

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.45 of 2015**

Arising Out of P.S. Case No. -48 Year- 2002 Thana -BELHAR District- BANKA

- =====
1. **Parasmani Yadav @ Parash Yadav**, son of Late Garbhu Yadav
 2. **Ajay Yadav**, son of Parasmani Yadav, both residents of village-Negel, P.S.-
 Belhar, District - Banka.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Mritunjay Prasad Singh-Advocate

For the Respondent/s : Smt. Abha Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 01-08-2017**

Appellants, Parasmani Yadav @ Parash Yadav and Ajay

Yadav have been found guilty for an offence punishable under Section 324 of the I.P.C. and each one has been directed to undergo simple imprisonment for one year, under Section 27 of the Arms Act, each one has been directed to undergo simple imprisonment for three years as well as to pay fine appertaining to Rs.500/- and in default thereof, to undergo simple imprisonment for three months additionally with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 04.12.2014 passed by the Additional Sessions Judge-Vth, Banka in Sessions Trial No.77 of 2003.

2. Informant, Maulendra Kumar Yadav (not examined)



gave his fard-bayan before A.S.I. Belhar Police Station while admitted at the clinic of Dr. Vijay Kumar Gupta, Sangrampur in an injured condition on 02.05.2002 at 4.30 p.m. disclosing therein that on the same day at about 10.30 a.m. while he was returning after taking both over handpipe of Arun Yadav, he saw Narsingh Yadav, Paras Yadav, Pravesh Yadav, Mahesh Yadav, Hajari Yadav, Pankaj Yadav, Vimal Yadav, Kamal Yadav, Pramod Yadav, Subash Yadav, Kailash Yadav, Sikander Yadav, Manoj Yadav, Rabindra Yadav @ Rabbo Yadav, Ajay Yadav and Pappu Yadav armed with gun coming from his house side. Just after coming nearer to him, first of all, Rampravesh Yadav shot fire causing injury over his hand as a result of which, he fell down. On hearing sound of firing, inmates of the house rushed to rescue him whereupon all of them began to fire indiscriminately as a result of which, Bhugol Yadav, Mala Devi, Randhir Yadav, Nimki Devi, Bulet Yadav and Bhawesh Yadav have sustained gun shot injury. Villagers, hearing sound of firing, rushed whereupon accused persons escaped there from. All the injured were lifted to hospital. Seeing the condition of Bhawesh Yadav, he was referred to specialized treatment. The accused persons have also threatened that they will commit murder. The motive for the occurrence has been shown as Ox of Bhawesh Yadav grazed straw of Pappu Yadav and for that, Pappu Yadav abused followed with an



altercation.

3. After registration of Belhar P. S. Case No.48 of 2002, investigation was taken up and after concluding the same, chargesheet was submitted whereupon trial commenced and concluded in a manner, the subject matter of instant appeal.

4. The defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 Cr.P.C. is that of complete denial. It has also been pleaded that actually, the prosecution parties were the aggressors, brutally assaulted the members of the appellants and others for that, they have also been prosecuted. However, neither any DW nor any kind of document has been exhibited on behalf of defence.

5. In order to substantiate its case, prosecution had examined altogether seven PWs, out of whom, PW-1 Bhugol Yadav, PW-2 Randhir Yadav, PW-3 Vakil Yadav, PW-4 Ramawatar Yadav, PW-5 Bullet Yadav, PW-6 Mala Devi, PW-7 Anil Kumar. Side by side, had also exhibited, formal F.I.R. as Exhibit-1, injury report of different injured as Exhibit-2 series.

6. From the record, it transpires that doctor has not been examined. The respective injury report has been exhibited by a witness PW-7, Anil Kumar. From the judgment impugned as well as from the record, it is evident that examination of PW-7 was after



recording of statement under Section 313 Cr.P.C. in terms of Section 311 of the Cr.P.C. That being so, after examination of PW-7, in spite of being formal in nature, there should have been subsequent exercise by recording statement of the accused at the end of the learned lower Court, which has not been complied. That being so, even if considering the evidence of PW-7 and respective injury reports, so exhibited at his end, happens to be non-admissible in the eye of law. That being so, in spite of non-examination of the doctor, the evidence of PW-7 did not uplift the prospect of prosecution case.

