

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.196 of 2015

Arising Out of PS.Case No. -39 Year- 2014 Thana -PATORI District- SAMASTIPUR

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1. Sunil Paswan
2. Karu Paswan, both sons of Shobhi Paswan, both are resident of village - Dumari,
P.S. Patori (Mohanpur O.P.), District - Samastipur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Animesh Kumar Mishra-Amicus Curiae
Mr. Ashok Kumar Mishra-Advocate
Mr. Rishit Deo Kumar Singh-Advocate
For the Respondent/s : Mr. Syed Ashfaq Ahamad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 16-05-2017

Appellant, Sunil Paswan has been found guilty for an offence punishable under Sections 341, 307 of the I.P.C. while appellant Karu Paswan has been found guilty for an offence punishable under Sections 341, 323 of the I.P.C. vide judgment of conviction dated 05.02.2015 and for that, appellant Sunil Paswan has been sentenced to undergo rigorous imprisonment for seven years as well as fine of Rs.5,000/- and in default of payment of fine, to undergo rigorous imprisonment for six months, additionally, simple imprisonment for 15 days, respectively, with a further direction to run the sentences concurrently, while appellant Karu Paswan has been sentenced to undergo simple imprisonment for six months, simple



imprisonment for 15 days, respectively with a further direction to run the sentences concurrently vide order of sentence dated 10.02.2015 by the Additional Sessions Judge-5th, Samastipur in Sessions Trial No.253 of 2014.

2. Appeal was called out, but none appeared on behalf of appellants and so, Sri Animesh Kumar Mishra, learned counsel been requested to assist the Court as an Amicus Curiae, which he accepted. During course of hearing, when the record has been gone through, it has been located that on account of having been convicted and sentenced under bailable offences, appellant Karu Paswan was released on provisional bail vide order dated 10.02.2015 by the learned lower Court effective till filing of the appeal. However, from the order sheet dated 10.02.2015, it is evident that learned lower Court had not accepted bail bond having been filed on his behalf. Even then, appellant Karu Paswan was let off on provisional bail. It is further evident that when appeal has come up for admission on 14.05.2015, though it was admitted, but no prayer was made on behalf of appellant Karu Paswan for confirmation of provisional bail, which he was enjoying since before vide order dated 10.02.2015 passed by the learned lower Court and instead thereof, both the appellants namely Sunil Paswan and Karu Paswan were released on bail till pendency of instant appeal as prayed for. That being so, on account of non-



confirmation of provisional bail, presence of appellant Karu Paswan was not at all recognizable in the eye of law before the Court and so, the appeal relating to him is found non-maintainable in terms of Rule-8 of Chapter-XII of the Patna High Court Rules. The same view is found also endorsed by the Division Bench in *Dhananjay Rai @ Guddu Rai vs. the State of Bihar reported in 2015(4) P.L.J.R. 764 and Chandra Shekhar Bharti (in 1746) Chandra Pratap Singh @ C. K. Singh @ Chand Pratap Singh (in 1627) Dr. Braj Bhushan Prasad @ Dr. Brij Bhushan Prasad (in 1603) Chhote Sharma & Anr. (in 1709) vs. the State of Bihar reported in 2014(2) P.L.J.R. 756*, whereupon instant appeal against appellant Karu Paswan is dismissed, summarily. That being so, the Appellant Karu Paswan is directed to surrender before the lower Court to suffer the sentence within fortnight, failing which, the learned lower Court will proceed against him in accordance with law.

3. Ashok Paswan (PW-7) gave his fard-bayan on 05.02.2014, while he was at Primary Health Centre, Patory at 5.45 p.m. alleging inter alia that on the same day at about 2.00 p.m. on account of dispute over feast, his co-villagers Sunil Paswan, Karu Paswan and Param Paswan began to abuse him near his house. On his protest, they have assaulted him with fists and slaps. During midst thereof, his father Ram Udesch Paswan came and intervened



whereupon Sunil Paswan rushed to his house and returned back with sword and gave sword blow over head of his father which, fortunately, did not strike over the same and instead thereof, caused injuries over cheek. Then thereafter, he was taken to Primary Health Centre, Patory where he was undergoing treatment.

