

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J) No. 556 of 2005

Hari Singh, son of Late Mahabir Singh, resident of
village-Ukamer, Tola-Ghorakaram Dona, P.S. Barwadih,
District-Latehar **.....Appellant**

Versus

The State of Jharkhand **.....Respondent**

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Sunil Singh, Amicus Curiae
For the State : Mr. V.S. Sahay, A.P.P.

ORAL JUDGEMENT IN COURT

Order No: 19/ Dated: 17.10.2024

This Criminal Appeal has been filed on behalf of the appellant by challenging the judgment of conviction dated 16.04.2005 and sentence dated 19.04.2005 in Sessions Case No. 065/2003 passed by Shri Ram Babu Gupta, learned Additional Sessions Judge (F.T.C), Latehar by which the appellant Hari Singh has been convicted for the offences under Section 307, 353 of I.P.C and Section 27 of the Arms Act and has been sentenced to undergo Rigorous Imprisonment for two (2) years for the offence under Section 353 of I.P.C, Rigorous Imprisonment for three (3) years for the offence under Section 27 of the Arms Act and Rigorous Imprisonment for five (5) years for the offence under Section 307 of I.P.C and to pay a fine of Rs. 2000/- under Section 307 of the I.P.C. However, all the sentences have been directed to

run concurrently.

2. The prosecution case, in brief, is that on 15.03.2004 while the informant Mithesh Singh i.e. Forester along with Ashok Kumar Sinha i.e. Forest Guard, Khadim Rasool i.e. Forest Tracker Guard and Md. Zameer Ahmed i.e. Forest Tracker and other forest personnel had gone for forest patrolling at Betla Compartment No. 2 and had arrived near Dhunima place at around 04:00 P.M. Then, he saw 15-16 miscreants having armed with guns and had seen one of the miscreants Hari Singh i.e. Appellant had fired upon them and one Dashrath Singh and other miscreants had pointed out guns at them. He could not identify the other miscreants but all of them were having guns. After firing by the miscreants, they became afraid and fled away but they raised the alarm. Thereafter, they had informed the D.S.P. Barwadih who along with armed force came to the place of occurrence and searched the miscreants but by that time they had fled away.

3. Heard Mr. Sunil Singh, learned Amicus Curiae on behalf of the appellant and Mr. V.S. Sahay, learned A.P.P. for the State.

4. Learned counsel for the appellant has submitted that the impugned judgment of conviction and sentence passed by the learned Court below is illegal, arbitrary and not sustainable in the eye of law. It is submitted that appellant has been convicted on mere suspicion and there was no evidence against him. It is submitted that the informant and other witnesses have falsely implicated them as they were the local people and has got landed property near the forest area. It is submitted that there is no Injury Report of any person including the informant. It is submitted that

there is no recovery of cartridges on the place of occurrence. It is submitted that the evidence of PW-4 namely Mithesh Singh are not reliable. It is submitted that PW-5 namely Kailash Thakur is the I.O of this case who has merely completed the formality and has wrongly submitted charge sheet against them. It is submitted that the appellant namely Hari Singh may be acquitted.

5. On the other hand, learned A.P.P. has submitted that the impugned judgment of conviction and sentence passed by the learned Court below is fit and proper and no interference is required from the Court. It is submitted that the appellant have been named in the F.I.R. and there is direct allegation against them for firing upon the informant and other forest guards. Although, no one was injured, but there was intention on behalf of the appellant to cause harm and also to cause death to the informant and other forest personnels. It is submitted that PW-1, PW-2 and PW-3 namely Md. Zameer Ahmed, Khadim Rasool and Ashok Kumar Sinha respectively have fully supported the prosecution case and the allegations of firing by the appellant upon the informant and upon them also. It is submitted that PW-4 Mithesh Singh is the Informant of this case who has fully supported his case and stated that the appellant had fired upon him and also upon PW-1, PW-2 and PW-3. It is submitted that PW-5 Kailash Thakur is the Investigating Officer of this case who had submitted charge sheet against him. Thus, the prosecution has successfully proved the case against the appellant. It is further submitted that PW-1 is the defence witness who is not reliable. Hence, the judgment and sentence may be affirmed and this appeal may be dismissed.

