

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.86 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

1. Satendra Singh
2. Rajendra Singh
3. Yogendra Singh
4. Bijendra Singh

All appellants S/O Late Bhiotan Singh, resident of village- Jhawsan,
P.S.- Bihiya, District- Bhojpur.

.... Appellant/s

Versus

State of Bihar

.... Opposite party.

Appearance :

For the Appellant/s : Mr.
Mr. Anant Kumar Pandey
Mr. Kumar Madhurendu

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 07-01-2015

Heard learned counsel for the appellants as well as learned
Additional P.P.

1. Appellant Satyendra Singh has been found guilty for an
offence punishable under section 324 of the I.P.C. and under section
27 of the Arms Act and has been sentenced to undergo rigorous
imprisonment for three years independently under both heads with a
further direction to run the sentences concurrently while appellants
Rajendra Singh, Yogendra Singh and Bijendra Singh have been found
guilty for an offence punishable under section 324/34 of the I.P.C. and
were let of giving privilege of 360 (1) of the Cr. P. C. directing them

to Execute bond of Rs. 2000/-with one security with a further direction to maintain good behavior for the period of one year and in default thereof, to be present for substantial sentence, vide judgment of conviction and sentence dated 28.01.2002 passed by Additional Sessions Judge 5th, Bhojpur, Arrah in Sessions Trial No. 30/95, have preferred instant Appeal.

2. Shorn of unnecessary details, the prosecution case as is evident from fardbeyan of Baban Singh, PW-3 recorded on 19.08.1993 at about 9.30 P.M. at Sadar Hospital, Arrah that his co-villager Bijendra Singh had came over his roof of his house and taken out ear ring of his sister Ramjari Devi, unfortunately was apprehended and subsequently, was produced at Belbahia police camp. On the following day, the police came and a Panchyati was convened, wherein he was let of.

3. In the aforesaid background, on the date of occurrence i.e. on 19.8.1993, at about 4 P.M. Satyendra Singh armed with country made pistol, Rajendra Singh and Yogendra Singh armed with Bhala and Bijendra Singh armed with lathi came at his Darwaza, where he was sitting since before. Just after reaching, Satyendra Singh fired, causing injuries at his left thigh. He raised alarm, attracting his neighbors Paras Singh, Hanuman Singh, Laxman Singh, Ramgrihi Singh, and Professor Singh etc, who rescued him and lifted to hospital.

4. On the basis of the aforesaid fardbeyan, Bihiya P. S. Case No. 91/93 was registered where upon investigation started and concluded by way of submission of charge sheet. After cognizance the case was committed, on account of which, trial commenced which ended in conviction and sentence, subject matter of the instant appeal.

5. The defence case, as is evident from mode of cross examination as well as from the statement recorded under section 313 of the Cr. P. C. is of complete denial of occurrence. It has also been suggested that on account of long strain relationship amongst the parties relating to land dispute, instant case has purposely been filed and to support the same, series of documents alongwith examination of D. Ws. have also been effected.

6. Learned counsel for the appellants, while assailing the judgment of conviction and sentence has argued that from the evidence of the witnesses, it is crystal clear that after suppressing the real version of genesis as well as manner of occurrence, filed this case with an ulterior motive in the back ground of long standing animosity against the appellants. To support the same, it has been submitted that as per version of PW3, injured, he was shot at his Darwaza and on account thereof, he fell down at his Darwaza but the I.O., PW 5, during course of inspection of the place of occurrence, has not found blood stain at so called place of occurrence. Therefore, the place of occurrence is found somewhere else than the place identified by the

informant P.W. 3.

7. It has also been submitted that P.Ws. 1 and 2 have not supported the case of the prosecution claiming themselves to be an eye witness of occurrence. It has further been submitted that mere presence of fire arm injuries over person of P.W. 3 Baban Singh, will not attract the appellants to be convicted as well as sentenced unless and until the plea of the prosecution , against the Appellants' is found duly supported with by the cogent, reliable evidence.

8. It has also been submitted that taking into account holistic view of the prosecution case, it is apparent that prosecution has failed to substantiate its case. As such, the conviction and sentence recorded by the learned Trial Court, is fit to be set aside.

