

(2004) 01 PAT CK 0030
In the Patna High Court
Case No : Criminal Appeal No. 588 of 2002

Ashok Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 34, 354, 452

Citation : (2004) 3 PLJR 582

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Advocate : Birju Prasad, for the Appellant; Sanjay Kumar Singh, for Informant and Ali Mozaffar, for the Respondent

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—The facts of the case are tell-a-tale. Allegedly Appellant in the night of 21st September, 1999 knocked door of the house of Geeta Devi, pushed her inside and having gained his access in inner apartment of the house, tried to out-rage her modesty and when victim grappled with him, fired shot on her chest causing injury, and made good his escape with others who had accompanied him. The informant of the case is none else but the victim. As usual, investigation had followed after institution of the police case at behest of the victim and the Police on conclusion of investigation laid charge sheet before the court below. Though Appellant suffered conviction under Sections 307, 354, 452/34 of the Indian Penal Code and also u/s 27 of the Arms Act, while no sentence was awarded to him on other counts, he was sentenced to suffer rigorous imprisonment for a term of nine years and also to pay a fine of Rs. 5,000/- for his conviction u/s 307 of the Indian Penal Code, and in default of payment of fine, to undergo further simple imprisonment for a period of three months. At trial, the State examined nine witnesses who are the victim, doctor, Police Officer and host of other witnesses including one formal who placed on the record the injury register

brought from Dighwara hospital.

2. The defence of the Appellant both before the court below and this Court had been that of innocence and he ascribed his false implication. Other defence of the Appellant was that Geeta Devi had illicit retention with one Yogendra Sah and hence false implication. The trial court, however, on marshalling evidences available before it while rejecting plea of innocence of the Appellant, recorded finding of guilt and sentenced him in the manner stated above.

3. A brief resume of the narratives of the witnesses can be noticed at threshold to appreciate contentions raised. Reiterating her earliest version which she rendered before the Police, Geeta Devi (P.W.6) states that the Appellant having pushed the door, got his entry in her dwelling house and when he wanted to outrage her modesty, she resisted his move, pursuant to which he fired shot on her chest. Among host of witnesses, the person who corroborated testimony of the victim, happens to be Anil Kumar Sah (P.W.1) who too was in the house in the night and witnessed assault on her aunt by Appellant, by fire arm.

4. Chhote Lal Sah (P.W.2) received message about Geeta Devi sustaining fire arm injury by Appellant, at Calcutta and shortly after he visited village collected details about the incident from none else but Anil Kumar Sah who was an eye witness. Ramesh Lal (P.W.4) stated to have rushed to the place of occurrence on hearing sounds of firing, when he noticed Geeta Devi smeared with blood and she had raised alarm about Appellant having fired shots on her. Attention of this witness had been drawn by the defence about statement rendered by him before police, being different where he did not make parallel statement about Geeta Devi stating complicity of Appellant before him. The Police Officer examined by State would, however, refute assertion made by witness about complicity of the Appellant having been disclosed to him by Geeta Devi when Sheoji Sah (P.W.5), husband of the victim lady, was at Punjab, and he too had rushed to village on receipt of information about his wife having sustained fire arm injury by the Appellant. He rushed to P.M.C.H. where he got tales about the incident from none else but his wife about Appellant having fired shots on her in the night of incident.

5. Braj Nandan Mahto (P.W.8) stated to have recorded fardbeyan of Geeta Devi on 3rd October, 1999 on strength of which first information report was drawn up at the police station. He stated to have visited place of occurrence, recorded statement of witnesses, secured injury report of Geeta Devi from Dighwara Hospital and made over charge of investigation to his successor on his transfer. This witness, however, states that on 21st October, 1999 he had received fardbeyan of Geeta Devi from Pirbahore Police Station, entry of which was recorded in case diary in paragraph 37.

