

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.338 of 2002

- =====
1. Chandra Deo Sah son of Saudagar Sah, R/O Village-Bharpura, PS. Chautham, Distt-Khagaria.
 2. Anandi Singh son of Harilal, R/O Village-Lagan, PS & PS Chautham, Distt-Khagaria.
 3. Tej Narayan Singh son of Damar Singh, R/O Village-Bharpura, PS. Chautham, Distt-Khagaria.

State of Bihar

Versus

.... Appellant/s

with

.... Respondent/s

=====

Criminal Appeal (SJ) No. 358 of 2002

=====

1. Subuk Lal Singh son of Nand Kishor Singh, R/O Village-Bharpura, PS. Chautham, Distt-Khagaria.

State of Bihar

Versus

.... Appellant/s

.... Respondent/s

=====

Appearance :

(In CR. APP (SJ) No. 338 & 358 of 2002)

For the Appellant/s : Mr. S.S. P. Yadav, Advocate

For the State : Mr. Sanjit Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 22-05-2015

Cr.Appeal No. 338/2002 wherein, Chandra Deo Sah, Anandi Sah and Taj Narayan Singh are the appellants while Cr.Appeal No. 358/2002 wherein Subuk Lal Singh is the appellant, commonly originate against the judgment of conviction and sentence dated 22.05.2002 passed by Additional District and Sessions Judge(Additional Court No.4), Khagaria in S.Tr.No.848/82 whereby and whereunder appellant, Subuk Lal Singh has been found guilty for



an offence punishable under Section 307 IPC and directed to undergo RI for five years, under Section 148 IPC and directed to undergo RI for two years, under Section 27 of the Arms Act and directed to undergo RI for one year with a further direction to run the sentences concurrently. While appellants' conviction, Chandra Deo Sah, Anandi Sah and Taj Narayan Singh, each has been found guilty for an offence punishable under Section 148 IPC and has been directed to undergo RI for two years. Because of the fact that under Section 27 of the Arms Act minimum prescribed therefor happens to be three years, on account thereof, show-cause was issued against the appellant Subuk Lal Singh on that very score which has been filed.

2. Informant, Deep Narain Singh (PW-1) gave his Fard-e-beyan on 18.05.1982 stating therein that servant of Subuk Lal Singh chased his goat for which he was scolded by him and on account thereof, Subuk Lal Singh, Chandra Deo Sah, Anandi Singh and Tej Narayan Singh along with others armed variously came at his place and attempted to assault whereupon he ran away therefrom towards the house of Manoranjan Singh being chased by the accused persons who intervened into the matter whereupon Subuk Lal Singh fired causing injury over his eye-brow. Subsequently thereof, Manoranjan was shifted to hospital where he was examined.

3. After registration of the Chautham PS case 75/82

investigation proceeded and after completing the same charge-sheet was submitted whereupon cognizance was taken leading to trial ultimately meeting with instant result, the subject matter of the instant appeals.

4. The defence case, as is evident from mode of cross-examination as well as from statement recorded under Section 313 Cr.P.C is of complete denial of occurrence as well as of false implication. However, neither any DW nor any document has been exhibited.

5. In order to substantiate its case, prosecution had examined altogether seven witnesses out of whom PW-1, Deep Narain Singh, PW-2, Deonarayan Singh, PW-3 Manoranjan Singh, PW-4, Harinarain Singh, PW-5, Sagar Singh, PW-6, Shivshankar Pd. Singh and PW-7, Dr. Ramanand Kumar. Side by side, exhibited Ext-1, Injury report. Neither Investigating Officer has been examined nor the Fard-e-beyan along with other relevant documents have been exhibited.

6. From the nature of the evidence adduced on behalf of prosecution, it is evident that PW-2, PW-4, PW-5 and PW-6 have not supported the prosecution case. PW-1 Deep Narain Singh, informant had uttered with regard to occurrence, however, he had not named Subuk Lal Singh to have fired at PW-3, Manoranjan Singh.