9. On the other hand, learned Additional P.P. supported the finding recorded by the learned Trial Court and submitted that the evidence of injured witness lies on upper pedestal than ordinary witness. There should be cogent and convincing ground where upon the version of the injured witness is liable to be rejected. After going through the evidence of P.W. 3, it is apparent that defence could not succeed in getting his evidence demolished more particularly regarding place of occurrence as well as manner of assault. Furthermore, the injury is found corroborated with the evidence of Doctor, P.W.4 and is also found supported with evidence of P.W 5, I.O. as well as P. Ws. 1 and 2. So submitted that the judgment of

conviction and sentence recorded by the learned Trial Court, is fit to be confirmed.

10. In order to substantiate this case, the prosecution had examined altogether five P.Ws., out of whom P.W. 1 is Ram Grihi Singh, P.W.2 Hanuman Singh, P.W.-3 Baban Singh, injured, P.W. 4 Dr Anil Kishore Prasad and P.W. 5 is Madan Kumar Thakur I.O. as well as had also proved, Ext. 1 signature of P.W. 1 over fardbeyan, Exhibit 1/A, signature of the informant over fardbeyan, Exhibit 1/B- signature of Professor Singh, Exhibit- 2- series of injury report, Exhibit-3-Fardbeyan, Exhibit-4-formal F.I.R., Exhibit-5 forwarding letter, Exhibit-6 -list of documents dated 17.11.2000 while defence had also examined two witnesses, D.W. 1 Mahadhan Singh and D.W. 2 Rajendra Singh, appellate/accused himself. Also Exhibited- Informatory petition, Exhibit-A, deed of agreement dated 20.01.57, Exhibit-B, Judgement of Trial No. 415/1997, Exhibit-C- F.I.R. of Bihiya P. S. Case No. 92/93 Exhibit- D- Charge sheet of Bihiya P.S. Case No. 92/93 Exhibit-E.

11. From the judgment impugned as well as after going through the order dated 24.09.2001, it is apparent that Exhibit- 'C', 'D' and 'E' , Judgment of counter case along with F.I.R., charge sheet have been admitted in accordance with Section 294 of the Cr.P.C., that means to say its genuinity has not been challenged at the end of the prosecution. From the evidence of P.W.5, I.O. at para-9 of his

cross examination, it is apparent that he had admitted presence of counter case bearing Behia P.S.Case No.92/93 as well as also admitted his status to be the Investigation Officer of counter case also. However, while examining himself as D.W.2, Appellate/accused, Rajendra Singh @ Satya Narain Singh had not deposed over Bihiya P. S. Case No.92/93, Exhibit-C, although he happens to be informant and in that case, the informant Baban Singh had got no presence. From Exhibit-‘E’, charge sheet, it is apparent that appellants namely, Rajendra Singh, Yogendra Singh and Bijendra Singh have not been shown as a witness therein. It is also apparent from the evidence of all other P.Ws. that defence could not be able to inter connect, though some of the witnesses happen to be an accused in the counter case. Furthermore, from Exhibit ‘C’, it is apparent that some of the accused in that case have already been convicted and were let of on due admonition.

12. From the evidence of witnesses, it is apparent that save and except, P.W.—5, I.O. none of them has been tested on the score of Exhibits-‘C’, ‘D’, and ‘E’ nor the appellant could be able to interconnect more particularly through the evidence of D.W2 Rajendra Singh @ Satyanarain Singh, himself.

13. Now coming to the merit of the case, P.W.4 Dr.Anil Kishore Prasad had examined injured P.W. 3 on 19.8.1993 and found following injuries:-

One lacerated circular wound on left thigh medial size $\frac{3}{4}$ " x $\frac{1}{2}$ " with inverted margin and blacking around wound margin and surrounding, swelling of the area. X-ray AP & Literal view was directed and the opinion of the wound reserved till X-ray. Age of injury within six hours.. The injured was admitted on 19.8.1993 and was discharged from hospital on 31.8.1993. X-ray was taken up on 19.8.1993 itself and gave opinion regarding existence of a foreign body of size 1" x $\frac{1}{2}$ " in the thigh which was removed after operation and found to be conical bullet On that very basis, the doctor opined the injury found on the thigh, caused by fire arms and simple in nature."

