

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.355 of 2018**

Arising Out of PS. Case No.-97 Year-2006 Thana- HARNAUT District- Nalanda

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Babban Singh @ Daddan Singh Son of Anirudh Singh, Resident of Village-
Laluadih, P.S. Harnaut, District- Nalanda.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. Krishna Prasad Singh, Sr. Advocate Mr. Davendra Kumar Pandey, Advocate
For the State	:	Mr. Binod Bihari Singh, A.P.P.
For the Injured	:	Mr. Rajesh Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT**

Date : 02-07-2021

Altogether twelve accused persons faced trial in Sessions Trial No. 531 of 2008 corresponding to Harnaut P.S. Case No. 97 of 2006 before the learned Fast Track Court No. 1, Nalanda for offences under Sections 147, 148, 447/149, 307/149 and 307 I.P.C. as well as under Section 27 of the Arms Act. The eleven were acquitted of all the charges on the very same evidence and the sole appellant was convicted under Section 307 I.P.C. and 27 of the Arms Act by the impugned judgment of conviction dated 04.12.2017. By order of sentence dated 06.12.2017 the appellant was awarded ten years rigorous imprisonment and a fine of rupees fifty thousand for offence under Section 307 I.P.C. In default of payment of fine, one year rigorous imprisonment was ordered. For offence under Section 27 of the Arms Act, three years rigorous



imprisonment was awarded along with fine of rupees one thousand. In default of payment of fine, two months rigorous imprisonment was ordered.

2. The prosecution case as disclosed in the written report submitted by PW-4 Gajendra Prasad Singh is that on 11.06.2006 voting for Panchayat election was going on in village Lalaudih P.S. (Telmar O.P.) Harnaut District Nalanda. The informant was sitting at his Dalan along with Shiv Shankar Singh (PW-2), Sudhir Singh (PW-5), Murli Manohar Singh (PW-1) and other villagers. At about 11:30 A.M., Mukhiya candidate Deshraj Singh Chauhan @ Dharmendra Singh along with his supporters (the twelve accused persons who faced trial) variously armed came to the *Dalan* (outer house of the informant) and exhorted others to kill Mukhiya i.e. PW-4. On that co-accused Dharmendra Singh fired at the informant but the informant hide himself behind a pillar. Others who were sitting there started fleeing. Then the appellant Babban Singh @ Daddan Singh, carrying a pistol, fired causing injury at the left eye of Shiv Shankar Singh (PW-2). Shiv Shankar Singh fell down and all who were firing returned to their house.

3. After investigation, the police submitted charge sheet and accordingly, the appellant and others were put on trial.



4. PW-1 Murli Manohar Singh, PW-2 Shiv Shankar Singh, PW-3 Nand Kishore Singh, PW-4 Gajendra Prasad Singh and PW-5 Sudhir Singh have supported, in their respective depositions, about the date of occurrence, the manner of occurrence, the place of occurrence and the perpetrators of the crime as disclosed in the FIR. Save and except that Gajendra Prasad Singh (PW-4) deposed that it was co-accused Pawan Singh (since acquitted) who had caused injury to Shiv Shankar Singh at the left eye.

5. PW-6 Dharmendra Kumar is a formal witness who has proved the formal FIR.

6. PW-7 Dr. Parmanand Prasad Pal had treated the firearm injury on Shiv Shankar Prasad Singh. The injury report was proved by PW-7 and marked as Exhibit-7.

7. PW-8 Rajesh Ranjan and PW-9 Arjun Prasad were investigating officer of the case. They have supported the investigation done by them.

8. Mr. Krishna Prasad Singh, learned senior counsel for the appellant contends that PW-4 Gajendra Prasad Singh who is informant of this case is not a hostile witness. He has deposed that it was co-accused Pawan Singh who had caused firearm injury at the left eye of Shiv Shankar Singh. His statement cannot be taken



as slip of tongue because Pawan Singh was also an accused in this case. Thus two conflicting evidence is on the record. One is of PW-4 that the injury was caused by co-accused Pawan Singh and rest witnesses deposed that the injury was caused by the appellant. The conflicting evidence aforesaid makes the prosecution case doubtful.

Learned senior counsel further contends that on the very same evidence, eleven accused persons were acquitted by the same judgment without distinguishing how the case of the appellant was on separate footing to that of acquitted accused persons. The law is well settled that if two views are possible on the same evidence, the views in favour of the accused should be preferred. Learned senior counsel has drawn attention of the court to the statement of PW-2 Shiv Shankar Singh, the injured witness who deposed that when the firing started, they all started fleeing. There is no evidence that they were fleeing facing the firing and normal conduct would be that the people would flee away from the firing. In that situation, it was difficult to see as to whose shot had caused the injury when several persons were allegedly indulged in firing.

9. Mr. Binod Bihari Singh, learned A.P.P. and Mr. Rajesh Kumar Singh learned counsel appearing for the injured contends that except PW-4, other prosecution witnesses are consistent that



the appellant had caused injury at the left eye of Shiv Shankar Singh. Gajendra Prasad Singh had also stated in the FIR that appellant had caused injury to Shiv Shankar Singh. If Gajendra Prasad Singh said before the court as PW-4 that it was Pawan Singh who had caused injury to Shiv Shankar Singh that would not make other four trustworthy witnesses unbelievable.

Finding:

10. There is no dispute that PW-4 Gajendra Prasad Singh is not a hostile witness. Even after conclusion of the prosecution evidence, Gajendra Prasad Singh did not file any application that his statement was a slip of tongue and in fact the appellant had caused injury to Shiv Shankar Singh.

In **Raja Ram V. The State of Rajasthan** reported in **(2005) 5 SCC 272**, the Hon'ble Supreme Court said that if a witness is not declared hostile by the prosecution, the defence can rely upon the evidence of such witness and it would be binding on the prosecution. The aforesaid view was reiterated in **Mukhtiar Ahmed Ansari V. The State (NCT of Delhi)** reported in **(2005) 5 SCC 258** in following terms :-

“29. The learned counsel for the appellant also urged that it was the case of the prosecution that the police had requisitioned a Maruti car from Ved Prakash Goel. Ved Prakash Goel had been examined as a prosecution witness in this case



as PW 1. He, however, did not support the prosecution. The prosecution never declared PW 1 “hostile”. His evidence did not support the prosecution. Instead, it supported the defence. The accused hence can rely on that evidence.

*30. A similar question came up for consideration before this Court in **Raja Ram V. State of Rajasthan** (supra). In that case, the evidence of the doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The doctor was not declared “hostile”. The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the doctor and it was binding on the prosecution.*

31. In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to the police in which the police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, the accused can rely on that evidence.”

11. Thus there is serious doubt on the identity of the assailant of Shiv Shankar Singh. Moreover, on the very same evidence, eleven persons have been acquitted and in absence of any material to substantiate or reason disclosed in the impugned judgment that case of the appellant stood on different and graver footing, the conviction of the appellant is not sustainable. The



learned trial Judge failed to consider that witness Shiv Shankar Singh has deposed that he sustained injury while fleeing and there was no definite evidence from any prosecution witnesses of the occurrence that the witnesses including Shiv Shankar Singh were fleeing facing the firing. Hence, it is doubtful that any one would have seen the real person who had caused firearm injury.

12. In view of the aforesaid infirmities, in my view, conviction of the appellant is not sustainable in law. Accordingly, the impugned judgment of conviction and order of sentence are, hereby, set aside. The appellant is acquitted and this appeal is allowed. Let the appellant be set free at once.

(Birendra Kumar, J)

shahzad/-

AFR/NAFR	A.F.R.
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