7. Now, the prosecution case rests upon the evidence of sole witness PW-3, the injured. Before going to testify his testimony, the evidence of PW-7, Dr. Ramanand Kumar who had examined PW-3 on 18.05.1982 at about 7:30 A.M. is to be looked into. As per evidence in consonance with Ext-1, injury report, the following injury has been found by the doctor during course of examination:-

- (a) lacerated wound 5 cm x 4 cm x 2 cm on the right side of scalp. Just above the right eye brow, margin everted, skin round the wound was scorched and black.
- (b) The injury was grievous in nature and caused by fire arm- may be gun.
- (c) age of the injury within six hours.

8. So from the evidence of PW-7, it is apparent that PW-3 had sustained fire arm injury. From cross-examination, it is apparent that defence could not be able to discredit his testimony on that very score.

9. Now, coming to the evidence of PW-3, it is evident that he had stated that on the alleged date and time of occurrence, after hearing uproar coming from outside of his house, he came out from his house and found accused, Subuk Lal Singh as well as Tej Narayan Singh including others whom he had not named. He intervened into the matter and asked for as to why they are chasing Deep Narain Singh over which Subuk Lal Singh fired causing injury over his eye-brow. Then thereafter, the accused persons proceeded in getting Deep

Narain chased. During cross-examination at para-10, he had stated that he was shot at from the distance of 10-15 steps. Save and except the aforesaid event, nothing substantial is found in his cross-examination to discredit his testimony.

10. Learned counsel for the appellants submitted that the finding recorded by the learned lower court happens to be bad, on account of the fact that save and except the injured, none had supported the prosecution case substantially and that being so, conviction of appellants happens to be illegal. Furthermore, it has also been submitted that learned lower court appreciated the evidence of PW-3 in cryptic manner. It has further been submitted that in likewise manner, the finding of learned lower court inferring the offence to be under Sections 307 IPC/148 IPC as well as 27 of the Arms Act followed with respective sentence happens to be arbitrary in the background of the fact that in spite of having absence of any sort of intervening circumstance, there was no repetition of firing nor PW-3 was the target. Therefore, even if considering the fact for the moment, the firing was made, that was not intermingled with knowledge or intention to commit murder.

11. Furthermore, it has been submitted that there was absence of corresponding injury and as the doctor had admitted that there was no pellets found in the injury, on account thereof, it could



not be said or inferred that the injury, which doctor had found, happens to be caused by fire arm. In the same breath, it has also been submitted that the doctor had found scorching injury, that means to say, the firing was made from close range while from own deposition of PW-3 at para-10, it is apparent that firing was made from a distance of 10-15 steps away and that being so, no scorching injury could be found. In the aforesaid background, it has also been submitted that there has been inconsistency in between ocular and medical evidence which nullify the accusation. Then, it has been submitted that Investigating Officer has not be examined in this case and on account thereof, defence is found highly prejudiced. To buttress such submission, it has been submitted that genesis of the occurrence is said to be on account of scolding of servant of appellant, Subuk Lal by PW-1, Deep Narain Singh who was engaged in chasing goat belonging to PW-1. Therefore, presence of goat only would have justified the subsequent reasoning. In likewise manner, the distance in between the house of Deep Narain as well as PW-3, Manoranjan, presence of blood stain at the Darwaza of Manoranjan as per PW-3, the said place, happens to be the alleged place of occurrence to substantiate the same would have been exposed only after examination of the I.O. So, for want of examination of Investigating Officer, the material evidence could not be brought up on record and

accordingly, the interests of appellants are found completely hijacked.

12. In its continuity, it has also been submitted that on account of inconsistency amongst the evidence of PW-1 as well as PW-3, more particularly, regarding presence of appellants as well as mode of assault, the learned lower court should have considered in its right perspective.

13. Even considering that PW-3 had stuck over his testimony, even then, the variance subsisting in his evidence would have taken note of and further, in the aforesaid background evidence of single witness was not safe to be relied upon to attribute conviction and sentence.

14. In the aforesaid background, the show-cause filed in pursuance of court's order relating to sentence inflicted under Section 27 of the Arms Act by the learned lower court has been answered. It has further been submitted that when the nature of injury did not suggest its origin having been created due to fire arm, then in that event, there happens to be no applicability of Section 27 of the Arms Act and that being so, the show-cause does not justify its relevance.

