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Court : Patna

Decided On : Sep-03-2002

Judge : B.N.P. Singh, J.

Appeal No. : Criminal Revision No. 399 of 2001

Appellant : Bhagwan Das

Respondent : State of Bihar

Judgement :

B.N.P. Singh, J.

1. Though eight persons including Dasrath Das were put on trial with accusation that they constituted an unlawful assembly and on exertion made by Das, petitioner fired shot causing gun shot injuries to Saryug Prasad Yadav (P.W, 8), as said Dasrath Das Died during pendency of appeal, the trial commenced only against seven persons when State examined nine witnesses including injured, doctor and police officer. Defence too examined two witnesses.

2. Defence of the petitioner before Court below and also this Court been denial of his complicity in the incident as well as false implication. Trial Court, however, rejecting plea of innocence of the petitioner and others, while recorded findings of guilt against the petitioner under Sections 307, 324 and 148 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for a term of five years

on the first count, no sentence was however awarded on two counts. Petitioner suffered conviction also under Section 21 of the Arms Act for which he was sentenced to suffer rigorous imprisonment for a term of two years with direction that both sentences shall run concurrently. Rest, who suffered conviction under Section 147 of the Indian Penal Code were, however, directed to be released under beneficial provision of Section 360 of the Code of Criminal Procedure. When petitioner carried the matter in appeal i.e. in Criminal Appeal No. 50/92, the appellate Court too while endorsing the findings recorded by the Court below, dismissed the appeal, hence this revision.

3. Various contentions were raised at bar about petitioner having suffered ordeal of long prosecution for about 20 years and also that narrations made by the witnesses were incoherent to lead to conclusion of guilt of the petitioner. The trial Court has principally relied on testimonies of Ram Briksh Gope (P.W. 1), Damodar Prasad (P.W. 2), Binda Prasad (P.W. 3), Sheo Dani Gope (P.W. 4) and Arjun Prasad (P.W. 5), who claimed to be ocular witnesses before the trial Court and had lent ample assurance to narration made by Saryug Prasad, about petitioner having opened fire on exertion made by Dasrath Das, the deceased, when said Saryug Prasad Yadav sustained gun shot injuries on his person. The doctor who examined the injured had noticed corresponding injuries on the person of injured as multiple pellet injuries were noticed on the neck, knee joint and also on the palm. The injuries were, however, considered to be simple in nature.

4. My attention has been drawn by learned Counsel for the petitioner to the injury report and though it is urged that time of examination of the injured did not find mentioned in the said injury report the argument was without substance as omission of doctor to mention time of examination in the injury report did not introduce legal infirmity in the finding that was recorded by him. Police officer too who happened to be Rameshwar Singh (P.W. 7), stated to have noticed blood drops at the place of occurrence. It is sought to be urged that if objective findings recorded by the Investigating Officer was to be given any credence, the police officer had noticed only black scar on the left side of the injured, which did not necessarily suggest gun shot injury. I am afraid that the said objective findings of the Police officer can be given preference to the positive findings of the doctor,

who had noticed multiple pellet injury on the neck and other part of the body of injured.

5. It is urged that though some motive was sought to be assigned by the State, no satisfactory evidence was adduced on this score since in this case direct evidences are available and that too of credence, motive pales into insignificance and hence even if there be paucity of good evidence on this score that would not negate bona fide of prosecution case. Other submissions canvassed at bar however deserves consideration. As has been urged at bar prosecution was launched against the petitioner for an occurrence that took place on 2nd February, 1982 and apart from undergoing order of long prosecution for about 20 years, the petitioner has remained in custody for some period.

6. Certain facts however deserve consideration. Though doctor had noticed pellet injury on neck, the injury was simple in nature. There was no accusation about successive fire shots by assailant. There was not even intervening circumstance that delisted the assailant from translating his design of committing murder into action and on consideration of these circumstances, I hold the view that case of petitioner squirrely fell within mischief of Section 324 of IPC for which too he was convicted. Accordingly while conviction and sentence awarded to the petitioner under Section 307 IPC being unmerited is set aside, other findings are confirmed.

7. Regard being had to these circumstances while upholding the findings recorded by both the Courts below, petitioner is sentenced to the period of custody already undergone by him. He is sentenced also to pay fine of Rs. 3,000, in default of which he will suffer rigorous imprisonment for eight months. Fine to be deposited in the trial Court within a period of 2/3 months of receipt/production of this order and half of fine so realised, shall be payable to the injure and in case he is not alive to his successor.

With this modification in sentence revision is dismissed.