

(2014) 02 PAT CK 0035

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 31 of 2002

Prabhu Nath Singh and Jai Kishun Sah

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 294, 319

Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2014) 02 PAT CK 0035

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Advocate : Rana Pratap Singh and Mr. Aaruni Singh, for the Appellant; S.A. Ahamad, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—Heard the learned counsels appearing on behalf of the parties. The two appellants have preferred this appeal against the judgment of their conviction, wherein, appellant No. 1, namely, Prabhu Nath Singh, has been convicted for the offence punishable under Sections 307 of the Indian Penal Code and 27 of the Arms Act and sentence to undergo rigorous imprisonment respectively for ten years and two years and appellant No. 2, namely, Jai Kishun Sah, has been convicted for the offence punishable u/s 307/34 of the Indian Penal Code and sentence to undergo rigorous imprisonment for ten years, as awarded on 15th Day of January, 2002 by 4th Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 45 of 1994 arising out of Garkha P.S. Case No. 4 of 1993 (G.R. No. 143 of 1993, U.T. No. 275 of 1993). All the sentences were ordered to run concurrently.

2. The prosecution case is based on Exhibit-5/1, the Fardbeyan of one Pashupati Singh (not-examined) recorded at 1.00 A.M. on 14th January, 1993 at the residence of the injured, P.W. 3, namely, Bharat Singh, by Sub-Inspector, namely,

H.B. Verma (not examined) is that in the previous evening while the informant was at his tea-stall situated at the Bhaishmara Nahar Chatti (Chowk), heard the sound of firing and on alarm rushed towards the place and found his cousin Bharat Singh (P.W. 3) lying down, who had just before proceeded for the house from Chowk and, on query, he was informed that appellant No. 2, namely, Jai Kishun Sah, has shot at him and in the flash of torch the informant could be able to see the appellant No. 2 fleeing. By the relevant time nearby persons, namely, Ramjeet Singh, Binay Singh and Radha Rai etc. had also arrived to whom also P.W. 3 stated about the incident by naming appellant No. 2 and all these persons brought him at district hospital, Chapra, where he lost his sense and the doctor, taking into consideration the critical condition, referred the injured to Patna, who was carried there by his full brothers. The cause behind the incident is said to be previous enmity. This Fardbeyan was attested by Ajit Kumar Singh and Binay Kumar Singh, but neither these two nor the alleged assembled persons nor the informant have been examined.

3. During trial, initially only against appellant No. 2, namely, Jai Kishun Sah, for the offence under Sections 307 of the Indian Penal Code and 27 of the Arms Act, three witnesses are examined, i.e., P.W. 1, namely, Jitendra Kumar, examined on 12th September, 1996, but finally discharged after cross-examination on 09th October, 1996, P.W. 2, namely, Brajesh Singh, examined on 18th November, 1996, but discharged on 20th November, 1996 and P.W. 3, namely, Bharat Singh, examined on 21st November, 1996, but discharged on 19th December, 1996 and by the period only two documents, i.e., Exhibit-1, a letter from Garkha police station dated 27th November, 1996 and another Exhibit-2, carbon copy of the Fardbeyan dated 16th January, 1993 of P.W. 3, recorded at PMCH, Patna, were on the record, which narrates a bit different story, as while proceeding towards village from Chowk where P.W. 3 met his son and nephew (P.Ws. 1 and 2), handed over the bag carrying by him in the way at the dictate, appellant Prabhu Nath Singh, co-appellant, got hold of him, paving way to shoot at by Prabhu Nath Singh. Alarm was raised about shooting at by Prabhu Nath Singh, anyhow, the two associates brought P.W. 3 at the road, where he lost his sense and only on regaining, he got his statement recorded.

4. At that stage, on the prayer of prosecution, appellant No. 1 was summoned u/s 319 of the Code of Criminal Procedure and in spite of some objections raised on his behalf, he was separately charged on 24th May, 1997 for the offence under Sections 307 of the Indian Penal Code and 27 of the Arms Act and, thereafter, one Vijay Singh and Jitendra Singh were examined respectively on 02nd June, 1998 and 28th July, 1998 as P.W. 4 and P.W. 5, but subsequently vide order dated 25th July, 2001, both stand corrected respectively as P.W. 1 and P.W. 2 and P.W. 3, namely, Bharat Singh, was re-examined on 08th August, 1998 and ultimately discharged on 10th November, 1998 and P.W. 4, namely, Dr. Vimal Mukesh, who examined P.W. 3 and found the following injuries and proved his report marked as Exhibit-3:-

(i) Lacerated wound of entry 3" to the left of umbilicus about 1 1/2" in diameter. Cut was protruding. Wound was bleeding plus-plus".

(ii) Wound of exit 3/4 in diameter in left lumbar region. X-ray of Abdomen showed no gas in diaphragm. The age of injury was within 12 hours from the time of examination.

5. The prosecution has produced some more documents as detailed below:-

(i) Exhibit-4:- C.C. of order-sheet dt. 7.9.92 passed in C. Case No. 1152/92.