6. Perused the Lower Court Records and considered the submissions made on behalf of the learned counsel for both the sides.

7. It transpires that the informant Mithelesh Singh had lodged the F.I.R. on 18.03.2003 for the occurrence alleged to have been taken place on 15.03.2003 against the appellant and 14-15 other unknown miscreants after delay of three (03) days.

8. It transpires that the police, after investigation, had submitted the charge sheet against the appellant on 13.06.2003 before the learned C.J.M., Latehar for the offence under Section 307, 353 of I.P.C and Section 27 of the Arms Act and the learned C.J.M, Latehar taken cognizance under Section 307, 353 of I.P.C and Section 27 of the Arms Act against the appellant on 13.06.2003.

9. After supplying the police papers to the appellant, the case was committed to the Court of Sessions.

10. The charges were framed against the appellant for the offences under Section 307 and Section 353 of I.P.C and Section 27 of the Arms Act on 12.09.2003 by then District and Sessions Judge, Latehar and to which, the appellant pleaded not guilty and claimed to be trial.

11. During trial, the prosecution got examined five (5) witnesses in support of its case who are as follows:-

- (i) PW-1 is Md. Zameer Ahmed (i.e. Forest Tracker),
- (ii) PW-2 is Khadim Rasool (i.e. Forest Tracker Guard),
- (iii) PW-3 is Ashok Kumar Sinha (i.e. Forest Guard),
- (iv) PW-4 is Mithelesh Singh (i.e. Forester and

Informant of this case) and,

(v) PW-5 is Kailash Thakur (i.e. A.S.I and I.O of this case)

10. The prosecution in support of its case had got proved the following documents as Exhibits which are as follows:-

(i) Exhibit-1 is the Written Application,

(ii) Exhibit-1/1 is the forwarding of Range Officer on application of informant,

(iii) Exhibit-2 is the signature of S.I. Raja Ram on F.I.R and

(iv) Exhibit-3 is the signature of Raja Ram Prasad on formal F.I.R.

11. The defence has examined one witness namely Ram Ashish Bhuia, Local Cultivator.

12. Thereafter, the appellant was examined under Section 313 Cr.P.C. on 17.03.2005 by the learned Court below and to which the appellant denied the circumstances put forth before them

13. Thereafter, the learned Court below, after considering the case of both the sides has convicted the appellant as mentioned above and sentenced them on different grounds as mentioned above

14. Now, this Court has consider as to whether the judgment and sentence passed by the learned Court below is correct or not?

15. It reveals that the occurrence took place on 15.03.2003 and the informant Mithesh Singh had lodged the F.I.R on 18.03.2003 i.e. after delay of three (3) days and no proper explanation has been furnished for lodging the F.I.R. after delay of three (3) days and this doubts the prosecution case.

16. It further reveals that the said F.I.R was seen on 21.03.2003

even after delay of further three (3) days and there is no explanation on behalf of the prosecution as to why the F.I.R. was sent to the Court after delay of three (3) days.

17. It is well settled from the catena of decisions that the delay in F.I.R is fatal to the prosecution case in such circumstances.

18. So far as the evidence of prosecution witnesses is concerned, PW-1 is Md. Zameer Ahmed who stated during his evidence that the occurrence took place on 15.03.2003 while he along with Ashok Kumar Sinha, Md. Khadim Rasool and other forest personnel had gone for forest patrolling in Betla Compartment No. 2 and had arrived near Dhunima Place at around 4 P.M. in the evening then they had seen 15-16 miscreants having armed with guns and the miscreants namely Hari Singh and Dashrath Singh had fired upon them, but he could not identify the other miscreants and then they have raised the alarm and fled away to Betla and informed the Deputy Superintendent of Police. Then, the police came and searched them but the miscreants fled away by taking advantage of Jungle.

During cross examination, he stated that there were 15-20 miscreants at the place of occurrence but he identified only two miscreants i.e. Hari Singh and Dashrath Singh who had fired upon them and fled away by taking advantage of Jungle.

19. Thus, from scrutinizing the evidence of PW-1, it is evident that there is contradiction of the evidence of PW-1 on the question of firing also because as per F.I.R. the appellant Hari Singh is said to have fired upon the informant and other forest personnel, whereas, this witness stated that both the appellant had fired upon them.

