

**Court No. - 40**

**Case :-** GOVERNMENT APPEAL No. - 2704 of 2017

**Appellant :-** State Of U.P.

**Respondent :-** Sanjai Kumar Pathak

**Counsel for Appellant :-** G.A.

**Hon'ble Bala Krishna Narayana,J.**

**Hon'ble Arvind Kumar Mishra-I,J.**

**(By the order of the Court)**

Heard learned AGA for the appellant - State of U.P. and perused the record as available on the file.

By way of instant leave to appeal application, the appellant-State is seeking leave to appeal against the judgment and order of acquittal dated 21.02.2017 passed by Sessions Judge Jalaun at Orai passed in **Sessions Trial No.90 of 2016** (State of U.P. versus Sanjai Kumar Pathak) connected with **Sessions Trial No.88 of 2016** (State of U.P. Versus Sanjai Kumar Pathak) by which the accused-respondent was acquitted of the charge levelled against him under Sections 307, 326, 333 and 353 IPC and 3/25 Arms Act.

Relevant facts as discernible from the record giving rise to this appeal appear to be that on 19.12.2016 Constable Dhaniram and Constable Mohd. Afsar Khan of Police Station- Kotra, District-Jalaun were on patrolling duty in search of wanted criminals and when they reached on the way to Achchhara Devi Temple, within the vicinity of Seidnagar, information was received by them that accused Sanjai Kumar @ Daddu Pathak armed with illegal gun and cartridges is going towards house

of Banmali Lal on Motorcycle No. UP 92 E 8817 and he will be apprehended if efforts are made. Pursuant to the information so received, police party reached at the spot and accused tried to secure his escape, but police party challenged him and tried to apprehend him, whereupon, he whipped out a country-made gun and fired on Constable Mohd. Afsar Khan causing him injury on his left part of the body and after some initial difficulties arrested the appellant, when teeth bite was given by the accused on the left arm of the Constable Mohd. Afsar Khan. On inquiry and search being made, he spelled his name as Sanjai Kumar @ Daddu Pathak and a country-made gun .34 bore along with two live and one empty cartridges were recovered. Memo of arrest and recovery was prepared by the police and two separate cases one under Section 307, 326, 353, and 333 IPC and another under Section 3/25 Arms Act were registered against the accused at Police Station Kotra, district Jalaun. The injured Constable Mohd Afsar Khan and Constable Dhaniram were medically examined at District Hospital Orai, wherein, Constable Mohd. Afsar Khan suffered injury in shape of *"lacerated wound measuring 1.5cm x 1 cm breadth on palm of left hand 6 cm from wrist joint. Tattooing present around the wound."*

Constable Dharniram complained of pain on right knee joint and wrist.

The case was investigated by SHO Awadhesh Kumar Singh of Police Station Kotra, district Jalaun. He inspected the place of occurrence and prepared site plan. Thereafter, he recorded the statements of the

witnesses and after completing the investigation submitted two separate charge sheets against the accused Sanjai Kumar Pathak @ Daddu Pathak in Case Crime No.24 of 2016 for offences under Sections 307, 326, 353, 333 IPC and another in Case Crime No.25 of 2016, under Section 3/25 Arms Act.

Thereafter, committal proceedings took place and the case was committed to the Court of Sessions, from where it was transferred to the concerned court below, after allotting Sessions Trial No.90 of 2016 and Sessions Trial No.88 of 2016.

The learned trial Judge after hearing the prosecution and the accused on point of charge was prima-facie satisfied with the case against the accused, therefore, framed charge against the accused under the aforesaid Sections of Indian Penal Code and Arms Act. Charges were read over and explained to the accused, who abjured the charges and opted for trial.

In order to substantiate the charges against the accused, prosecution examined five witnesses. P.W.1 Constable Dhaniram, who is a injured witness. P. W.2 Constable Afsar Khan, he is also an injured witness. P.W.3 is S.I. Ganga Prasad. P.W.4 is the SHO Awadhaesh Kumar Singh, he is the I.O. of this case and lastly, P.W.5 Dr. Deepak Sharma, who medically examined the injured witnesses.

Thereafter, evidence for the prosecution was closed and statement of accused recorded under Section 313 Cr.P.C., wherein accused claimed to have been falsely implicated in the case on account

of village election enmity.

Accused examined D.W.1 Banmali in his defence.

Thereafter, the evidence for defence was closed and after considering the merit of the case, charges were found not proved beyond reasonable doubt. Resultantly, the trial court returned finding of acquittal against the accused.

Consequently, this Government Appeal.

Apart from other aspects of the case, the crux and core consideration before this Court is the fact whether the appellant was apprehended near and in the vicinity of house of Banmali. Strangely enough, Banmali has been produced as D.W.1, who has denied any such incident to have taken place as claimed by the prosecution on 19.12.2016. The point for consideration is that it was not silent encounter but it was an encounter, wherein firing was done, besides scuffle between the police and the appellant. Doctor witness has not confirmed the fact that the injury of Constable Mohd. Afsar Khan (P.W.2) was invariably of firearm and no X-ray, though advised, was subsequently done. Injury of Mohd. Afsar Khan was stated to be simple in nature. Thus, the ocular testimony of firearm wound does not tally with the medical evidence on record and in the absence of any independent corroboration by any independent source regarding manner and style of the happening, the prosecution claim becomes shrouded in mystery. The testimony of D.W.1 Banmali inspires confidence that in case such incident would have taken place in the vicinity of his house, then he would have been the best person

to come to know about the same. He has been produced by the defence, though he was a prosecution witness. No worthy reason was given by the prosecution as to how he was not produced on behalf of the prosecution.

The learned counsel for the appellant failed to demonstrate that the observations of the court below were factually incorrect.

After comprehensive scrutiny of the claim of the State, we do not find any factual or legal error in the evaluation of evidence by the court below while acquitting the accused respondent. Moreover, the view taken by the court below is a possible view. The court below has given cogent, convincing and satisfactory reasons while passing the impugned judgment and order. We, therefore, do not consider it to be a fit case for grant of leave to appeal to the appellant. The application seeking leave to appeal is, accordingly, rejected and, consequently the government appeal is also **dismissed.**

**Order Date :- 30.05.2017**

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