
(2011) 07 PAT CK 0054

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 280 of 1997

Sheo Chandar Singh, Manoj Singh and Arun Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 307, 324, 34

Citation : (2011) 07 PAT CK 0054

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard learned Counsel for the Appellants and learned Counsel for the State.

2. The Appellants have been convicted for the offence u/s 307/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years. Appellant No. 1, namely, Sheo Chandar Singh and Appellant No. 3, namely, Arun Singh have further been convicted for the offence u/s 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years. However, it has been ordered that both the sentences shall run concurrently.

3. The prosecution case as alleged by the informant is that at the toddy shop of Laxmi Choudhary, Suraj @ Suresh Sharma was being assaulted by these Appellants Arun Singh, Sheo Chandra Singh and Manoj Singh then Nawal Mahton came to save Suraj @ Suresh Sharma then Sheo Chandra Singh fired and then Nawal Mahton tried to flee away then Arun Singh, Sheo Chandra Singh and Manoj Singh chased Nawal Mahto and also gave two-three firearm injuries.

4. On the basis of the fardbeyan, the FIR was lodged and after investigation charge-sheet was submitted, cognizance was taken and the case was committed to the court of Sessions and in the court of Sessions the charge was framed u/s

307/34 of the Indian Penal Code and 27 of the Arms Act against the Appellants. During the trial 12 witnesses were examined and the documentary evidence adduced and after considering the oral and documentary evidence, the order of conviction was recorded as stated above.

5. Perused the records. P. Ws. 1, 2, 3 and 4 has been declared hostile. However, P. Ws. 5 and 12 has supported the prosecution case as alleged in the fardbeyan that Sheo Chandra Singh fired at Suraj @ Suresh Sharma and Nawal Mahto and corroborated the injury on Nawal Mahto by Sheo Chandra Singh.

6. However, P.W. 10 is the doctor and has found the lacerated wound on the upper chest of Nawal Mahto. However, the doctor has found three injury lacerated wound on the back of the left side below scapula 3/4" in diameter charring plus plus though lacerated wound on the left upper chest 1/2" x 1/2" and lacerated wound two in number in left arm upper medial aspect 1/2" x 1/2" with charring plus plus. He has further stated that the X-ray report of the chest shows that the injury No. 1 body consolidation left lung on surgical emphysema aspiration of blood done from left lung and has opined that the nature of injury No. 1 and 2 are grievous caused by firearm and injury No. 3 and 4 are simple caused by firearm. However, in his cross-examination he has stated that injured was not before him in the court room and charring wound got caused with firearm 5 to 10 feet X-ray plat is not before him and he had seen the X-ray report at the time of writing injury report. However, X-ray has not been proved in evidence. However, the medical evidence and the opinion of the doctor that it was grievous is based on X-ray of the chest. Moreover, there was no mention that the injury was dangerous to life and hence the order of conviction u/s 307/34 of the Indian Penal Code is not sustainable.

7. There is specific allegation and evidence regarding firing by the Appellant No. 1 and hence his conviction and sentence is maintained u/s 324 of the Indian Penal Code. However, so far the Appellant Nos. 2 and 3 are concerned there is no specific overt act against them and hence the order of conviction and sentence recorded against Appellant Nos. 2 and 3 is hereby set aside. However, Appellant No. 1 has remained in jail for about a year and since his conviction u/s 307/34 of the Indian Penal Code is set aside, the sentence of the Appellant Nos. 2 and 3 recorded by the trial court is also hereby set aside and since the Appellant No. 1 remained in jail for about a year from 20.07.1995 to 24.04.1996 and during investigation from 20.08.1997 to 11.12.1997 after conviction and hence the ends of justice shall meet by sentencing the Appellant No. 1 for the period already undergone and hence the appeal is allowed in part