

(2013) 01 PAT CK 0071

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 372 of 1998

Raj Keshwar Sharma and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 109, 144, 147, 148, 307

Citation : (2013) 01 PAT CK 0071

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Advocate : Arun Kumar Tripathi, Amicus Curiae, for the Appellant; Sujeet Kumar Singh, Assistant Public Prosecutor for the State, for the Respondent

Judgement

Honourable Mr. Justice Hemant Kumar Srivastava

1. Heard learned counsel Sri Arun Kumar Tripathi appearing for the appellants as amicus curiae as well as learned Additional Public Prosecutor for the State and perused the record. This criminal appeal has been preferred against the judgment of conviction as well as sentence order dated 24.09.1998 passed by Sri Damodar Prasad, Sessions Judge, Jehanabad in Sessions Trial No. 605 of 1992 by which and whereunder he convicted the appellant no. 1 u/s 307 read with section 109 of the Indian Penal Code, appellant no. 2 u/s 307 of the Indian Penal Code, appellants no. 3, 4 and 5 u/s 380 of the Indian Penal Code and sentenced the appellant no. 1 to undergo rigorous imprisonment for five years u/s 307 read with Section 109 of the Indian Penal Code, appellant no. 2 to undergo rigorous imprisonment for five years u/s 307 of the Indian Penal Code and appellants no. 3, 4 and 5 to undergo rigorous imprisonment for one year u/s 380 of the Indian Penal Code. The learned trial court acquitted the appellants no. 1 and 2 of the charge u/s 380 of the Indian Penal Code and appellants no. 3, 4 and 5 of the charge u/s 307 of the Indian Penal Code.

2. The prosecution case, in brief, is that P.W.6., namely, Ram Nandan Prasad Singh filed complaint case in the court of Additional Chief Judicial Magistrate, Jehanabad on 08.08.1986 against the appellants alleging therein that on 07.08.1986 at about 08:00 P.M. while he was listening the radio in his dalan, appellants being armed with gun came there and started abusing him and after that he fled in his Zanani Kita out of fear and as soon as he reached near the main door of his house, at the instigation of appellant no. 1, appellant no. 2 opened fire of his country made gun aiming his head but the aforesaid firing hit on the wall and after that he entered his house and closed the door but all the appellants entered into his dalan and appellant, Yogeshwar Sharma picked up a black coloured steel box containing clothes and other articles whereas appellant, Yogendra Sharma picked up an umbrella and appellant, Bijendra Sharma picked up a pot worth rupees one hundred. P.W.6. also opened fire but all the appellants fled away from there along with the stolen articles. The reason behind the alleged occurrence is said to be a previous dispute on the point of irrigation. The witnesses assembled on the place of occurrence having heard the alarm as well as sound of firing. After the aforesaid occurrence, P.W.6. went to concerned police station to lodge the first information report but he saw the appellant no. 1 sitting in the police station and after that he went to the court and filed the complaint case.

3. Learned Additional Chief Judicial Magistrate, Jehanabad sent the aforesaid complaint petition to the concerned police station for institution of the first information report and investigation and after that Arwal P.S. Case No. 102 of 1986 for the offences under Sections 144, 447, 379 of the Indian Penal Code was registered against the appellants. The matter was investigated by the Investigating Officer and after completion of investigation, the Investigating Officer submitted charge sheet for the offences punishable under Sections 147, 148, 307, 448, 380 of the Indian Penal Code and 27 of the Arms Act. The cognizance of the offences was taken and the case was committed to the court of Sessions, in usual way.

4. After commitment, all the appellants were put on trial and accordingly, on 04.07.1989, charge under Sections 307 and 380 of the Indian Penal Code was framed against all the appellants. In support of its case, the prosecution examined, altogether, eight witnesses and also got exhibited production-cum-seizure list as Exhibit-1, complaint petition as Exhibit-2, formal first information report as Exhibit-3 and production list as Exhibit-4.