7. From the record, it is also evident that I.O. has also not been examined nor there happens to be any explanation. From the evidence of the respective witnesses, there happens to be an admission. PW-2, Para-12, PW-5, Para-8 that accused persons have also instituted a case and on account thereof, pendency of case and counter-case necessitated examination of the I.O. in order to properly affix the place of occurrence as well as manner of occurrence. Furthermore, from the evidence of witnesses, PW-1, Para-20, PW-2, Paras-11, 13, PW-3, Para-14, PW-4, Para-12, PW-5, Para-9, PW-6, Paras-6, 7, it is evident that there happens to be material contradiction which, on account of non-examination of I.O. would not be brought up on record whereupon, the interest of appellants are found duly prejudiced. Apart from this, it is also apparent that informant/ injured,



Maulendra Kumar Yadav, injured Nimki Devi, Bhawesh Yadav have not been examined and for that, no explanation has been offered.

8. Now, coming to the evidence of remaining witnesses, PW-1 had stated that after an altercation took place in between Pappu Yadav and Vibhash Yadav over grazing of straw belonging to Pappu Yadav by Ox of Vibhash Yadav, he returned back and then thereafter, all the accused persons so named therein came at the residence of Vibhash Yadav, encircled the same and then, made indiscriminate firing as a result of which, he along with Maulu Yadav, Bhawesh Yadav, Bullet Yadav, Randhir Yadav, Mala Devi, Nimki Devi sustained injury. He had also stated that Pappu Yadav had caused injury over person of Bhawesh Yadav. During cross-examination in Para-4, he had stated that after hearing sound of firing, he rushed from his house while under Para-10, he had stated that he along with Bibhash Yadav had got common house. In Para-11, he had stated that accused persons had made indiscriminate firing and before his reaching at the P.O., 8-10 rounds of firing had already effected. So far continuous animosity amongst the parties are concerned, under Para-12 and 13 admitted the same. In Para-15, he had stated that he came to the house of Bibhash, raised alarm and after that, about 20 persons reached near the house of Bibhash Yadav after hearing hue and cry namely Nand Lal Yadav, Lallu Yadav, Ramavatar Yadav,



Dharmendra Yadav, Rajesh Yadav, Rahul Yadav and others.

9. PW-2, is Randhir Yadav, who had deposed that on the alleged date and time of occurrence, he was at the place of occurrence. He had further stated that Maulendra Kumar Yadav (informant) was taking bath over hand-pipe. After sometime, the accused persons (so named) came armed variously. Ajay Yadav fired as a result of which, seven persons sustained injury namely Maulendra Yadav, Bhugol Yadav, Bhawesh Yadav, Bullet Yadav, Nimki Devi, Mala Devi and he himself. He had sustained injury over left shoulder. They were taken to hospital. In Para-5 of his cross-examination, he had stated that his house stood 10-12 steps east to the place of occurrence. In Para-7, he had stated that he along with Bibhash Yadav was standing. Maulendra was taking bath on the hand-pipe of Arun Yadav, which happens to be at a distance of 50 Yards from the place of occurrence. At Para-10, he had disclosed that houses of Yogendra Yadav, Hajari Yadav, Ravindra Yadav stood in the vicinity of the place of occurrence, but later on corrected it by stating that the house of none happens to be in the vicinity. In Para-14, he had further stated that four persons namely Ramavatar Yadav, Vakil Yadav, Arun Yadav, Mukesh Yadav came on uproar having raised at their end.

10. PW-3 is Vakil Yadav, who had stated that on the alleged date and time of occurrence, he was at his house. After



hearing hue and cry, he came at the place of occurrence and found the accused persons (named), who were armed variously. He had seen gun in the hand of Ram Pravesh Yadav, who shot at Mauli Yadav. Pappu Yadav shot at Bhawesh Yadav, Ajay Yadav shot at Randhir Yadav, Parasmani shot at Mala Devi. Mahesh Yadav shot at Nimki Devi, Ajay Yadav shot at Bullet Yadav also. All the injured were taken to hospital. During cross-examination, he had stated that when he reached at the place of occurrence, apart from accused persons, 18-20 persons were also present including Ravindra Yadav, Ramavatar Yadav, Randhir Yadav, Bullet Yadav, Bhugol Yadav, Arun Yadav, Mukesh Yadav, Bilas Yadav. He after coming to place of occurrence, raised alarm, 5-7 persons came, but he is unable to disclose their identity.

11. PW-4 Ramawatar Yadav had stated that on the alleged date and time of occurrence, he was sitting at his Darwaza. He saw an altercation in between Pappu Yadav and Bibhash Yadav. Pappu Yadav returned back and came with other accused persons (so named) having variously armed. On an order of Narsing Yadav, Rampravesh Yadav shot at Maulendra Yadav, Pappu Yadav shot at Bhavesh Yadav, Parasmani Yadav shot at Mala Devi, Ajay Yadav shot at Randhir Yadav and Bullet Yadav, Mahesh Yadav shot at Nimki Devi. Then thereafter, all the injured were taken to hospital.



