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BALMIKI SINGH

v.

RAM CHANDER SINGH AND ORS.

(Criminal Appeal Nos. 554-555 of 2002)

SEPTEMBER 18, 2008

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[DR. ARIJIT PASAYAT AND HARJIT SINGH BEDI, JJ.]

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Penal Code, 1860/Arms Act, 1959 – s. 307 r/w s. 34/s. 27 – Prosecution under – Delay in lodging FIR and in dispatch of the same to Court – Non-examination of Investigating Officer – Medical evidence as well as evidence of doctor contrary to evidence of the prime witness, on the basis of whose testimony conviction recorded by trial court – Acquittal by High Court – On appeal, held: In view of the discrepancies in the case, acquittal justified.

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Respondents-accused were prosecuted u/s 307 r/w s. 34 IPC and u/s 27 of Arms Act, 1959. On the basis of *fardebayan* of the injured informant (PW 6), FIR was lodged. There was delay of two days in lodging FIR. Investigating Officer was not examined during trial. Trial court convicted the accused relying on the evidence of PW 6. High court, in appeal, acquitted them. Hence the present appeals by the informant.

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Dismissing the appeals, the Court

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HELD: 1.1 In view of the discrepancies in the case, there is no reason to interfere with the judgment of acquittal. Vital facts have been noted by the High Court. The incident is supposed to have taken place on 11.8.1992. The first information report was lodged on 13.8.1992. Strangely, the doctor (PW-7) stated that on the basis of requisition received from the police, he had examined the informant on 11.8.1992 at 11.30 a.m. It is not explained as to why the first information report was recorded on

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13.8.1992. In fact, the first information report shows that the fardbeyan was on 11.8.1992 at 1400 hrs. and the first information report is registered at 13.8.1992 at 11.30 a.m. The occurrence according to first information report took place at 7.00 a.m. on 11.8.1992. Additionally, the report reached Court on 14.8.1992. The IO was not examined who could have explained the delay in registering the FIR and dispatching the same to the Court and no reason was indicated as to why he was not examined. [Paras 6 to 8] [631-G] [631 B-E]

1.2 Evidence of PW-6 is also contrary to the medical evidence in a sense that according to him there was one shot. But there were three injuries. The High Court noted that there was no explanation for the third injury. Even doctor's evidence shows that the two injuries cannot be treated as an entry and exit rooms. [Para 7] [631-E-F]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal Nos. 554-555 of 2002

From the final Judgment and Order dated 30.8.2001 of the High Court of Judicature at Patna in CrI. Appeal (S.I.) Nos. 185 and 204 of 2000

A.K. Pandey, Sudhanshu Saran, Shefali Jain, Shalini Chandra, Ranjana Narayan and Rajesh Prasad Singh for the Appellant.

Sandhya Goswami and Gopal Singh for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. These appeals have been filed by the informant questioning the judgment passed by the learned Single Judge of the Patna High Court directing acquittal of the respondents 1 & 2. Each of the accused persons was found guilty for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') and sentenced to undergo RI for 5 years. Additionally, respondents were convicted for offence punishable under Section 27

A of the Arms Act, 1959 (for short 'Arms Act') and sentenced to undergo RI for 3 years.

2. Background facts, in a nutshell, are as follows:

B On 11.8.1992 at 7.00 a.m. the informant was going to see his transplanted paddy in the field and when he reached near the Ahari Payin, he saw the appellants behind palm tree armed with Garasa and country made rifle. The appellants began to abuse him, which was protested by the informant. Thereupon, accused Ramchandra ordered his son accused Shraavan to fire and Sravan fired upon the informant which hit his right chest. It has been stated that prior to this occurrence two days earlier an altercation had taken place in between the informant and the accused persons on use of irrigational water. The informant after sustaining injuries sat down and thereafter he was taken to Magadh Medical Hospital where he was treated and his Fardbeyan was recorded by the S.I. of police. On the basis of Fardbeyan, F.I.R. was drawn up. After completion of investigation charge sheet was submitted, cognizance was taken and the case was committed to the court of Sessions. Finally the trial concluded with the result as indicated above.

E The appellant pleaded not guilty and stated that they had been falsely implicated in this case.

F 3. 8 witnesses were examined to further the prosecution version of whom PWs. 1, 5 and 6 were stated to be the eye witnesses. But ultimately it was noted that PWs. 1 and 5 were not eye witnesses and the prosecution version primarily rested on the evidence of PW-6, the injured informant. The Trial Court found the evidence to be cogent and accordingly sentenced the accused persons.

G 4. In appeal, the High Court found that the prosecution has not been able to establish the accusations and directed acquittal. The informant has filed these appeals questioning acquittal.

H 5. In support of the appeal learned counsel for the appellant submitted that there was no basis to discard the evidence

of PW-6 and, therefore, the High Court should not have directed acquittal. A

6. Though the judgment of the High Court is very sketchy, we find that vital facts have been noted by the High Court. The incident is supposed to have taken place on 11.8.1992. The first information report was lodged on 13.8.1992. Strangely, the doctor (PW-7) stated that on the basis of requisition received from the police, he had examined the informant on 11.8.1992 at 11.30 a.m. B

7. Learned counsel for the appellant tried to explain that the fardbeyan was recorded on 11.8.1992. Even if that be so, it is not explained as to why the first information report was recorded on 13.8.1992. In fact, the first information report shows that the fardbeyan was on 11.8.1992 at 1400 hrs. and the first information report is registered at 13.8.1992 at 1130 am. The occurrence according to first information report took place at 7.00 a.m. on 11.8.1992. Additionally, the report reached Court on 14.8.1992. The IO was not examined who could have explained the delay in registering the FIR and dispatching the same to the Court and no reason was indicated as to why he was not examined. Additionally, evidence of PW-6 is also contrary to the medical evidence in a sense that according to him there was one shot. But there were three injuries. The High Court noted that there was no explanation for the third injury. Even doctor's evidence shows that the two injuries cannot be treated as an entry and exit rooms. According to PW-6 the first information report was recorded through Jamin Khan at the medical college. If that be so, there was no reason as to why the first information came to be lodged after two days. C
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8. In view of the aforesaid discrepancies highlighted by the High Court, we find no reason to interfere with the judgment of acquittal recorded. G

9. The appeals are dismissed.

K.K.T.

Appeals dismissed.

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