(ii) Exhibit-5:- C.C. of F.I.R. of Garkha P.S. Case No. 120/95.

(iii) Exhibit-6:- C.C. of Judgment dt. 20.11.69 passed in Tr. No. 297/69 by Munsif, Magistrate, Chapra.

(iv) Exhibit-6/1:- C.C. of Judgment dt. 14.2.74 passed in Cr. Appeal 354/69 by Hon"ble High Court, Patna.

(v) Exhibit-5/1:- Fardbeyan of Pashupati Singh (Garkha P.S. Case No. 4/93).

(vi) Exhibit-2/1:- F.I.R. of Pashupati Singh (Garkha P.S. Case No. 4/93).

Out of which, Exhibits-5/1 and 2/1 are marked u/s 294 of the Code of Criminal Procedure besides Exhibit-D. On the other hand, the defence has produced the following documents:-

(i) Exhibit-A:- Formal F.I.R. & Fardbeyan of Garkha P.S. Case No. 26/89.

(ii) Exhibit-B:- Original copy of the charge-sheet of Garkha P.S. Case No. 26/89.

(iii) Exhibit-A/1:- Formal F.I.R. & Fardbeyan of Garkha P.S. Case No. 27/85.

(iv) Exhibit-C:- Requisition dt. 13.1.93 of A.S.I. Shakuntala.

(v) Exhibit-D:- Bed Head Ticket dt. 13.1.93 of Bharat Singh.

Though, no oral evidence was produced on behalf of the defence, on the consideration of the materials available on the record, the trial court has convicted and sentenced the appellants in the manner aforementioned.

6. It is contended by learned counsel for the appellants that the prosecution witnesses examined have come out with altogether a different case than stated by the informant and for the reasons explained neither the informant nor the attesting witnesses nor the persons referred in Fardbeyan, appearing immediately on alarm, have been examined. In Exhibit-5/1, there is no reference of P.W. 1 and P.W. 2, but in the statement of P.W. 3, only these two persons, apart from him, are the eye-witnesses and brought the injured at hospital since he lost his sense. There is nothing from the evidence of the witnesses showing as to how and why the informant shall come out with a different case and, if at all he did, what step was taken by the informant and by prosecuting agency against him, who, if statements of three witnesses examined are true, tried to screen the

real offender and thus committed another offence. Learned Additional Public Prosecutor tried his level best to support the findings of the court below but he also has no explanation to support the manner in which the trial proceeded and concluded.

7. P.W. 1 (corrected), namely, Vijay Singh, is not named in the charge-sheet, though, by signing as Bharat Singh, he can be said a charge-sheeted witness, but at the same time, when his earlier examination as P.W. 2 is taken into consideration, it raises doubt as to whether the same person has been produced or not since on 18th November, 1996 he stating his age twenty two years, he has signed as Brajesh Kumar Singh, but roughly two years thereafter when he then examined on 02nd June, 1998 (if at all is a same person) he has given his age twenty years and signed only as Brajesh Singh. Normally, no one changes his signature practically and even assuming he is the same person and at no point of time he could be able to explain about the informant and the persons emerging in Exhibit-5/1 and also explain as to how Ajit Singh could accompany the injured to PMCH and an attesting witness of his Fardbeyan can be witness attesting Fardbeyan of the informant, Pashupati Singh, recorded when the injured had already proceeded for PMCH.

8. P.W. 2 (corrected), namely, Jitendra Singh, was earlier examined as P.W. 1 and he too though stated the incident in the manner as P.W. 1 has said, but also similarly failed to explain what P.W. 1, could not.

9. P.W. 3, namely, Brajesh Singh, inspired injured, has stated what comes in Exhibit-2, but though he has said he never made any statement to the informant or anyone else except to the police at PMCH, but at the same time, could not be able to explain as to how and under what circumstances the informant could get the case instituted with wrong statement and remained un-prosecuted/unpunished. Twice he has been cross-examined at length, but failed to said nothing.

10. Here it can also be said, of course, the error was being committed by the trial court, if at all, the appellant No. 1 was summoned u/s 319 of the Code of Criminal Procedure and the charge was framed on his surrender only against him. Subsequent statements of the witnesses examined could be only be considered for newly added accused, but there appears nothing clear as to how and in what manner the trial court proceeded. In fact, there appears joint cross-examination of the witnesses by both the appellants and, in fact, they were cross-examined twice. If at second time, the appellant No. 1 charged singly, whatever materials came during trial prior to commencement of the trial of appellant No. 1 could have been available only for appellant No. 2, but everything appears mixed up and hotchpotch. The facts and circumstances stated above, specifically, non-examination of the informant, attesting witnesses and the Investigating Officer to explain the facts and circumstances, emerged against the prosecution creating dark cloud and the prosecution cannot be said to have proved its case, consequently, the judgment of conviction and order of sentence, as recorded by

the trial court, appears not at all sustainable. Accordingly, it is set-aside and the appeal is hereby allowed. Both the appellants abovenamed are set free from the liabilities of bail-bonds furnished on their behalf.