4. On the basis of the aforesaid fard-bayan, Patory (Mohanpur O.P.) P.S. Case No.39 of 2014 was registered followed with an investigation and after concluding the same, chargesheet was submitted facilitating the trial, which concluded in a manner as indicated above, the subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence as well as false implication in the background of admitted strained relationship. However, neither any DW nor any chit of paper has been adduced on behalf of defence.

6. In order to substantiate its case, prosecution had examined altogether nine PWs, out of whom, PW-1 Lakhindra Paswan, PW-2 Geeta Devi, PW-3 Sunaina Devi, PW-4 Kavita Devi, PW-5 Putali Devi, PW-6 Ram Udesb Paswan, PW-7 Ashok Paswan, PW-8 Krishna Kumar Rai (I.O.) and PW-9 Dr. P. D. Sharma. Side by side had also exhibited Exhibit-1 series signature, endorsement over



Fard-bayan Exhibit-1/2 fard-bayan, Exhibit-2 injury report of Ram Udesb Paswan.

7. While assailing the judgment of conviction and sentence, it has been submitted on behalf of appellants that the finding recorded by the learned lower Court happens to be unrealistic, on account of non-appreciation of materials available on the record in its right perspective. In order to substantiate such plea, it has been submitted that learned lower Court should have considered that occurrence was alleged to have taken place at public place and on account thereof, presence of independent witnesses was so much natural, but their absence cast a doubt over the manner of occurrence as suggested by the prosecution. Furthermore, it has been submitted that whoever been examined are own kith and kin of the so alleged injured and that being so, their evidences could not have been relied upon by the learned lower Court while recording finding of guilt against the appellants.

8. In likewise manner, it has also been submitted that genesis of occurrence has also been knavishly withheld during trial, as exposed under fard-bayan and substituted with new one. That means to say, from perusal of the evidences of PWs, it is crystal clear that they have completely changed the genesis as well as manner of occurrence, whereupon the whole prosecution case is found



deplorable.

9. It has also been submitted that after going through the evidences of the PWs, it is crystal clear that they could not be an eye witness to occurrence on account of inconsistency as well as exaggeration having in their evidences and so, the learned lower Court should have rejected their evidence outrightly being unreliable, untrustworthy. Furthermore, it has also been submitted that when the evidence of Doctor is taken together with the evidence of the victim PW-6, it is evident that same is not at all corroborative to each other and so, the judgment of conviction and sentence is fit to be set aside.

10. Refuting the submission raised on behalf of appellants, it has been submitted on behalf of learned Additional Public Prosecutor that evidence in its entirety is to be seen. Appreciation of evidence in piecemeal manner is not at all permissible. It has also been submitted that *falsus in uno falsus in omnibus* is not at all applicable in the Indian continent. Therefore, having proper consideration of the evidence on record in its entirety in consonance with the medical evidence, it is apparent that appellants have rightly been convicted and sentenced for. So, instant appeal is fit to be dismissed.

11. PW-9 is the doctor, who during course of examination of the injured on 05.02.2014 at Sadar Hospital



Samastipur had found following injuries:-

(1) *Sharp cut wound left side of neck the wound profusely bleeding patient is in shock, size-3" x 1/6" x 1/6".*

(2) *Swelling on the left upper arm outer aspect 4" x 3".*

(3) *Swelling on the occipital region 2" x 2".*

This doctor further found no boney injury and fracture on the basis of X-ray. The doctor further stated that injury No.1 was caused by sharp cut weapon remaining caused by hard blunt substances Doctor also stated that the injury no.1 is dangerous to life and rest injury simple in nature.