PW-1 have not stated as to when they have informed the matter to the police and when the police had arrived at the jungle and it is also evident that the F.I.R was lodged on 18.03.2003 after the delay of three (3) days. He had also not taken the name of Deputy Superintendent of Police and also the name of foresters who had accompanied with them in the Jungle. Thus, the evidence of PW-1 is not reliable.

20. PW-2 is Md. Khadim Rasool who also stated that the occurrence took place on 15.03.2003 while he along with Ashok Kumar Sinha, Md. Zameer Ahmed and other forest personnel had gone for forest patrolling in Betla Compartment No. 2 and had arrived at Dhunima place at around 4 P.M then they had seen 15-20 miscreants having armed with guns and on seeing them both the appellant Hari Singh had fired upon them, then they informed the matter to the Police Station, then police came and searched there but the miscreants fled away by taking advantage of Jungle.

During cross-examination, he admitted that he is acquainted with Hari Singh and Dashrath Singh earlier prior to the occurrence and also because he is patrolling the nearby area. He also stated that miscreants came there for hunting in the Jungle and around 7-8 miscreants were keeping guns.

21. Thus, from scrutinizing the evidence of PW-2, it is evident that it is also contradictory to the statement made in the F.I.R. Even PW-2 had stated that two miscreants namely Hari Singh and Dashrath Singh had fired upon them and the informant had stated in F.I.R that only Hari Singh had fired upon them. PW-2 had not stated as to when they have informed the matter to the police and when the

police had arrived at the jungle and it is also evident that the F.I.R was lodged on 18.03.2003 after the delay of three (3) days. He had also not taken the name of Deputy Superintendent of Police and also the name of labourers who had accompanied with them in the Jungle. Thus, the evidence of PW-2 is also not reliable.

22. PW-3 is Ashok Kumar Sinha who is Forest Guard and has stated the same fact that the occurrence took place on 15.03.2003 while he along with Mithlesh Singh, Md. Zameer Ahmed Khadim Rasool and other forest personnel had arrived at Dhunima place, then they saw 15-16 miscreants having armed with guns with suspicious condition and all the miscreants have fired upon them but he had find only Hari Singh.

During cross-examination, he stated that he is not aware of the boundary of the place of occurrence and he admitted that Hari Singh is villager of nearby village. He also admitted to have arrived at the Police Station within one hour after the occurrence and had informed also the Deputy Superintendent of Police, Betla.

23. Thus, from scrutinizing the evidence of PW-3, it is evident that his evidence is contradictory to the statement of the informant as he has stated that all the miscreants have fired upon them whereas, the informant has alleged in the F.I.R that only Hari Singh had fired upon them. He also admitted that he is acquainted with the Hari Singh i.e. appellant who is local villager. He had also not taken the name of any labourers who had gone to Jungle with them. Thus, evidence of PW-3 is also not reliable.

24. PW-4 is Mithesh Singh who is the Forester of Forest Department and informant of this case. He stated during his evidence

that on 15.03.2003, he along with Ashok Kumar Sinha, Khadim Rasool, Md. Zameer Ahmed and other forest personnel had arrived Dhunima place at 4 P.M, then he saw 15-16 miscreants having armed with guns who were aiming for firing and one of the miscreants Hari Singh had fired upon him but he saved his life and informed his Superior officers and D.S.P and also informed the Police Station. Thereafter, he again came to the place of occurrence with the officials of Police Station but the miscreants have fled away.

During cross-examination, he stated that he does not remember as to whether they were dressed or not on the date of patrolling. He admitted to have identified Hari Singh and Dashrath Singh prior to the occurrence, who were the local residents. He submitted his written application before the Officer-in-Charge and which was forwarded by his Forest Range Officer, Arjun Baraik in his writing and signature which is marked as Exhibit-1/1. He denied the suggestion for falsely implicating the appellants.

25. Thus, from scrutinizing the evidence of PW-4 i.e. the informant, it is evident that though, he alleged that the appellant had fired upon them on 15.03.2003 but the F.I.R was lodged on 18.03.2003 i.e. after the delay of three (3) days and there is no explanation for lodging the F.I.R. after three (3) days by the informant. Even the informant was acquainted with the appellants prior to the occurrence. Thus, the evidence of PW-4 is also doubtful.

