

(2024) 04 PAT CK 0062

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 214, 367 Of 2006

Jagarnath Tiwari

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 23-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 324
Arms Act, 1959 — Section 27

Citation : (2024) 04 PAT CK 0062

Hon'ble Judges : Sunil Kumar Panwar, J

Bench : Division Bench

Advocate : Sunil Kumar, Mukeshwar Dayal

Final Decision : Dismissed

Judgement

1. Heard Mr. Sunil Kumar appearing for the appellants as well as Mr. Mukeshwar Dayal, learned Additional Public Prosecutor for the State.

2. These appeals have been preferred by the appellants challenging the judgment of conviction and order of sentence dated 27.02.2006 passed by learned Additional Sessions Judge FTC No. III, Patna in Sessions Trial No. 271 of 1996 and 45/2005 arising out of Bikram P.S. Case No. 134 of 1995, whereby and whereunder appellant, namely, Jagarnath Tiwari has been convicted for the offence punishable under Sections 307 and 34 of the Indian Penal Code and Section 27 of the Arms Act. Whereas appellant, namely, Ramayan Tiwari has been convicted under Section 307 of I.P.C and Section 27 of the Arms Act and they were sentenced to undergo rigorous imprisonment for 7 years under Sections 307/34 of IPC and Section 307 of IPC respectively and they have further been sentenced to undergo rigorous imprisonment for 3 years under Section 27 of the Arms Act.

3. Prosecution case in short is that informant, namely, Malti Devi (P.W.-2) has given her statement in the fardbeyan (Ext-3) on 23.05.1995 at about 10.30A.M.

before S.I. Sri Prahlad Sharma (P.W.-7) at village-Gorakhari alleging therein that on 22.05.1995 at about 7 P.M. the informant was at her house and her husband Kameshwar Tiwari (P.W.-1) was sitting on roof and son of the informant, namely, Umesh Tiwari(P.W.-5) was going to take bath. In the meantime, Ranjit Tiwari aged about 8 years son of Sunil Tiwari came at the house of the informant and asked Umesh Tiwari that one person of village Datiyana is calling you, on which, Umesh Tiwari went along with Ranjit Tiwari. After sometime, he returned and from the house of Butan Tiwari alias Ram Krishna Tiwari, two persons came out. The informant was seeing them from the roof. Accused/appellant Ramayan Tiwari was standing at the corner of the house. Accused Sudhir Tiwari and appellant Jaggarnath Tiwari had come out from east side from the house of Butan Tiwari and appellant Ramayan Tiwari was standing at the corner of the house of Rangnath Tiwari. All the above three accused persons have surrounded Umesh Tiwari and with intention to kill, appellant Ramayan Tiwari fired upon him(informant's son) due to which he sustained injury. Son of the informant(Umesh Tiwari) stated that after making plan, appellants along with other co-accused person opened fire on him. The reason for this as alleged occurrence is that accused Sudhir had taken Rs. 15,000/- from the son of the informant for giving him employment and due to demand of the aforesaid money, the alleged occurrence took place.

4. That on the basis of aforesaid fardbeyan of the informant (P.W.-2) Bikram Police Station Case No. 134 of 1995 for offence punishable under Sections 324, 307 and 34 of the Indian Penal Code and Section 27 of the Arms Act was registered against the accused persons.

5. After completing the investigation, Investigating Officer has submitted chargesheet under Sections 324, 307 and 120B of the I.P.C. and Section 27 of the Arms Act against the accused persons. On the basis of evidence during investigation, cognizance was taken and the case was committed to the Court of Sessions for trial and disposal.

6. Charge has been framed against the appellants. Trial Court explained the charge to the accused(appellants) to which they pleaded not guilty and claimed to be tried.

7. To substantiate the charges levelled against the accused/appellants, altogether seven witnesses were examined by the prosecution. Out of them, P.W.-1, Kameshwar Tiwari (husband of the informant and father of the injured), P.W.-2 Malti Devi (informant and mother of the injured Umesh Tiwari), P.W.-3 Raju Kumar(co-villager), P.W.-4 Dinesh Tiwari(cousin of the injured), P.W.-5(Umesh Tiwari who is injured himself), P.W.-6 is Dr. Sahjanand Prasad Singh(doctor) and P.W.-7 Prahlad Sharma (I.O.).

