

(2013) 12 PAT CK 0045

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 160 of 2002

Gopal Singh, Surendra Singh, Sanjay Singh and Parsuram Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 307

Citation : (2013) 12 PAT CK 0045

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Pushpa Sinha and Mr. Ajay Kr. Ambastha, for the Appellant; Indihar Kumari, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellant No. 1 has been convicted u/s 307 Indian Penal Code and sentenced to rigorous imprisonment for five years. He along with Appellant No. 2 has also been convicted u/s 148 Indian Penal Code and sentenced to rigorous imprisonment for one year. The Appellant No. 2 has further been convicted u/s 27 of the Arms Act and sentenced to rigorous imprisonment for three years. Appellants No. 3 and 4 have been convicted u/s 147 Indian Penal Code and released on Probation of Offenders Act on bond of Rs. 2,000/- for a period of one year by the 5th Additional Sessions Judge, Bhojpur, at Arrah, in Sessions Trial No. 646 of 1992 by a Judgment and order of conviction dated 27.2.2002. The case of the Informant is that when he was proceeding along with others to his home from the Railway Station, he saw Appellant Gopal Singh and Sanjay Singh walking little ahead. They had also traveled with them on the train. When the Informant and his colleagues reached near Arrah Sasaram Light Railway line-Railway Hospital, the Appellant Gopal Singh and Sanjay Singh started altercation with them as to why they did not help them in cheating. Thereafter, they started assaulting him. In the meanwhile, Appellant Surender

Singh armed with the double barrel gun, Appellant Satyendra Singh armed with the single barrel gun and Appellant Mohit Singh @ Parsuram Singh came there. Appellant Gopal Singh took the gun from the hand of Appellant Sanjay Singh and fired at Anil Singh on account of which he was injured. This statement was recorded at 4.30 P.M. on 14.7.1991 even though the occurrence had taken place the day before at 6.00 P.M. i.e. almost after a day.

2. The Prosecution during Trial examined nine witnesses. PW-1 Raj Kishore Singh is the nephew of Raj Narain Singh, PW-2/Informant PW-5. He stated that on the date of occurrence, while he was returning to Arrah from Sadisopur with the Informant and other companions, the accused persons picked up a fight with them with regard to the fair stand taken by the Informant and Appellant Gopal Singh assaulted the Informant with the wooden stick on his head on account of which he fell down. Little later, the rest of the accused persons came with gun and Appellant Gopal Singh having taken the gun from the accused Satyendra Singh fired at Anil Singh, PW-4, causing injuries on him. Thereafter, the two injured were taken to the Hospital where his statement was recorded next day.

3. PW-2 the cousin of the Informant, PW-5 and PW-4 has also given the same version as PW-1. PW-3 Sunil Kumar is another eye witness to the occurrence and also cousin of the Informant and other witnesses have supported the case in all his material particulars.

4. PW-4 Anil Kumar is the injured of this occurrence who stated that he was fired at by the Appellant Gopal, on account of which he became senseless and regained his consciousness only the next day. PW-6 Dr. Surendra Pd. Srivastava found five lacerated injuries simple in nature on the person of Anil Kumar, PW-4, and one injury on the person of the Informant, is also simple in nature.

5. There is no doubt that the ocular version of the witnesses is fully supported by each other and also to some extent by the Doctor's evidence. However, the glaring point in the present case is that the report of the occurrence was made on the next day which raises a reasonable suspicion with regard to the veracity of the Prosecution case, Had it been a case where the only two injured had witnessed the occurrence who had become senseless and regained consciousness only on the next day, the delay would have been condonable. However, in the present case, I find that there are other eye witnesses who claimed to have accompanied the Informant and in the circumstances not reporting the occurrence to the Police after reaching the Hospital for medical aid is very material and cause for the accused to get benefit of the same. Moreover, the Doctor having found simple injuries on the person of the two injured and no positive statement that the two were unconscious, the non explanation for the delay is even more material.

6. Hence, the Appeal is allowed giving benefit of doubt to the Appellants. The order of conviction and sentence dated 27.2.2013 passed by the 5th Additional Sessions Judge, Bhojpur at Ara, in Sessions Trial No. 646 of 1992 is, hereby, set

aside. The Appellants are discharged from the liabilities of their respective bail bonds.