

(2012) 04 PAT CK 0103

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 281 of 1999

Ram Bilas Mahton

APPELLANT

Vs

The State Of Bihar

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 307

Citation : (2012) 04 PAT CK 0103

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Advocate : Bharat Lal and Mr. Muneshwar Prasad, for the Appellant; Ajay Mishra, Assistant Public Prosecutor, for the Respondent

Judgement

Honourable Mr. Justice Mandhata Singh

1. Statement/Fardbeyan of Singheshwar Prasad alias Nepali Mahton P.W.10 has been made basis for F.I.R. which, in short, is that on 1.7.1991 at about 11.00 he along with his father Paro Mahton, brother Prakash Mahton and mother was in his Khalian, arranging the straw, his cousin Ram Bilas Mahton came with a country made Pistol and shot firing on his brother Prakash Mahton which hit his chest. He fell down. Ram Bilas Mahton thereafter fled from there. It is said that a short while ago his brother and Ram Bilas Mahton had quarreled on the question of arranging straw. Khalian of both parties are side by side after partition of land. His brother was taken to Lakhisarai for treatment. After the trial, conviction and sentence u/s 307 of the Indian Penal Code is recorded against accused appellant by passing the impugned judgment and order validity of which has been questioned through filing this appeal.

2. In all 11 witnesses are examined in this case and they are P.W.1 Raj Kumar Singh, P.W.2 Hare Ram Prasad Singh, P.W.3 Subhash Mahton, P.W.4 Rajo Devi, P.W.5 Mathura Manjhi, P.W.6 Ishwar Mahton, P.W.7 Parmeshwar Mahton alias Paro Mahton father of victim, P.W.8 Vinod Kumar, P.W.9 Prakash Mahton victim of

the case, P.W.10 Singheshwar Prasad alias Nepali Mahton informant of the case and P.W.11 Dr. Ashok Kumar Singh.

3. P.Ws 1 and 2 are formal witnesses. P.W.11 is doctor who examined the victim. Rest of the witnesses are there to state about taking place of incident specifying firing of shot by accused appellant hitting chest of victim P.W.9.

4. Of them, P.Ws 3,4,5,6 and 8 are said not eye witnesses. Their name is not figured in the F.I.R. Now three witnesses remain claiming eye witness of the occurrence. Of them, P.W.9 is victim, P.W.10 is informant and P.W.7 is their father.

5. Land dispute is there in between the parties for which it is said that accused appellant has falsely been implicated in the case but enmity cuts both way. False implication if is possible then that can be taken for motive also.

6. All these three witnesses are constant on the point of firing shot by accused appellant which hit the chest of informant's brother. They are doubted only on the ground that distance from which the fire is shot differs. No where it has appeared that from what distance firing was shot. These three witnesses are stating about coming of accused appellant and firing the shot in corroboration of F.I.R. without referring any distance. Distance if any has appeared in the case that is in the statement of P.W.11 the doctor who examined the victim and P.W.9 in paragraph 9 of his statement. P.W.11 in paragraph 6 states that blackening around the wound caused upon the victim was indicating the distance of shot about three feet. In paragraph 9 P.W.9 states that distance of accused persons was 15 to 20 feet. What is relevant in the case that apart from the accused appellant, two others namely Narayan Mahton and Shri Mahton were also alleged for causing firing. They are acquitted after trial in the case. Allegation against them is also similar in nature but their firing did not hit any one. No direct question is put to this witness P.W.9 about distance of accused appellant at the time of firing rather in paragraph 9 it has appeared that a single fire was shot on him. Narayan Mahton and Shri Mahton also shot firing which did not hit any one. Thereafter a vague question is put that what was the distance of accused persons, certainly of all the three and in that sequence it is replied that the distance was 50 ft. to 20 ft., in no case can be accepted the distance of the real shot. So, the prosecution case cannot be doubted on this ground.

7. Evidence of witnesses has been well discussed by the trial court in its judgment even have been taken for acquittal of two of the accused persons namely Shri Mahto and Narayan Mahton suffers with no infirmity or mistake.

8. Accused appellant is sentenced to undergo rigorous imprisonment for ten years u/s 307 of the Indian Penal Code for the incident of 1991 while he was quite young, as submitted followed by enmity between the parties for the land dispute so, that may be minimised to seven years. Appellant is further sentenced to undergo rigorous imprisonment for two years u/s 27 of the Arms Act.

9. On the observations made above, evidence on record and circumstances of

the case, the appeal is dismissed. The judgment of conviction passed in Sessions Case No.32/92 is affirmed with modification in sentence to the extent that the sentence which was awarded to the appellant is minimised to seven years for the offence u/s 307 of the Indian Penal Code

10. As the appellant is on bail, his bail bond is cancelled. He is directed to surrender in the court below to serve out rest of the sentence. The trial court is directed to take necessary steps to arrest the appellant forthwith. Let a copy of judgment along with lower court records be sent back to the trial court forthwith.