8. P.W.-1 namely, Kameshwar Tiwari deposed in his evidence that on the date of occurrence at 5.00 P.M., he was at the roof of his house when Ranjit Tiwari came at his house to call his son Umesh Tiwari (injured). Ranjit said that appellant

Ramayan Tiwari is calling you. Umesh Tiwari went with him. At that time, he saw that Rangnath Tiwari and Dinesh Tiwari were standing at the corner of their house. Again, the witness has deposed that appellant Ramayan Tiwari, Ramadhar Tiwari, appellant Jaggarnath Tiwari and Ram Chandra Tiwari were standing at the corner of the house of the Rangnath Tiwari and Dinesh Tiwari. At the same time, Sudhir Upadhyay was coming from the house of Butan. After sometime, when Umesh Tiwari was returning home and reached at the corner of the house of Dinesh Tiwari, accused Ramadhar Tiwari assaulted him with slaps and ordered appellant Ramayan Tiwari to fire upon which appellant Jaggarnath Tiwari gave pistol to appellant Ramayan Tiwari and Ramayan Tiwari fired on Umesh Tiwari from back side as a result of which Umesh Tiwari sustained injury after that he brought his son to Bikram for treatment but the accused persons also chased him, hence he brought his son to Patna at the clinic of Dr. Sahjanand.

9. P.W.-2, namely, Malti Devi(informant of this case) deposed in her evidence that at the time of occurrence, she was at her house and her son Umesh Tiwari was going to take bath when Ranjit son of Sunil came and said Umesh Tiwari that one person is calling him. She saw that accused Ramadhar, appellant Ramayan, Sudhir and appellant Jaggarnath came out from the house of Butan and when her son reached near the corner, accused Ramadhar ordered to kill Umesh Tiwari upon which, appellant Ramayan Tiwari fired on her son due to which he sustained gun shot injury.

10. P.W.-3 Raju Kumar(co-villager) deposed in his evidence that he was taking meal at the roof of his house when he heard sound of firing and came down and went outside the house and saw Umesh Tiwari in injured condition running towards his house and he was saying that on the order of Ramadhar Tiwari, accused/appellant Ramayan Tiwari fired on him.

11. P.W.-4 Dinesh Tiwari (cousin of the injured) deposed in his evidence that at the time of occurrence, he was in his house and from his door he saw that altercation was going on between injured Umesh Tiwari and appellant Ramayan Tiwari. Appellant Ramayan Tiwari fired from the pistol and the pellet hit in the back of Umesh Tiwari.

12. P.W.-5 Umesh Tiwari(injured of this case) deposed in his evidence that on 22.05.1995 at 7 P.M., he was at his house when Ranjit Tiwari said to him that appellant Ramayan Tiwari is calling you. After receiving this information, he came out from his house with a torch and reached near the house of Rangnath Tiwari which is adjacent to his house. When he reached in the land between the house of Rangnath Tiwari and Dinesh Tiwari, he saw Ramadhar Tiwari, appellant Ramayan Tiwari, appellant Jaggarnath Tiwari and Ramchandra Tiwari were standing there. He asked what is the matter. On this, accused Ramadhar Tiwari abused him and assaulted him with slaps. After that, accused Ramadhar Tiwari ordered to fire. Upon which, appellant Jaggarnath Tiwari gave pistol to appellant Ramayan Tiwari. He started to fleeing but appellant Ramayan Tiwari opened fire upon him which hit in his back. He rushed through his house and disclosed the

entire occurrence to his family members and after that he became senseless.

13. P.W.-6 Dr. Sahjanand Prasad Singh(doctor) who examined the injured Umesh Tiwari and found one lacerated wound on left side of his back and charred wound behind the back. He operated the injured and found one bullet from the body of the injured and he has proved the injury report as Ext-2.