15. Per contra, it has been submitted on behalf of learned APP that PW-3, injured had categorically deposed and identified appellant Subuk Lal to be author of his injury which is found corroborated with the finding of PW-7, Dr. Ramanand coupled with

Ext-1, the injury report and is supported on that very score by PW-1, informant-Deep Narain to the extent of presence of Subuk Lal along with other co-accused chasing him making firing, however, he said that as he was inside the house of PW-3, he could not see the assailant. So the finding recorded by the learned lower court is fit to be confirmed.

16. In accordance with Section 134 of the Evidence Act, it is the quality not the quantity which matters. That means to say, evidence of the sole witness, in case happens to be trustworthy, reliable, creditworthy, then in that event, that could form the ground for conviction. Moreover, where the witness happens to be the injured, it has got much more weightage and if found consistent and supported with other corroborative material, then in that event, it has and should be given due weightage during course of consideration of evidence.

17. In the case of *Dilip Kumar Mandal v. State of W.B* as reported in (2015) 3 SCC 433 at para 13, it has been held:-

13. Evidence of injured witnesses PWs 10 and 11 lends credence to their testimony and their evidence is entitled to great weight. Very much convincing ground is essential to discard the evidence of the injured witnesses PWs 10 and 11. Despite searching cross-examination, nothing substantial was elicited from PWs 10 and 11 to discredit their evidence.



18. In the aforesaid background, evidence is to be scrutinized. PW-3 had said that after hearing uproar, he came out and found the accused persons out of whom he named only Subuk Lal Singh and Tej Narain Singh, chasing Deep Narayan over which he intervened and during course thereof, Subuk Lal fired. On that very score, he was cross-examined at length and his testimony is not at all found demolished. Mere stating that at the time of firing, the accused persons were 15-20 steps away is not going to discredit his testimony, more particularly in the background that it was mere an expectation. The presence of gun-shot injury is found fully corroborated by the evidence of PW-7 as well as even by PW-1 though he had not named the assailant.

19. So far other appellants are concerned, Chandra Deo Sah and Anandi Singh, they have not been named by PW-3. Furthermore, the manner of evidence whereunder PW-1 had deposed did not inspire confidence apart from the fact that their presence have not been corroborated. Hence, putting reliance on the shaky evidence of PW-1 is not at all found justified.

20. Now coming to Tej Narayan Singh, it is found that he has been named by PW-1 as well as by PW-3, however, he has not been found armed with deadly weapon and that being so, his conviction for an offence punishable under Sections 148 IPC is not at

all found maintainable. Because of the fact that he has not been charged for an offence punishable under Sections 147 of the IPC, on account thereof, he is found entitled for such benefit on technical ground.

21. Accordingly, conviction and sentence recorded against all the above named three appellants, Chandra Doe Sah, Anandi Singh and Tej Narayan Singh are set aside. Consequent thereupon, Cr.Appeal.No.338/2002 is allowed. They are on bail, hence, are discharged from its liability.

22. Now coming to the status of appellant, Subuk Lal Singh, there happens to be allegation of firing against him. Fire arm is a deadly weapon and while using the same, at least the user must have acknowledged the nature of weapon, its effectiveness and being so, the conviction recorded by the learned lower court is affirmed.

23. In the aforesaid context, accordingly, the sentence so recorded by the learned lower court under Section 27 of the Arms Act for a year would not stand and instead thereof, is enhanced to RI for three years, the minimum sentence so prescribed therefor.

24. With regard to sentence having inflicted under Section 307, RI for five years needs some sort of interference in the background of status of the witnesses coupled with the occurrence happens to be of the year 1982. Furthermore, the appellant, Subuk Lal

Singh has faced ordeal for such long period. Accordingly, sentence inflicted for offence punishable under Section 307 IPC to the extent of R/I for five years is reduced to R/I for three years, while affirming the same relating to Section 148 IPC with a further direction to run the sentences concurrently.

25. With the aforesaid modification in sentence, Cr.Appeal No.358/2002 is dismissed.

26. Appellant, Subuk Lal Singh is on bail, hence, his bail is hereby cancelled with a direction to surrender before the learned lower court to serve out the remaining sentence.

(Aditya Kumar Trivedi, J)

Patna High Court
May 22nd 2015
perwez/AFR

U		T	
---	--	---	--