
(2013) 12 PAT CK 0068

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 352 of 2001

Ram Bachan Rai, Arun Kumar Rai @ Arun Rai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Arms Act, 1959 — Section 27

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

Citation : (2013) 12 PAT CK 0068

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Pramod Kumar, for the Appellant; Bipin Kumar, Assistant Public Prosecutor in CR. APP (SJ) No. 355 of 2001, for the Respondent

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellants of Criminal Appeal No. 353 of 2001 have been convicted u/s 307 Indian Penal Code and sentenced to rigorous imprisonment for three years whereas Appellants of Criminal Appeal No. 355 of 2001 have been convicted u/s 307 /34 Indian Penal Code and sentenced to rigorous imprisonment for ten years as also u/s 27 of the Arms Act and sentenced to rigorous imprisonment for three years by the Second Additional Sessions Judge, Bhojpur, Arrah, by a Judgment and order of conviction dated 26/27.9.2001 in Sessions Trial No. 175 of 1995. The Prosecution case according to the injured Binay Kumar Rai was that on 12.7.1994 while he was returning after easing with a torch in his hand, he saw that the accused persons coming out from behind of Mahua tree. He identified them as the present Appellants. Appellant Ram Bachan Rai ordered that the Informant be killed at which Appellant Bhagwan Rai fired from his gun which hit his left hand. He tried to flee away but the Appellant Chhedi Rai again fired with his gun causing injury on back portion of the left shoulder. The Informant fell down. On his cry, several witnesses came. Appellant Bhagwan Rai again fired from his gun which however, did not hit him. He was then removed to the Hospital where he gave the First

Information Report.

2. During Trial, the Prosecution examined seven witnesses. PW-1 Nand Kumar Rai is the father of the Informant who stated that on 12.7.1994 at about 7.30 P.M. his son informed him that when he was coming home from easing, the accused persons came up and suddenly shot at him as mentioned in the First Information Report. In his cross-examination, he stated that in Sessions Trial No. 259 of 1986 which proceeded against the Appellants, he was one of the witnesses. A Title Suit had also been filed by his father in which the Appellants were the other party.

3. PW-2 Ambika Rai stated that on the date of occurrence, on the alarm raised by the Informant who happened to be his grand son, he rushed to the place of occurrence and saw the Appellants fleeing away. He is merely on this point and not even hear-say on the factum of the occurrence.

4. PW-3 Anil Rai also rushed to the place of occurrence on the alarm of the Informant and saw him in an injured condition. On his asking, the Informant told him that Sri Bhagwan Rai had fired at him and all had run away. The reason for the occurrence is an old enmity between the parties. However, he does not state that he had seen the Appellants fleeing away from the place of occurrence.

5. PW-4 Vinay Kumar Rai is the injured Informant who stated that about 7.30 P.M. on 12.7.1994 while he was returning home after finishing his natural call, the four accused persons came from behind a tree variously armed. Appellant Bhagwan Rai fired at him which hit him on his right hand. When he started to flee away Chhedi Rai fired which hit him on the shoulder due to which he fell down. Bhagwan Rai again fired but it did not hit him. Soon thereafter, PW-1, PW-2 and PW-3 came and removed him to the Hospital. He stated that accused persons belonged to two families and the family of Appellant Ram Bachan Rai was his agnate and not others. Cases are going on between the parties since a long time.

6. PW-5 Dr. Rajesh Kumar Singh examined the injured on 13.7.1994 and found a lacerated wound with blackening of margin $1/2$ " x $3/10$ " depth on the back of left shoulder and on the ulna portion of the right forearm. He stated that the patient was discharged on 21.7.1994 and there was a pellet embedded in the chest. He proved bed head ticket of another Doctor wherein the x-ray report has been noted to the effect that foreign body resembling pellet in scapular region found in the chest. However, the said Doctor had not been examined.

7. PW-6 is the Investigating Officer who has not given any material worth nothing. PW-7 Puran Prasad proved the x-ray report of the Informant.

8. On going through the evidence of the sole eye witness what I find that even though he stated that the Appellants came out behind Mahua trees, meaning thereby, that they were facing him but the injuries are found on the back portion of the left shoulder, which evidently indicates he had been hit from the back.

Further, the injury on the right forearm is also on the ulna. In such circumstances, the factum of identification of the Appellants becomes highly doubtful in the background of enmity between the parties both, by way of Civil Suit and earlier Criminal Case, which is admitted by them.

9. In such circumstances, it would not be in the interest of justice to rely on the sole testimony of the Informant.

10. Hence, giving benefit of doubt to the Appellants, the Appeal is allowed. The order of conviction and sentence dated 26/27.9.2001 passed against the Appellants in connection with Sessions Trial No. 175 of 1995 by the 2nd Additional Sessions Judge, Bhojpur, Arrah, is, hereby, set aside. The Appellants are discharge from the liabilities of their respective bail bonds.