14. P.W-7 Prahlad Sharma(I.O of this case) who deposed that on 23.05.1995, he had received secret information that firing has been made in village Gorkhary. After receiving this information, he has made sanha and proceeded to the village at 10.00 A.M. and after reaching the village, he has recorded the fardbeyan of Malti Devi(informant) on the basis of which Bikram P.S. Case No. 134/95 was registered. The fardbeyan was marked as Ext-3. He had inspected the spot, recorded the statement of informant, obtained fardbeyan of injured Umesh Tiwari from Patrakarnagar Police Station, recorded the statement of witnesses, obtained bullet of 3.5 bore which was taken out from the body of Umesh Tiwary and kept it in Malkhana. During investigation, he was transferred and he had handed over the investigation to Officer-in-charge. The witness has proved formal F.I.R which was marked as Ext-4. In his cross-examination, the witness has deposed that during the course of investigation, he has not recorded the statement of the doctor. He had recorded the statement of injured Umesh Tiwari in hospital.

15. Learned counsel appearing on behalf of the appellants submitted that entire proceeding leading to present appeals conducted by the trial court is without jurisdiction and trial court has completely failed to appreciate the entire evidence made by the prosecution. Prosecution has failed to establish the place of occurrence, time of occurrence, motive and genesis of the occurrence. It is further submitted that para-8 of the cross-examination of P.W.-1 in which he stated that he went along with his injured son Umesh Tiwari at first Vikram where the police station and hospitals are situated. Condition of his son was serious but neither he informed the Vikram Police nor he admitted his son in Vikram hospital. Again, he proceeded from Vikram to Patna via Naubatpur which is situated at the distance of 11 to 12 km and in Naubatpur, police station and hospitals are situated but again, he neither informed to Naubatpur P.S. nor admitted his son in the Hospital at Naubatpur. P.W.-5 has stated in his cross-examination in para-7 that P.O. is situated only at the distance of 20/25 steps but neither the P.W.-1 nor the P.W.-2 tried to rescue their son nor they raised alarm against the accused persons whereas both of them claimed themselves to be the eye witnesses of the occurrence. In the fardbeyan of the informant namely Malti Devi (P.W.-2) and fardbeyan of injured Umesh Tiwari (P.W.-5), the motive/genesis of occurrence is quite different. According to P.W.-2 Malti Devi, the reason behind the occurrence is that accused Sudhir Tiwari had taken Rs. 15,000/- from her son to provide him job but on demand to refund the amount, occurrence is alleged to have taken place. Whereas according to P.W.-5, injured Umesh Tiwari, he made protest against the illegal act of accused Ramadhar Tiwari who used to sell transformer oil for which in the village meeting, he was

socially boycotted. The impugned judgment and order of sentence are out and out illegal, bad in law and fit to be set-aside.

16. Learned APP appearing for the state argued that impugned judgment in question is based on cogent and consistent evidence. The prosecution witnesses have supported the prosecution case in their evidence and the medical evidence has also corroborated with the prosecution case. The defense has failed to discredit the evidence of the prosecution witnesses. He further submitted that the prosecution has been able to prove its case beyond all reasonable doubts, and therefore, learned trial court has rightly convicted the appellants by relying upon the evidence brought on record by the prosecution during trial. It has been contended that minor contradictions and variations in the testimony of the witnesses cannot be a ground to discard their evidence as a whole. Therefore, the judgment and order assailed in appeal requires no interference and appeals are liable to be dismissed.

17. I have gone through the entire prosecution oral and documentary evidence and carefully considered the rival submissions made on behalf of the appellants' counsel as well as learned APP for the State. In this case, P.W.-1 father of the injured, namely, Umesh Tiwari deposed in his evidence that he had seen the occurrence and he specifically deposed that accused Ramadhar Tiwari assaulted to his son Umesh Tiwari(P.W.-5) with slaps and ordered appellant Ramayan Tiwari to fire upon which appellant Jaggarnath Tiwari gave pistol to Ramayan Tiwari and he fired on Umesh Tiwari from back side as a result of which Umesh Tiwari sustained injury and fell down at his door. P.W.-2 and P.W.-4 also supported the prosecution case. P.W.-3 deposed in his evidence that on the order of accused Ramadhar Tiwari, appellant Ramayan Tiwari fired on the person of the injured(Umesh Tiwari). P.W.-5 is the injured himself who specifically deposed in his evidence in respect of time, place, manner and genesis of occurrence and he deposed that accused Ramadhar Tiwari ordered to fire upon which appellant Jaggarnath Tiwari gave pistol to Ramayan Tiwari and appellant Ramayan Tiwari fired on him(Umesh Tiwari). In the torch light, he identified the accused/appellants along with other accused persons. When he regained his sense, he found himself at the clinic of Dr. Sahjanand at Patna where police recorded his statement for which his signature is Ext-1. P.W.-6 is the doctor who found the lacerated wound on left side of the back $\frac{1}{2} \times \frac{1}{2}$ inch and charred wound behind the back of the injured(Umesh Tiwari). The medical report and evidence of the doctor corroborated the prosecution case. P.W.-7 is the I.O who also supported the prosecution case and he stated in respect of conducting the investigation and recording the statement of witnesses. He had inspected the spot, recorded the statement of informant and obtained the fardbeyan of injured Umesh Tiwari. Further, he obtained the bullet which was taken out from the body of injured Umesh Tiwari and kept in Malkhana. This witness proved formal FIR marked as Ext-4. From perusal of the entire evidence of the prosecution, it is apparent that there is consistent evidence of witness that appellant Jaggarnath Tiwari gave pistol to appellant Ramayan Tiwari and he fired which hit in the back of Umesh