14. In para-6, he had stated that wound was covered since before by a bandage, which suggests that the injured had taken first aid prior to his treatment. In para-7 and 8, the witness was cross examined over blackening. In para-11, he had stated that his opinion is based upon a report of treating surgeon, who has not been examined. As such, from the evidence of P.W. 4, presence of fire arm injury over the person of P.W. 3, Baban Singh is found duly supported with. P.W.3 is the victim/informant himself. During his Examination in-Chief, he had stated that on 19.8.1993 at about 4 P.M. while he was at his Darwaza, Rajendra Singh and Yogendra Singh armed with bhala, Satyendra Singh armed with country made pistol and Bijendra Singh armed with lathi came and abused. The informant



restrained them from abusing whereupon Satyendra Singh fired at him with an intention to kill, causing injury over his left thigh and he fell down and raised alarm attracting Hanuman Singh, Raj Grihi Singh, Laxman Singh, Paras Singh, who have seen the occurrence as well as lifted him at hospital, then he had disclosed the motive. He had further exhibited the relevant documents. In para-5 of his cross examination, he had stated that satyendra Singh @ Rajendra Singh had instituted a case against Hanuman Singh, Raj Grihi Singh, Laxman singh. He has further detailed the topography of the place of occurrence under para-14. In para-15 he had stated that he was at his Darwaza when accused persons came. He has further stated that the assailants were 4-5 fit away from him. He further stated that he fell down at his Darwaza after sustaining injury. At that very time, he was conscious. On his alarm, people came and then accused escaped, and he stated that he fell down on Chaukhat (door frame). In para-17, he has stated that blood had oozed out from his injury and had spread over area of one span (bitta). Lungi had also drenched with blood. There was hole in lungi.

15. P.W. 5 is the I.O. Madan Kumar Thakur, who had stated that after registration of the case on the fardbeyan of P.W. 3, Baban Singh, investigation was entrusted to him and had inspected place of occurrence as disclosed by Uncle of informant, Ram Grihi Singh. In para-2 he had stated that the Place of occurrence happens to be a Gali

lying Eastern side of house of the informant and Western to Darwaza. This Gali happens to be of six feet. After passing through Dalan and Janani Kita, of the informant, had conjoined with Southern Eastern Gali. He further stated that there also happens to be Gali on Northern side, which passes through the land of the informant as well as accused and then has given boundary, obtained injury report, recorded statement of witnesses and then had submitted charge sheet.

16. In para-10 of his cross examination had admitted that he had not recorded statement of boundary people. He had not mentioned in the case diary regarding presence of blood stain at the P.O.

17.P.W. 1 is Ram Grihi Singh, who had deposed that he after hearing alarm of Baban Singh as well as sound of firing, rushed to Gali lying in front of his house where he found Baban Singh lying having injury over his left thigh. He had seen accused Satyendra Singh, armed with pistol, Rajendra Singh and Yogendra Singh armed with Bhala and Bijendra Singh armed with lathi, who were assaulting Baban Singh, Baban Singh had disclosed that all the accused persons have abused and then Satyendra Singh shot at him. At that very moment Shiva Singh, Ram Kumar Singh have also arrived. They have lifted the injured to hospital.

18. In para-3 of his cross-examination, he had admitted that accused Satyanarayan Singh had instituted a case though, he has been

acquitted. He has further disclosed that he was present at his Darwaza since before the occurrence alongwith Rama Kant, Rama Nand which lies 200 meter away from the house of Baban Singh.

19. In para-4, he had admitted that blood had oozed out from the injury. He had further disclosed that he had applied bandage over his injuries.

20. In para-5 he has admitted that he had not stated before the police, that Baban Singh had disclosed him that all the accused persons have abused and then shot at him.

21. P.W. 2 is Hanuman Singh. He had stated that on the alleged date and time of occurrence, he was at his Darwaza. He heard sound of firing and then saw Rajendra Singh, Yogendra Singh armed with Bhalu, Satyendra Singh armed with Pistol, Bijendra Singh armed with lathi, fleeing towards his house. He also seen fire Arms injury over left thigh to Baban Singh and he disclosed that Satyendra Singh had shot at him. During cross examination at para-2, he had admitted that he had not seen the assailant during course of firing. He has seen the accused persons at the distance of twenty to twenty five steps fleeing towards their house. He had further disclosed that Paras Singh, Ram Grihi Singh, Sumesh singh were also present. Again, he disclosed that those persons have gone to place of occurrence along with him. Then, thereafter, they have taken the injured to hospital. He had further stated that he had applied bandage over injury of Baban

Singh.