During cross-examination, he had stated that the house of Pappu Yadav lies 200 yards west to his Darwaza. Hand-pipe of Arun Yadav lies 150-175 yards from his Darwaza. At the time of occurrence, he alone was at his Darwaza. In Para-11, he had stated that accused persons remained at the house of Bibhash Yadav for 10-15 minutes during midst thereof, there was firing. After hearing sound of firing, he got down from his Darwaza. 25-26 persons were present at the Darwaza of Bibhash Yadav.

12. PW-5 is Bullet Yadav, who had stated that after an altercation in between Pappu Yadav and Bibhash Yadav, Pappu returned back and then, came along with other co-accused (named) armed variously. Paras Yadav fired causing injury over his person. Pramod Yadav, Pankaj Yadav, Pappu Yadav, Narsingh Yadav and others also fired causing injury over Mala Devi, Minki Devi, Naresh Yadav, Maulendra Yadav, Randhir Yadav. Thereafter accused persons returned back. They were taken to hospital. During cross-examination at Para-2, he had stated that on the alleged date and time of occurrence, he was present at his house, he had not gone to his school. Then at Para-5, he had stated that all the accused persons came conjointly having variously armed, out of whom, Paras Yadav, Pappu Yadav, Ramprabesh Yadav, Pramod Yadav, Pankaj Yadav, Narsingh Yadav were armed with gun, rest were armed with different weapons.



In Para-6, he had stated that first of all, Pappu Yadav had fired causing injury over Bhawesh Yadav. They rushed and came near Bhawesh Yadav, whereupon they lifted him and were in a way to hospital. Vakil Yadav, Bibhash Yadav had lifted him. Then second firing was made at that very time, Bhawesh Yadav was taken inside. Second firing was made by Paras, which strike him. Nimki Devi also sustained injury.

13. PW-6 is Mala Devi, who had stated that after hearing hue and cry, she came out from her house and had seen the accused persons (named) having armed variously. Paras Yadav shot at her causing injury over her neck. Pappu had also shot at son of Bibhash. Ajay had shot Nirmala Devi and Randhir, Prabesh Yadav had shot at Mauli Yadav. During cross-examination at Para-4, she had stated that Mauli Yadav happens to be her Dewar, both have got separate houses. At the time of occurrence, Bibhash Yadav, Arun Yadav and she were living jointly. She came out after hearing sound of Vakil Yadav. When she came out from her house, she saw so many persons apart from accused. They were about 100 in number. First of all, there was an altercation followed with assault. Who made first firing, she is unable to say. Before sustaining gun shot injury, 2-3 rounds of firing were already effected.

14. As stated above, examination of PW-7 was effected



after recording statement under Section 313 Cr.P.C. After examination of PW-7, no fresh exercise was taken at the end of the Court to record fresh statement of the appellants and that being so, there happens to be illegal procedure followed by the learned lower Court whereupon apart from deficiency in the prosecution case on account of non-examination of the doctor, the formal evidence by way of PW-7 would not be accepted. When the evidence in its totality has been considered, it is evident that on one pretext or the other, there happens to be material exaggeration in the evidence of all the PWs whereupon, on account of non-examination of the I.O., the interest of the appellants/ accused has been prejudiced. So, in absence of injury report conviction would not be relating to Section 324 of the I.P.C. as, the nature of injury was not at all before the Court. Furthermore, as discussed hereinabove, the witnesses have admitted presence of counter-case and so, due to non-examination of the I.O. the status of the parties, who amongst them, being an aggressor, has not been properly identified. In likewise manner, the actual place of occurrence has also not properly been brought up on record. As there happens to be inconsistency amongst the evidences of the PWs as, some of the witnesses have stated that after coming to the house of Bhawesh, accused persons encircled the same and then, made indiscriminate firing. At the other end, some had deposed contrary to it, some had



not spoken where the actual place of occurrence happens to be. That being so, it looks unsafe to rely upon the evidences of the PWs, who as per their evidences, claimed to be the victim and being victim, their evidences are to be accepted, but in the facts and circumstances of the case, presence of counter-case, then in that event, there should have been proper identification, who happens to be the aggressor and in likewise manner, the place of occurrence. The aforesaid inconsistency as well as lapses on the part of the prosecution did not justify the judgment impugned as a result of which, same is set aside. Appeal is allowed. Appellants are on bail. Hence are discharged from it liabilities.

(Aditya Kumar Trivedi, J)

Vikash/-

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