Tiwari(P.W.-5).

18. The prosecution witnesses subjected to cross-examination by the defense but from perusal of the entire evidence, there are no major contradictions in the testimonies of the witnesses which may be discarded or any doubt may be placed regarding testimonies.

19. The contention raised on behalf of the appellants is that the prosecution witnesses are interested witnesses with each other and their testimonies should not be accepted. From perusal of the entire evidence of the witnesses. I found no force in the contentions raised on behalf of the appellants. P.W.s witnesses deposed in respect of occurrence which happened in normal way. They all are stood firmly during cross-examination regarding their presence at the scene of occurrence. The other contentions raised on behalf of the appellants is that the occurrence is alleged to have taken place on 22.05.1995 at about 7.P.M and the police station is situated at the distance of 4 km but no one including the informant and her husband had taken step to inform the police which is apparent from the deposition of the I.O. It is contended that the information in respect of occurrence has not been given to the nearby police station. Hence, there is a doubt upon the prosecution case. In this respect, P.W.-1 who stated in his evidence vide para-2 that he brought his injured son to Vikram but the accused persons chased him, due to this, he brought his injured son to the clinic of Dr. Sahjanand Sharma at Patna for his treatment. P.W.-1 also deposed vide para-3 in respect of motive of the occurrence that Sudhir Upadhyay had taken Rs. of 15,000/- from his injured son Umesh at the instance of providing employment, on demand, Sudhir Upadhyay did not return the same. Other contention raised on behalf of the appellants is that no source of identification has been disclosed by the prosecution in its evidence. P.W.-2 in her cross-examination vide para-13 has disclosed that there was dark night and she further deposed that she did not disclose before police that she identified the accused in torch light. In this respect P.W.-5 (injured) specifically deposed in his evidence that he identified the accused/appellants and other in the light of torch. Further, he deposed in his evidence that he went out from his house with torch. In this case, all F.I.R. named accused persons and the prosecution witnesses are well-known and well-acquainted with each other. So, the witnesses and injured(P.W.-5) identified the accused persons/appellants and others in the light of torch as well as from the sound of the accused persons.

20. After considering the available evidence on record, I am of this view that the appellants were present at the place of occurrence and actively participated in the alleged occurrence and the appellant Jaggarnath Tiwari handed over the pistol to appellant Ramayan Tiwari and he fired on the person of injured Umesh Tiwari due to which he sustained gun shot injury on his vital part. The evidence of the doctor also corroborated the prosecution case by way of medical report which is Ext-2.

21. The judgment of conviction passed by the trial Court is fit and proper and

based on consistent and cogent evidence. Trial Court has rightly convicted the appellants. I find no interference in the impugned judgment of conviction.

22. Hence, the conviction passed by the trial court is hereby confirmed.

23. In my view, order of sentence is required to be modified. In this case, the appellants had faced ordeal of trial since initiation of this case. These appeals relate to year 2006. In this case, appellants remained in judicial custody for about about 3 years.

24. Considering the period of custody as well as ordeal of trial faced by the appellants, the appellants are sentenced to period already undergone by them.

25. Accordingly, the instant appeals are hereby dismissed with modification in the order of sentence.