

Brajesh Maharaj Vs. the State of Bihar and ors

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Court : Patna

Decided On : May-13-2012

Appellant : Brajesh Maharaj

Respondent : The State of Bihar and ors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (DB)
No.1156 of 2011 Brajesh Maharaj Versus The State Of Bihar & Ors

13. 1.2012 We have heard Mr. Amrendra Kumar Jha, at length in support of this appeal against acquittal and for enhancement of sentence. Upon information given by the appellant, four persons were charged. Arbind Kumar Akela was charged and found guilty under Section 307/34 of the Indian Penal Code and sentenced to three years rigorous imprisonment, Sanjay Kumar Jaiswal was charged under Section 307 IPC and sentenced to seven years rigorous imprisonment. This appeal is for enhancement . So far as Bikas Mandal and Ranjan Kumar are concerned, though they were charged under Section 307/34 of the Indian Penal Code they have been acquitted of all charges. Thus the appeal in respect of them is against their acquittal. Appellant is the informant and as per fardbeyan lodged by him , his case was that while driving his motor cycle on NH 30.he was chased by the four accused persons on two motor cycles. One was driven by Arbind Kumar Akela on which Sanjay Jaiswal was a pillion rider. Sanjay Jaiswal fired two shots at the infomant.One was miss fired and the second hit him. Allegedly the

informant saw and identified Sanjay Jaiswal firing from the rear view mirror Bikas Mandal and Ranjan Kumar were riding on the other motor cycles. They were neither armed nor they fired. Upon being injured the informant fell down and he was carried to the hospital by a tempo driver, who stopped -2- seeing him fell down. To establish the allegation, the prosecution examined seven witnesses. P.Ws. 1,2 and 3 stated that they had learnt about the incident from, P.W.5. P.W.5 admits that his statement was never recorded by the police under Section 161 of the Code of Criminal Procedure. Thus, P.Ws. 1,2,3 and 5 are not worthy of being considered and has rightly been held so by the trial court. P.W.4 is the informant. P.W.6 is the doctor and P.W.7 is the investigating officer. We come to the testimony of doctor (P.W.6). The injury is discussed in para 13 of the judgment, under appeal. There are three wounds on the person of the informant as per doctor. (1) Circular lacerated wound over the right side of abdomen with charred margin and bleeding, (2) One lacerated wound cm x cm over the left side of abdomen red in colour bleeding below the unstackle and (3) one linear longitudinally lacerated wound with charred margin red in colour 6 x x over left thigh. The doctor in his deposition states that all these injuries are caused by one single bullet and the firing was from about 5 to 11. It is to be noticed that if it is a single bullet injury then how at two different points of the body there could be charring. Secondly as per the case of the informant the shot was fired from the back. There is no wound at the back rather wound is on the thigh which is ahead of the body while riding on a motor cycle, the abdomen, which is front side of the body. Thus, it is apparent that the medical evidence does not corroborate the ocular evidence of the informant himself. There is no other witness, much less independent witness to corroborate . The tempo driver has not -3- been examined. The place of occurrence has not been established even there are evidence of the investigating officer. The informant has admitted that he is implicated in several cases. In view of the above we are not inclined to interfere in the judgment as rendered by the trial court. This appeal is accordingly dismissed. singh (Navaniti Prasad Singh,J) (Ashwani Kumar Singh,J)