26. PW-5 is Kailash Thakur who is the A.S.I and I.O of this case and stated during his evidence that he was handed over the investigation of this case by the Officer-in-Charge and during investigation, he had inspected the place of occurrence and has

described the boundary. Thereafter, he had recorded the subsequent statement of the informant and also of other witnesses (but he was not taken the name of any witnesses). He has further proved the F.I.R in the writing of S.I Raja Ram Prasad, Officer-in-Charge, Barwadih which is marked as Exhibit-2 and he has also proved the formal F.I.R which is marked as Exhibit-3.

During cross-examination, he stated that distance between the Barwadih to Betla is approximately 14 Kilometer and it will take 15 minutes while going through the vehicle. He further stated that there is only two (2) Kilometer distance between Betla To Dhunima Jungle (Park) from the place of occurrence. He admitted to have not investigated on the type of fire arms. He had also not tried to recover the fire arms. Even the witnesses have not given any specific details of the fire arms rather they have stated about the firing upon them. None of the witnesses have stated about sustaining injury while they were fleeing away.

27. Thus, from scrutinizing the evidence of PW-5, it is evident that he had made perfunctory investigation. It also reveals from the evidence of PW-5 that nothing was recovered from the place of occurrence and he had not mentioned as to with whom he had investigated the place of occurrence. He had also not stated about the fact after elaborating the matter to D.S.P. Thus, evidence of PW-5 is also not reliable.

28. It further transpires that defence has examined one witness namely Ram Ashish Bhuia, who stated that there are agriculture land of several villagers near the forest area who used to cultivate and the land of Hari Singh i.e. the appellant is also there. He also stated that

his land and the land of Hari Singh are adjacent and they used to cultivate their land. On the date of occurrence, he along with Hari Singh were tracking using crackers for fleeing the animals.

29. This Court has not considered the evidence of defence witness in view of the fact that he has been examined only on the question of cultivation of agricultural land.

30. It reveals that prosecution had not examined D.S.P to whom the matter was informed by the informant and the other aggrieved persons.

Thus, non-examination of the D.S.P. is fatal to the prosecution case.

31. It further appears that even the other Forest Trackers and in-mate and labourers were not examined by the prosecution and they have not been named by the I.O and the informant during their entire evidence. Therefore, the story of moving in the Jungle with several forest inmates and laborers and forest trackers is also not proved as none of the witnesses i.e. from PW-1 to PW-4 have disclosed the names of any laborers.

32. It further transpires from the impugned judgment that fire arms were not produced during the trial but the appellant has convicted for the offence under Section 27 of the Arms Act which is completely illegal, arbitrary and not sustainable in the eye of law and in absence of fire arm, no conviction and sentenced is permissible. Thus, the appellant Hari Singh is acquitted for the offence under Section 27 of the Arms Act.

33. So far as the allegation for the offence under Section 353 is concerned, this Court finds that due to inordinate delay in lodging

the F.I.R and also inordinate delay in submitting the F.I.R to the Chief Judicial Magistrate, Latehar, the story of as propounded by the prosecution is doubtful and cannot be believed.

34. Even no blank cartridge has been recovered from the place of occurrence although, it could not be possible but it appears that no effort was made by the I.O also.

35. In view of the discussion made above, the judgment of conviction dated 16.04.2005 and sentence dated 19.04.2005 in Sessions Case No. 065/2003 passed by Shri Ram Babu Gupta, learned Additional Sessions Judge (F.T.C), Latehar by which the appellant Hari Singh has been convicted for the offence under Section 307, 353 of I.P.C and Section 27 of the Arms Act are set aside and the appellant Hari Singh is acquitted for the offences under Sections 307, 353 of I.P.C and Section 27 of the Arms Act and the appellant is discharged from the liability of his bail bonds.

36. Thus, the Criminal Appeal (SJ) No. 556 of 2005 is allowed.

37. Let a copy of this order be sent to the learned Member Secretary, JHALSA and to pay Rs. 5500/- to Mr. Sunil Singh, learned Amicus Curiae for assisting this Court.

38. Let the original Lower Court Records be sent back to the learned court below by the office at once.

(Sanjay Prasad, J.)

Avinash/

N.A.F.R