22. After careful, cautious scrutiny of evidence of P.Ws., it is apparent that P.Ws. 1 and 2 are certainly not an eye witness to occurrence. It is also apparent from P.W. 5 that he had not found blood at the place of occurrence while inspecting the place of occurrence.

23. In the back ground of the aforesaid deficiency now the remaining evidence have to be taken into consideration for the purpose of adjudication.

24. From the evidence of P.W.4, the Doctor, it is apparent that injured P.W. 3 was examined by him on 19.8.1993, who was admitted as indoor patient, X-ray was conducted. Foreign body was found, injured was operated upon and then was discharged on 31.08.1993 and on that very scope, defence could not be able to demolish his evidence. That means to say presence of fire arm injury over P.W. 3 is found unrefuted. Non examination of Surgeon who conducted operation is found unretentive.

25. Now coming to the evidence of P.W. 3, it is apparent that so far manner of occurrence is concerned, he had elaborately deposed and stuck over the same even during cross-examination. There is no ground, as the defence could not be able even to suggest the motive for false implication, to discard his testimony. It is settled principle of law that the evidence of injured witness lies on upper

pedestal than the ordinary witness and further, conviction can be recorded on the basis of single evidence of injured witness if inspires confidence. Furthermore is found corroborated with the medical evidence.

26. This issue has been considered and explained by the Hon'ble Apex Court in **Veer Singh and others Vs. State of U.P.** reported in 2014 **Criminal Law Journal**, 2014 page -1083 and the relevant paras are quoted below:-

17. "Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity multiplicity or plurality of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided under section 134 of Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable (vide; Vadivelu Thevar and Anr. V. State of Madras, AIR 1957 SC 614, Kunju alias Balachandran v. State of Tamil Nadu, AIR 2008 SC 1381, Bipin Kumar Mondal v. State of West Bengal, AIR 2010 SC 3638, Mahesh and Another v. State of Madhya Pradesh (2011) 9 SCC 626 (2012 SC 2172), Prithipal Singh and Ors. V. State of Punjab and Anr. (2012) 1 SCC 10 : (AIR 2012 SC (Cri) 333. Kishan Chand V. State of Haryana, JT 2013 (1) SC 222 and Gulam Sarbar Vs. State of Bihar (Now Jharkhand) 2013 (12) SCALE -504: (AIR 2013 SC (Cri) 2322).

18. In the present case we are left with the sole testimony of injured eye-witness PW4 Harbans Kaur. She has lost all the members of her family in the attack during the occurrence. There is no reason for her to falsely implicate any of the accused in the case. On the contrary she would only point out the correct assailants who are responsible for killing her family members. We

are of the considered view that the testimony of PW4 Harbans Kumar is cogent, credible and trustworthy and has a ring of truth and deserves acceptance. All the 12 victims of the occurrence died of homicidal violence is established by the oral testimony of the doctors, who conducted autopsies on their bodies and the certificates issued by them to that effect.”

27. Exhibits, made on behalf of the defence as referred above, lost its relevance in the back ground of fact that neither P.W. 3 was an accused in that case nor D.W. 2 Satyendra Singh @Rajendra Singh while deposing stick over the same.

28. Hence, the conclusion of the learned lower Court is found based upon the evidence and is accordingly confirmed.

29. Now coming over question of sentence, taking into account, the nature of offence, so perceived in the background of presence of strenuous interse relationship as well as long pendency of the instant trial, the sentence inflicted by the learned lower Court is reduced and accordingly, appellant Satyendra Singh is directed to undergo rigorous imprisonment for one year as well as fined of Rs. 2000/-under Section 324 of the I.P.C., In default thereof, to undergo Rigorous imprisonment for six months. He is further directed to undergo Rigorous imprisonment for three year under Section 27 of the Arms Act, the minimum sentence so prescribed as well as also fine of Rs. 2000/- in default thereof to undergo rigorous imprisonment of six months sentences will run concurrently. In case, fine is deposited then half of the fine amount will be paid to the

informant Baban Singh on proper identification. Appellant Satyendra Singh is on bail, hence his bail bond is cancelled.

30. With the aforesaid modification of the sentence, the instant appeal is dismissed.

(Aditya Kumar Trivedi, J)

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