12. Before coming to oral evidence, and further, analyzing the same in consonance with the medical evidence, to search out whether finding recorded by the learned lower Court is permissible or not, a glimpse should be over the legal requirement relating therewith. In ***Podiyan alias Valuthakunju v. State of Kerala reported in 2017 CRI.L.J. 106***, it has been held:-

"4. In order to constitute an offence under Section 307 IPC, attempt to commit murder, two elements are essential. First, the intention or knowledge to commit murder. Secondly, the actual act of trying to commit the murder. The question whether a certain



*act amounts to the commission of a particular offence, is a question of fact dependant on the nature of the offence and the steps necessary to take, in order to commit it. No exhaustive and precise definition of what would amount to an attempt to commit an offence is possible. Apex Court in **Hari Singh v. Sukhir Singh and others (1988 SCC (CrI) 984)** it was held as follows:-*

"Under Section 307 IPC what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be



taken into consideration to determine the intention. In this case, two parties in the course of a fight inflicted on each other injuries both serious and minor. The accused, though armed with ballam, never used the sharp edge of it. They used only the blunt side of it despite their being attacked by the other side. They suffered injuries but they were not provoked or tempted to use the cutting edge of the weapon. It is very significant showing that they had no intention to commit murder. They had no motive either. The fight might have been a sudden flare up. Where the fight is accidental owing to a sudden quarrel, the conviction under Section 307 is generally not called for. There is, therefore, no reason to disturb the acquittal of the accused under Section 307 in this case".

13. In ***Chhanga @ Manoj vs. State of M.P. reported in 2017 (2) P.L.J.R. 186 (SC)***, it has been held:-

"7. Neither of the points raised by Shri Garg appeal to us. First and foremost, it is not essential that bodily injury capable of causing death should have been inflicted in order that the charge under



Section 307 be made out. It is enough if there is an intention coupled with some common act in execution thereof. This position has been repeatedly laid down by this Court in “*State of M.P. vs. Kashiram and Others*” (2009) 4 SCC 26 at paragraphs 12 to 16. In addition, in a recent Judgment in ‘*Jage Ram and Others vs. State of Haryana*’ (2015) 11 SCC 366, the law has been laid down as follows :-

“For the purpose of conviction under *Section 307* IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under *Section 307* IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the



circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

14. Furthermore, from the deposition, it is evident that more or less, the witnesses are consanguine, in the aforesaid background, in what manner their evidences are to be considered. In ***Ram Chander and others vs. State of Haryana reported in (2017) 2 SCC 321***, it has been held:-

“33. The submission of learned counsel for the appellants that since Guddi (PW-9) was in close relation with the deceased persons, she should not be believed for want of evidence of any independent witness, deserves to be rejected in the light of the law laid down by this Court in [Dalbir Kaur and Ors. vs. State of Punjab](#), (1976) 4 SCC 158, and [Harbans Kaur and Anr. vs. State of Haryana](#), (2005) 9 SCC 195, which lays down the following proposition:

“7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had



reason to shield actual culprit and falsely implicate the accused.”

34. *In Namdeo v. State of Maharashtra, (2007) 14 SCC150, this Court further held:*

“38. it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

15. How far importance of evidence of an injured is to be given, that has been properly considered in ***Baleshwar Mahto and another v. State of Bihar and another reported in (2017) 3 SCC 152***, it has been held:-

“12. Here, PW-7 is also an injured witness. When the eye-witness is also an injured person, due credence to his version needs to be accorded. On



this aspect, we may refer to the following observations in Abdul Sayeed vs. State of Madhya Pradesh[(2010) 10 SCC 259]:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” [Vide Ramlogan Singh v. State of Bihar [(1973) 3 SCC 881:1973 SCC (Cri) 563:AIR 1972 SC 2593], Malkhan Singh v. State of U.P. [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], Machhi Singh v. State of Punjab [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], Bonkya v. State of Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], Bhag Singh [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], Mohar



v. State of U.P. [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan [(2008) 8 SCC 270: (2008) 3 SCC (Cri) 472], Vishnu v. State of Rajasthan [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], Annareddy Sambasiva Reddy v. State of A.P. [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211]

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107]* , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

“28. *Darshan Singh (PW 4)* was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694]* this Court has held that the deposition of the injured witness should be relied upon unless there are strong



grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. *In State of U.P. v. Kishan Chand [(2004) 7 SCC 629: 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”*

30. *The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of*



his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

16. In ***Bhagwan Jagannath Markad & Ors. vs. State of Maharashtra reported in 2017(2) P.L.J.R. 174 (SC)***, it has been held:-

“19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former



inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects creditworthiness and trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted (1999)9 SCC 525. Want of independent witnesses or unusual behavior of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinized to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a 'partisan' or 'interested' witness may lead to failure of justice. It is well known that



principle “falsus in uno, falsus in omnibus” has no general acceptability (2002) 8 SCC 381. On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.”

