in convicting and sentencing the appellants.
11. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order submitting that on the point of assault, P.W. 4. and P.W. 5. have successfully proved the prosecution case and the testimony of the aforesaid prosecution witnesses is corroborated by testimony of P.W. 2 and P.W. 7 and, therefore, the learned trial court rightly convicted and sentenced the appellants passing impugned judgment of conviction and sentence order.
12. The only question arises for determination as to whether the impugned judgment of conviction and sentence order is liable to be sustained or not, particularly, in the light of submissions advanced on behalf of the parties.
13. On perusal of materials available on the record, I find that P.W. 1, Shiv Kumar Yadav @ Sukhi Gope claimed to be an eye witness of the alleged occurrence but learned trial court disbelieved the testimony of the aforesaid witness and, in my

view, the learned trial court rightly disbelieved the testimony of this witness because this witness stated at para 9 of his deposition that he along with injured had gone to police station and reached the police station at 08:00 A.M. but Exhibit-2 shows that Ferdbeyan of P.W. 5 was recorded at his door at 07:30 A.M. on the same day and the aforesaid fact has been corroborated by P.W. 7 and he stated at para 6 of his cross examination that none had gone to police station to give information in respect of the alleged occurrence and, therefore, in my view also, no reliance can safely be placed on testimony of P.W. 1.

14. P.W. 3, Ram Uchit Gope is not an eye witness of the alleged occurrence rather he frankly admitted in his deposition that having heard the sound of firing he went towards the house of P.W. 5 and saw the appellants and other accused coming out from the house of the P.W. 5. Although, this witness claimed that appellants and other accused were carrying weapons and boxes in their hands but he admitted at para 7 of his cross examination that he had not given any statement to police in respect of the alleged occurrence and first time he was deposing in the court. Therefore, in my view, the testimony of this witness requires some corroboration.

15. P.W. 4, Nawal Gope is one of injured persons of this case. This witness supported the prosecution case in his examination in chief and, specifically, stated that at the instigation of appellant Dularchand Yadav, appellant, Chandrika Yadav opened fire which hit on wrist of right hand, on left side of forehead, on left shoulder and on left thumb of P.W. 5, Udal Prasad. This witness further stated that appellants Jagdish Prasad @ Yadav and Dularchand Yadav hurled bhala blow on him causing injury on his left eyebrow and below the eye and after that appellants and other accused entered the house of P.W. 5 and committed loot. At para 4 of his cross examination, he stated that his house is situated in front of house of P.W. 5 and between both the houses, there is a lane. At para 7 of his cross examination, he stated that at the time of alleged occurrence only P.W. 5 and this witness were present and when the appellants and other accused started assaulting, the other witnesses came there. At para 10 of his cross examination, he admitted that he did not sustain injury by lathi.

16. P.W. 5, Udal Prasad, is informant as well as another injured of this case. This witness supported the prosecution story and stated that appellant, Dularchand Yadav ordered the others upon which appellant Chandrika Yadav opened fire of his gun which hit on his left forehead, left shoulder, thumb of left hand and right wrist. He further stated that P.W. 4 was chased by appellants Dularchand Yadav and Jagdish Prasad and both the aforesaid appellants gave bhala blows to him as a result of which he sustained injury on left side of his forehead as well as below the eye. He further stated that accused Sudhir and Pravesh entered his house and committed theft. He further stated that his statement was recorded by P.W. 6 and after that he was sent to hospital for treatment. He admitted in his cross examination that there was land dispute between him and appellants as well as other accused since long. He further admitted at para 16 of his cross examination

that having sustained injury he fell in the lane and after his falling none had assaulted him. At para 21 of his cross examination, he further admitted that P.W. 4 had also fallen in the lane having sustained bhala injury. The attention of this witness was drawn by the defence towards his previous statement recorded u/s 161 of the Cr. P.C. and he admitted that he had not disclosed before the police that P.W. 4. was chased by the appellants and other accused. He frankly admitted at para 33 of his cross examination that there was previous enmity between him and the appellants including the other accused.