5. The statements of all the appellants were recorded u/s 313 of the Cr.P.C. in which they denied the prosecution story and claimed their false implication. The defence also exhibited the signature of P.W.3. on an affidavit as Exhibit-8.

6. The learned trial court having considered the materials available on the record and having relied upon the depositions of prosecution witnesses convicted and sentenced the appellants in the manner as stated above.

7. Learned counsel Sri Tripathi appearing for the appellants as amicus curiae challenged the impugned judgment of conviction and sentence order arguing that almost all the material prosecution witnesses are related to each other and no independent witness came forward to support the prosecution case. He also submitted that according to prosecution case itself, none had sustained any injury and only one cartridge was produced whereas it is admitted case of the prosecution that the informant (P.W.6.) had also opened fire and, therefore, production of only one cartridge creates doubt about the genuineness of prosecution case. He further submitted that moreover, prosecution could not succeed to prove the manner as well as place of occurrence beyond all shadow of reasonable doubts. He further submitted that according to prosecution case itself, the alleged occurrence took place in the year 1986 and the appellants faced trial for near about twenty seven years and, therefore, a lenient view should be taken in this case.

8. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order submitting that no doubt, the material witnesses are related to each other but only on this ground their depositions cannot be discarded. He further submitted that all the material witnesses have stated that appellants having armed with firearms entered the house of P.W.6. and opened fire with intent to kill him and, therefore, learned trial court has rightly convicted and sentenced the appellants.

9. On perusal of record, I find that P.W.1, Nageshwar Prasad Sharma, P.W.2, Birender Sharma, P.W.4, Ranvijay Kumar Sharma are said to be eye witnesses of the alleged occurrence. P.W.6, Ram Nandan Prasad Singh is informant of this case and he supported the prosecution story. P.W.3, claimed to have seen the appellants while they were returning after committing the alleged crime. P.W.5, has been tendered by the prosecution whereas P.W.7 is a formal witness. P.W.8, is Investigating Officer of this case.

10. As I have already stated that all the appellants were charged for the offences punishable under Sections 307 and 380 of the Indian Penal Code and no separate charge u/s 307 of the Indian Penal Code was framed against the appellant, Madheshwar Sharma and similarly, no separate charge for abetting the appellant, Madheshwar Sharma was framed against the appellant, Raj Keshwar Sharma. Furthermore, I find that all the appellants have been jointly charged for the offence punishable u/s 380 of the Indian Penal Code whereas it is specific case of the prosecution that appellant, Yogeshwar Sharma picked up the box whereas appellant Yogendra Sharma picked up an umbrella and appellant Bijendra Sharma picked up a pot but admittedly, all the aforesaid three appellants have not been charged separately for the commission of the aforesaid occurrence. Furthermore, I find that the aforesaid fact was not placed before the appellants when their statements u/s 313 of the Cr.P.C. were recorded rather a vague question was asked from all the appellants. Therefore, I find that not only the statements of appellants are defective but charge has also not been framed

properly which has been resulted in failure of justice. Admittedly, appellant no. 1, Raj Keshwar Sharma has been convicted for the offence punishable u/s 307 read with Section 109 of the Indian Penal Code but no charge u/s 109 of the Indian Penal Code had been framed against the appellant, Raj Keshwar Sharma. It is well settled principle of law that if the charge is not framed properly and the statement of an accused u/s 313 of the Cr.P.C. is not recorded properly and the aforesaid defect results in failure of justice, the entire trial would be vitiated. Therefore, in my view, in the present case, neither statements of appellants u/s 313 of the Cr.P.C. have been recorded properly nor charge has been framed properly against them and, therefore, I am of the opinion that the aforesaid defects have resulted in failure of justice and the entire trial of the appellants is vitiated. In the aforesaid circumstance, I have no option except to set aside the judgment of conviction and sentence order. Accordingly, this criminal appeal is allowed and the impugned judgment of conviction as well as sentence order dated 24.09.1998 is, hereby, set aside and all the appellants are acquitted of the charges framed against them. All the appellants are on bail. They are discharged from the liabilities of their bail bonds respectively.