17. In the background of settled proposition of law, as referred hereinabove, now the evidences of the witnesses is to be scrutinized, and for that, first of all, evidence of PW-6, an injured is to be taken. He had deposed that Ashok Paswan, informant, happens to be his son, who has instituted this case against Karu Paswan, Sunil Paswan, Param Paswan. Occurrence is about 5-6 months ago. It was 2.00-2.30 p.m. At that very time, he was returning from Lalan Thakur, where he had gone to shave. When he reached at Chauraha, he saw Sunil Paswan, who was saying that he will be cut short of, which was resisted by his son. Sunil left the scene. In the mean time, Karu



Paswan and Param arrived, who enquired from him, why altercation was going on over which, he requested them to convince Sunil, otherwise may shoot. Sunil came with sword. Param caught hold his wrist. Sunil was carrying sword in his right hand and lathi in his left hand. Karu also caught hold him. Sunil gave sword blow causing injury upon him. Karu also assaulted with lathi, Param did not spare him. Then he was taken to hospital where he was treated. Thereafter, taken to Sadar Hospital, Samastipur.

18. During cross-examination at Para-2, had admitted that accused also belong to his agnate. He became unconscious after receiving injury and continued for three days. Police took his statement after 1 ¼ month. In Para-6, he had stated that he remained at hospital for 20 days. Though, he has not been cross-examined over occurrence, but from Para-15-16, attention has been drawn over his deposition, which the I.O., PW-8, Para-50 had substantiated. However, after going through the same, it is evident that with regard to assault by sword by Sunil, he had stated before the police.

19. PW-7 is Ashok Paswan, informant, son of PW-6. He had deposed that on the alleged date and time of occurrence, while he was at village Chauraha, Lakhindra Paswan, Sunaina Devi, Kavita Kumari, Tetari Devi were also present to see immersion of Goddess Saraswati. During midst thereof, Sunil came and was abusing, over



which he interrupted which caused annoyance to Sunil. At that very time, Param and Karu also arrived. Sunil had gone to his house. Karu and Param indulged in an altercation with his father. Sunil returned back having sword in his right hand while lathi in his left hand. Just after arrival, Sunil gave sword blow over his father causing injury over his cheek. Karu assaulted with lathi. Karu also assaulted him. He took his father to Patori Hospital, from there, he was referred to Sadar Hospital, Samastipur. While his father was undergoing treatment at Patori, Police came and took his fard-bayan (exhibited). From Para22, his attention has been drawn up towards fard-bayan, while from Paras-18 to 21, 23 to 25, attention has been drawn up towards further statement, found corroborated from the evidence of PW-8 under Para-51, 52, 53, but with some exception.

20. PW-1 is Lakhindra Paswan, who had deposed that on the alleged date and time of occurrence, he was over village road along with his wife to see immersion procession of Goddess Saraswati. Sunil came and made coarse seeing his wife whereupon, he protested. So many persons including Ram Udes and Ashok came. Ram Udes also scolded Sunil. He left the place saying that soon he is going to teach a lesson. Karu and Param also arrived. Sunil returned back from his house having lathi in his left hand and sword in right hand and gave sword blow over Ram Udes over his cheek. Then



thereafter, all ran away. Further, he asserted that a quarrel had taken place about 14 years ago over feast. In Para-3, there is contradiction corroborated by PW-8 (I.O.) Para-33. In Para-8, had stated that 5-6 more persons were present since before. In Para-14, had said that Sunil came back from his house after five minutes carrying weapons. In Para-15 had stated that Ram Udesb fell down on road after sustaining injury. Blood oozen out from his injury.