6. The doctor who clinically examined the injured was Dr. R.K. Choudhary (P.W.7) who noticed a round lacerated wound on lower and middle part of chest with inverted margin. However, there was no sign of charring. There was two fire arm

wounds and both were communicating to each other. The injury in his estimation was caused by fire arm and in the supplementary report he opined that the injury was grievous because it was on vital part of the body. This is essence of all evidence that has been placed on the record.

7. Submission on behalf of the Appellant was that though victim was shown to have sustained fire arm injury from very close range as has been opined by the doctor, he did not notice marks of charring or tattooing which is an usual feature when shots were fired from close range. However, submission made at bar did not assume much significance in view of the fact that in many cases, it has been noticed that fire arm even discharged from very close range would not produce charring or tattooing, as it all depends upon the nature of weapon. Yet other submission is that in view of defence of the Appellant about his false implication due to questionable relationship of prosecutrix with one Yogendra Prasad, the prosecution version had to be discarded by the trial court. However, I find that barring bold suggestion given to the witnesses about false implication due to questionable relation between Geeta Devi and Yogendra Prasad, the Appellant had not chosen to examine any witness to strengthen his defence and neither there was such defence in statement of the Appellant recorded u/s 313 of the Code of Criminal Procedure not even if defence of the Appellant was accepted for the moment there appeared to be ostensible reason as to why Appellant was picked up for prosecution with whom there was no animosity even if Yogendra had questionable relationship with Geeta Devi. Other argument was that the Appellant happened to be in custody since more than two years and nine months and in view of all these mitigating circumstances, the sentence be considerably reduced if the finding of guilt is up held by this Court. Contention raised by learned Counsel for the Appellant was resisted by the State stating inter alia that testimony of the victim finds corroboration from evidence of Anil Kumar Sah who is an eye witness and though evidence of other witnesses are of ancillary nature, they too support the prosecution version about complicity of the Appellant. Needless to say that there has been evidence of the victim on the record who is a stamped witness, and that apart, there has been corroboration of her evidence from Anil Kumar Sah, P.W.1, also who was only 11 years old and had corroborated prosecutrix version on all material particulars of incident. Narrations made by these two witnesses is corroborated also from the positive finding recorded by the doctor who noticed fire arm wound on chest of injured. However, what disturbs me is the finding recorded by doctor about nature, of the injury as doctor considered injury to be grievous simply because it was on vital part of the human body. Least said is better.

8. Other argument too canvassed on behalf of the Appellant cannot remain unnoticed, as submission is that even though the occurrence took place on 21st September, 1999, it was not before 3rd October, 1999 that fardbeyan of Geeta Devi was recorded by the "Police Officer in village and there being no plausible explanation for belated action of the prosecution, the prosecution case be discarded on this score alone. However, it is noticed that during pendency of

investigation, fardbeyan of Geeta Devi recorded by Pirbahore Police Station on 24th September, 1999 had been received by P.W.9 and that must be considered to be the earliest version of the prosecution. Even if, for want of details, the injury is considered to be simple in nature, the case of the Appellant would squarely fall within the ambit of Section 307 of the Indian Penal Code, as while considering application of the section, the nature of weapon used, the manner in which it is used and also the motive for the crime and part of the body where injury is inflicted, are some of the salient factors that may be taken into consideration. The Appellant gained access in inner apartment of the house of the injured in night and that too with deadly weapon which he used for outraging modesty of the victim.

9. Regard being had to the formidable nature of weapon used by the Appellant, attending circumstances and also part of the body of the injured where injury was inflicted, I am of the view that finding of ; guilt recorded by the Court below did not merit interference. However, since Appellant has remained in custody for about more than two years and nine months and also that occurrence took place about more than four years back, the sentence awarded to the Appellant is reduced to four years. In the backdrop of the circumstances, fine forwarded to the Appellant is reduced to Rs. 2500/-, in default of payment of which, he twill suffer further rigorous imprisonment for a term of three months and with these modifications, the appeal is dismissed.