

(2024) 04 PAT CK 0052

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 899 Of 2006

Gaya Prasad Mehta

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 19-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 307, 324, 341
Arms Act, 1959 — Section 27

Citation : (2024) 04 PAT CK 0052

Hon'ble Judges : Sunil Kumar Panwar, J

Bench : Single Bench

Advocate : Vipul Sinha, Z. Hoda

Final Decision : Dismissed

Judgement

1. Heard Mr. Vipul Sinha, learned Amicus Curiae on behalf of the appellant and Mr. Z. Hoda, learned APP appearing for the State.

2. This appeal has been preferred by the appellant Gaya Prasad Mehta, being aggrieved and dissatisfied with the judgment of conviction and order of sentence, dated 19th of October, 2006 passed by the learned Additional Sessions Judge I, Aurangabad in Sessions Trial No. 133/95 and 121/2000, arising out of Aurangabad (Town) P.S. Case No. 216 of 1994, whereby and where-under appellant is convicted under Section 307 of Indian Penal Code and awarded sentence to undergo rigorous imprisonment of 7 years and further convicted under Section 341 of Indian Penal Code and sentence him to undergo simple imprisonment for 1 month and again convicted under Section 27 of Arms Act and sentence him to undergo rigorous imprisonment for 3 years. However, all the sentence have been ordered to run concurrently.

3. The Prosecution case is based on the Fardbyan of informant, Gopal Prasad, stating therein that on 26th of June, 1994 at about 9 P.M., having closed his shop Gopal Prasad was on his way to home on the motorcycle and as soon as he

reached near Narendra Talkies Cinema hall, three miscreants coming from opposite direction stood up on the road and prevented him from moving forward. Meanwhile, one of them, with the description of light dark colour, healthy and well built and having average height, extricated revolver from his waist and fired at him. Fortunately, the bullet did not hit him but the gun powder emitted there from caused injury on the face, near right eye and cheek, leading to bleeding. When the informant raised alarm as "Dacoit-Dacoit", they left the scene of occurrence. He claimed to identify on seeing them.

4. On the basis of said Fardbeyan, instant case was registered and investigation was taken up. After completion of the due investigation, chargesheet was submitted against the accused/appellant. During course of investigation, said appellant was put on Test Identification Parade. Wherein he was identified by the informant/victim and accordingly, cognizance was taken against the appellant. Ultimately, this case was committed to the Court of Sessions for trial and disposal.

5. Defense of accused/appellant was total denial of the charges and false implication. Appellant took the plea that he resided at the same Mohalla as that of the informant belongs and in spite of that lodging of F.I.R. against unknown, he implicated the appellant with concocted allegations.

6. The point of consideration in this appeal is whether the prosecution is able to prove the charges levelled against the appellant/ accused person beyond reasonable doubt or not.

7. In order to prove the charges, the prosecution examined altogether 9 witnesses.

8. P.W. 1 Ram Sumiran Choudhary, P.W. 2 Arun Kumar, P.W. 4 Vijay Kumar Mahto, P.W. 9 Vishwanath Choudhary (initially P.W. 3) did not support the prosecution version and shown their ignorance about the occurrence as such they have been declared hostile.

9. P.W. 5 Gopal Prasad who is the informant and victim of this case, has deposed and supported the date, time and manner of occurrence. He deposed that having closed his shop while he was going to his house and on the way, when he reached near Narendra Talkies, three miscreants obstructed his way and forced to stop the motorcycle to which the informant was riding. He further deposed that having stopped his motorcycle, he took out key there from and kept in his pocket. Meanwhile, miscreant of light dark complexion, took out a pistol from his waist and fired at him due to which he sustained sporadic injury, caused by Gun Powder of the said firearm, near his right eye and cheek. Blood was also oozing therefrom. When this witness raised alarm, the miscreants fled away. He further deposed that the miscreants were of age group of 25-30 years. Since the occurrence took place in the vicinity of police station, few constables also reached there and they chased the miscreants. Vide para 8, this witness claimed to identify all the miscreants and despite that he identified accused Gaya Prasad

Mehta standing in the court's dock. He proved his signature on the Fardebeyan, marked as Ext. 1. On behalf of the defence, he stood the test of cross-examination. Vide para 11 of the cross-examination, this witness expressed his ignorance as to who was Bhola Mahto of Shahpur Mohalla and further as to whether Gaya Prasad(Appellant) happens to be the son-in-law of said Bhola Prasad.

10. P.W. 6 is the doctor Anil Kumar Sinha who has examined the P.W. 5(injured) and found

(I) multiple pellet injuries involving right side of forehead up to line ending right angle of mouth to right lobes of ear.

(ii) redness and swelling of right eye.

This witness opined the cause of injury due to firearm and simple in nature. P.W. 7 Sri Madhusudan Tiwari (Judicial Magistrate) who had held the Test Identification Parade of accused in local jail. He has proved the Test Identification Parade, marked as Ext. 3.

P.W. 8 Balkeshwar Kumar is retired Sub Inspector has deposed that he has investigated the case and completing the investigation, charge-sheet against the said accused/appellant Gaya Prasad was submitted.