17. P.W. 2, doctor, Indrajit Prasad proved the injury reports of injured persons of this case as Exhibit-1 series. This witness found firearm injuries on the person of P.W. 5 and similarly, penetrating wound on the person of P.W. 4 besides the other injuries. This witness also stated that he examined the injured persons on 01.12.1990 at 10:20 A.M. at State dispensary Karai Parsarai, District-Nalanda. Therefore, this witness clearly proved this fact that firearm injury as well as piercing wound were found on the person of the injured persons of this case on the alleged date of occurrence.

18. P.W. 6. is S.I., Nand Kishore Rai and he stated that on 01.12.1990 he was officer in charge of Karai Police Station and on the same day at 07:30 A.M. he recorded Ferdbeyan of P.W. 5. This witness proved the Ferdbeyan of P.W. 5 as Exhibit-2. This witness stated that he took charge of investigation and inspected the place of occurrence. He stated at para 3 of his examination in chief that in course of investigation, he found bricks and stones scattered in the lane as well as courtyard of P.W. 5. This witness after completion of investigation submitted charge sheet. He also proved the requisitions issued by him in respect of injuries of P.W. 4 and P.W. 5 as Exhibit-3 series. At para 7 of his cross examination he stated that he came on the place of occurrence having heard sound of firing. He stated that though he found blood was oozing out from the wounds of P.W. 5 but he did not mention this fact in the case diary nor he seized the blood stained clothes of injured of this case and furthermore, this witness admitted that after recording the Ferdbeyan, he started investigation without drawing the formal first information report. He further admitted that he did not take pain to investigate the case in respect of the land dispute of the parties. He also stated that he recorded the statements of witnesses.

19. P.W. 7 is a formal witness. He has proved the formal first information report as Exhibit-4 and there is nothing important in the deposition of this witness.

20. After careful scrutiny of depositions of prosecution witnesses, I find that P.W. 4 and P.W. 5 have supported the factum of assault and their testimony is corroborated by the testimony of P.W. 2. Although, some minor contradictions have occurred in depositions of P.W. 4 and P.W. 5 but the aforesaid minor contradictions do not go to the root of prosecution case.

21. The appellants and other accused were acquitted of the charge framed u/s 380 of the Indian Penal Code and in my view, the learned trial court rightly acquitted the appellants and other accused of the aforesaid charge because prosecution witnesses have made contradictory statements on the point of theft and the contradictions occurred in the depositions of prosecution witnesses create doubt about the story of theft.

22. Similarly, the appellants have been acquitted of the charges framed against them under Sections 307/ 149 and 307 of the Indian Penal Code and while acquitting the appellants of the aforesaid charges, the learned trial court noticed that there was inconsistency between medical and ocular evidence and the injuries found on the persons of P.W. 4 and P.W. 5 were simple in nature and not dangerous to life and furthermore, the learned trial court observed that injuries found on the person of P.W. 5 were possible also by circular brick batting and the learned trial court gave the benefit of doubt to the appellants and other accused and accordingly, the appellants and other accused were acquitted of the charge framed under Sections 307/ 149, 307 of the Indian Penal Code and 27 of the Arms Act. The learned trial court has given sound reasoning for acquitting the appellants and other accused of the charges framed under Sections 307, 307/ 149 of the Indian Penal Code and 27 of the Arms Act and I also find that prosecution miserably failed to prove the charges framed under Sections 307, 307/ 149 of the Indian Penal Code and 27 of the Arms Act. because P.W. 5 himself admitted in his deposition that having sustained injury he fell down on the ground and after his falling, the appellants and other accused did not hit him. So, the aforesaid statement of P.W. 5 shows that the appellants and other accused had no intention to kill the P.W. 5 because had the appellants and other accused had intention to commit the murder of P.W. 5, they would have certainly made firing on P.W. 5 after his falling on the ground.

23. As I have already discussed that P.W. 4 and P.W. 5 have proved the story of assault and, therefore, in my view, the learned trial court rightly convicted the appellants for the offence punishable u/s 324 of the Indian Penal Code and this Court does not find any ground to interfere into the impugned judgment of conviction and sentence order. On the basis of aforesaid discussions, this criminal appeal stands dismissed and the impugned judgment of conviction and sentence order dated 19.01.1998 is, hereby, confirmed.