21. PW-2 is Geeta Devi, wife of PW-1. She had deposed that on the alleged date and time of occurrence, they were on road for seeing the immersion procession of Goddess Saraswati, where Sunil came and began to abuse whereupon her husband interrupted. Ram Udesb also came, who scolded Sunil. Sunil gone and then came with lathi and sword. Param caught hold hand and then, Sunil gave sword blow causing injury over cheek. Karu assaulted with lathi. Ram Udesb was taken to hospital. In Para-3, 4, 5, there is contradiction, corroborated by PW-8 Para-34. In Para-8, she had stated that they remained at the place even after Sunil gone to his house. When Sunil returned back, none had tried to snatch the weapon. At that very time, Sunil stood 2-3 hands away from her. In Para-12, she had narrated the event.

22. PW-3 is Sunaina Devi, who had during course of examination-in-chief, had reiterated the same version in sum and



substance and further, deposed that after Sunil left the scene, Karu and Param came, who caught hold Ram Udesb and then, Sunil came along with weapon having in his hand and then, gave sword blow over Ram Udesb causing injury over his cheek. Ram Udesb was taken to hospital. During cross-examination at Para-12, 13, 14, 15, there happens to be contradiction, corroborated by PW-8 under Para36, 37, 38, 39, 40. In Para-18, she had stated that after sustaining injury, Ram Udesb fell down and remained lying for half an hour. In Para-22, she had stated that I.O. had not seized sword.

23. PW-4 is Kavita Kumari, who had also deposed in similar manner and stated that Param had caught hold hand of Ram Udesb and then, Sunil gave sword blow causing injury over his cheek. Karu assaulted with lathi. Then all of them ran away. Ram Udesb was taken to hospital. During cross-examination, Para-10, there happens to be contradiction corroborated by PW-8 Para-41, 42. In Para-11 and 12, she had given vivid picturization of the occurrence. In Para-13, she had deposed that none other than her family members are witnesses of the occurrence.

24. PW-5 is Putali Devi. She also supported the prosecution version, save and except that she came back to her house seeing Sunil coming back with farsa and lathi. Then thereafter, she came to know that Ram Udesb has been assaulted. Para-6,7,8,9,12,14,



16 of her cross-examination is over contradiction, corroborated by PW-8, Para-3, 44, 45.

25. From minute observation of the evidence of respective PWs as referred above, it is evident that though there happens to be development in their evidence, but those are on other aspect, as so far assault part is concerned, they are consistent and on account thereof, no contradiction on that very score has been perceived. Furthermore, from their evidence, it is also apparent that there happens to be no reason to implicate the appellants exonerating the main culprit responsible for causing injury over Ram Udes, rather their consistent version clearly expose Sunil to be author of the sharp cut injury while Karu to be author of lacerated injury by way of inflicting sword as well as lathi blow, respectively over Ram Udes, wherein Param caught hold hand of Ram Udes, in order to facilitate the crime. Apart from this, from the evidence of injured PW-6, it is apparent that his testimony has not been shaken so far assault part is concerned identifying Sunil to have inflicted sword blow while Karu lathi. Furthermore, activity of Param has also been substantiated, who in order to facilitate the crime, caught hold Ram Udes.

26. Because of the fact that appeal against Karu Paswan as stood dismissed on account of his own lapses, the conviction of appellant, whereupon no further scrutiny is headed relating to him. So



far, Sunil is concerned, it is evident that seeing the female folk, he indulged in discourteous manner for which he was scolded, whereupon gone to his house, came out therefrom duly armed with sword and lathi, and further, indulged himself by giving a blow and further, handed over lathi to Karu to assault, clearly exposes his intention, nothing than to commit murder, and further nature of injury being dangerous to life as found by the doctor, duly substantiate the same.

27. That being so, the finding recorded by the learned lower Court relating to him, is found in accordance with law, based upon the material available on record, whereupon needs no interference. In likewise manner, the sentence. Consequent thereupon, the appeal sans merit and is dismissed. Appellant is under custody, hence directed to serve out the remaining part of sentence. Copy of 1st and last page of judgment be given to learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	24.04.2017
Uploading Date	16.05.2017
Transmission Date	16.05.2017