11. On behalf of the defence, one witness, namely, Dinesh Singh was examined, who proved the Ration Card, marked as Ext. A. The voter list has also been marked for identification.

12. Mr. Vipul Sinha, learned Amicus Curiae, in defence of the appellant has assailed the judgment of conviction and order of sentence passed by learned trial Court and submitted that the same not according to law. It has also come in evidence vide para 20 of P.W. 5(informant) that there was enmity between Bhola Prasad (father-in-law of the appellant) and the appellant was residing since before the date of occurrence.

Out of all nine witnesses, P.W. 1, P.W. 2, P.W. 9(initially P.W. 3) and P.W. 4 have declared hostile. P.W. 5(informant of the case) whose evidence has not been corroborated by other independent and eye witness. Only on the basis of single interested witness, who is informant himself, the conviction should not be upheld. It is prudent rule that the evidence of the victim/informant should be corroborated by other independent and eye witnesses. It is further submitted that no offence u/s 307 of Indian Penal Code is made out in this case as the informant has not received any injury as per the F.I.R. itself. Only the gunpowder had spread which caused simple injuries.

13. In contra, learned A.P.P. submitted that the judgment of conviction and order of sentence, which has been challenged by this appeal, is based on cogent and consistent evidence which is adduced by the prosecution and the same is sustainable and the instant appeal is fit to be dismissed.

14. I have gone through the entire case records, oral and documentary evidence adduced on behalf of the prosecution as well as defense. I have also consider the rival submissions made on behalf of the respective parties. In this case, it is admitted fact that the case was initially lodged against unknown and during investigation, the name of accused/appellant came into light on the basis of Test Identification Parade. The informant (P.W. 5) identified the accused/appellant who committed the offence against the informant. In this case, except P.W. 5 who is the informant, victim and star witness of this case, other witnesses P.W. 1, P.W. 2, P.W. 4, P.W. 9(initially P.W. 3) have not supported the prosecution case and declared hostile. P.W. 5 has supported the prosecution case in respect of time, place and manner of occurrence, by way of his evidence. This witness was subjected by the defence during lengthy cross-examination but nothing major surfaced to discredit his evidence. From perusal of the impugned judgment which has been challenged by way of this appeal, learned trial Court rightly observed that in this case the informant has lodged the case against unknown and during investigation the appellant/accused was identified during Test Identification Parade by the informant. Due to this, the appellant faced trial.

15. The prime point in this instant appeal is whether the prosecution succeed to prove its case beyond reasonable doubt in respect of offence under Section 307 of Indian Penal Code or not. From perusal of F.I.R., the informant(P.W. 5) has stated in his Fardbeyan that the bullet did not hot him but gunpowder emitted therefrom caused injury on the face, near right eye and cheek, leading to bleeding. P.W. 6 Doctor opined that the injury is simple in nature and caused by fire arm. To prove the offence under Section 307 of Indian Penal Code. The prosecution has to prove the following facts.

(a) that the accused did an act.

(b) that the act was done with such intention or knowledge and under such circumstances that if he by the attack caused death he would be guilty of murder.

(c) the intention is to be gathered from all circumstances and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

Doctor opined the injury is simple in nature. So, I have no hesitation to hold that the accused/appellant has no intention to kill the informant by opening fire as apparent from the prosecution evidence. To bring home an offence punishable under Section 324 of Indian Penal Code, the prosecution has to prove

(a) that the accused caused hurt, caused bodily pain, or disease or infirmity (vide Section 319 of the Indian Penal Code) to another.

(b) that it has been caused voluntarily ie. with knowledge or intention to cause

(c) that it has been caused by any instrument for shooting, for stabbing or

cutting, or by any instrument which qua weapon of offence is likely to cause death, or by means of fire or any heated substance or by means of poison or any corrosive substance or by means of any explosive substance or by means of any substance which is deleterious to the human body to inhale to swallow or to receive into blood or by means of any animal

(d) that the offence does not attract Section 334 of Indian Penal Code.

As discussed above, I am of this view that the prosecution is not able to prove the charge under Section 307 of Indian Penal Code. But, from perusal of the entire evidence available on record either orally or medically, the prosecution has established its case under Section 324 of Indian Penal Code and not under Section 307 of Indian Penal Code.

16. Thus, in view of the facts and circumstances of the case and the evidence discussed above, I hold that the appellant, namely, Gaya Prasad Mehta is found guilty under Sections 324, 341 of Indian Penal Code and Section 27 of Arms Act and convict him there under. In this case, the appellant has faced ordeal of trial since 1994. This appeal relates to year 2006. The appellant remained in judicial custody for more than 1 year.

17. Considering the period of custody as well as ordeal of trial, the appellant is sentenced to period already undergone by him.

18. The appeal stands dismissed with aforesaid modification of judgment of conviction and order of sentence.

19. Mr. Vipul Sinha, learned Amicus Curiae was appointed to represent the appellant/ accused. I put on record the words of appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court Legal Services Committee is hereby directed to pay a sum of Rs. 6,000/- (rupees six thousand only) to Mr. Vipul Sinha, towards his professional fee.