
(2012) 07 PAT CK 0074

In the Patna High Court

Case No : Criminal Revision No. 992 of 2010

Jawahar Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 149, 307, 326, 436

Citation : (2013) 1 PLJR 171

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant; S. Azeem, for the Respondent

Final Decision : Dismissed

Judgement

Birendra Pd. Verma, J.—Heard. The petitioner, being aggrieved by the judgment and order dated 5th June, 2010 passed in Sessions Trial No. 536 of 1988 by the learned 3rd Additional District and Sessions Judge, Naugachia, Bhagalpur, acquitting the accused-Opposite Party Nos. 2 to 16 for various charges including the charges under Sections 307 /149, 436 /149, 326 of the Indian Penal Code as also u/s 27 of the Arms Act, has preferred the present revision application questioning the correctness and legality of the impugned judgment of acquittal.

2. An occurrence is said to have taken place on 28.5.1981 at about 8 A.M. in the morning. The petitioner lodged FIR after undue and unexplained delay of more than 26 hours on 29.5.1981 making allegations against the accused persons that they assaulted the petitioner due to non-payment of Rs. 500/- towards contribution. The petitioner claims to have sustained injuries in his right eye. Apart from that, he claims to have sustained injuries caused due to explosion of bomb. Accused Munilal Sah is said to have set his house on fire.

3. Learned counsel appearing on behalf of the petitioner has submitted that in support of prosecution case, altogether six witnesses were examined, out of

them P.W. 4 Suresh Mandal @ Suresh Singh and P.W. 5, Dhaniklal Singh, have been declared hostile as they have not supported the prosecution case. P.W. 6 Ganesh Mandal is a formal witness, being the Advocate Clerk and has proved the injury report marked as Ext.-3. The remaining three witnesses were P.W. 1 Kamleshwari Singh, father of the informant, P.W. 2 Bhola Singh and P.W. 3 Jawahar Singh, who is the informant himself.

4. Learned counsel for the petitioner has fairly conceded that neither the investigating officer nor the doctor, who examined P.W. 3, was produced during the course of trial. According to the learned counsel, even if the doctor and the investigating officer have not been examined in support of the prosecution case, yet on the basis of evidence of P.W. 3 Jawahar Singh as also evidence of P.Ws. 1 and 2, learned trial court ought to have accepted the prosecution case and ought to have recorded the judgment of conviction against the Opposite Party Nos. 2 to 16. In support of the above contention he has placed reliance on the judgment of the Apex Court in the case of Narendra Nath Khaware Vs. Parasnath Khaware and Others, and of Akhtar and Others Vs. State of Uttaranchal, .

5. The learned trial court, on the basis of the materials available on record, has given the benefits of doubt to the accused persons and acquitted the accused-Opposite Party Nos. 2 to 16. The reasons for giving the benefits of doubt have been discussed at great length in paragraph-12 of the impugned judgment of acquittal. The learned trial court has come to a finding that though occurrence had taken place on 28.5.1981 in the morning hours at about 8 A.M., yet explanation has not been given by the prosecution for lodging the FIR after delay of about 26 hours on 29.5.1981, though police station is hardly at a distance of 200 yards. On scrutiny of the evidence of witnesses, learned trial court has also doubted the presence of P.Ws. 1 and 2 at the place of occurrence, when occurrence is said to have taken place. Admittedly, P.W. 1 is none else, but the father of the present petitioner and P.W. 2 is the neighbour of the petitioner. The learned trial court has also recorded a finding of fact that P.Ws. have subsequently tried to develop the prosecution case and have also tried to implicate more and more accused persons. It has also been noted that in the FIR altogether 7 persons have been named as accused persons. Subsequently, P.W. 1 tried to implicate 30-40 persons, P.W. 2 also tried to implicate about 40 persons and P.W. 3 tried to show the involvement of 25-30 persons with respect to the occurrence in question. The evidence of aforesaid 3 witnesses was found to be contradictory to each other. It has also been noted by the learned trial court that there was enmity between the parties from before and that could have been the possible cause for implication of the accused persons with respect to the crime in question. Learned trial court has also noticed that prosecution case is based on two versions. One is based on the fardbeyan of the informant and other is based on the written application (Ext-1) submitted by P.W. 1 (father of the petitioner) to the Dy. S.P. Naugachia, where 18 persons were named as accused. Furthermore, the investigating officer and the doctor have not been examined in the present case on behalf of the prosecution. Taking into consideration the

aforesaid circumstances and the infirmities in the prosecution case, the learned trial court has given the benefits of doubt to the accused persons and has recorded the judgment of acquittal in their favour.

6. After having heard the learned counsel for the petitioner at great length, but in view of apparent contradiction in the evidence of witnesses of the prosecution, and for the reasons recorded by the learned trial court, any interference by this Court by exercising revisional jurisdiction would be wholly unwarranted and unjustified. The judgments cited by the learned counsel for the petitioner are not applicable in the facts and circumstances of the present case. In the result, the application has to fail. It is, accordingly, dismissed. No order as to costs.