

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.79 of 2015**

Arising Out of PS.Case No. -112 Year- 2001 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

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Ranjeet Das, son of Babulal Das Resident of Mohalla - Bhikhanpur Harijan Tola,
P.S. Ishakchak, District - Bhagalpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ashutosh Kumar-Advocate
Mr. Geeta Kumari Jha-Advocate
For the Respondent/s : Mr. S. A. Ahmad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 18-09-2017

Appellant, Ranjeet Das has been found guilty for an offence punishable under Section 307 of the I.P.C. and Section 27 of the Arms Act and sentenced to undergo R.I. for 7 years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. of one year, additionally, under Section 307 I.P.C., R.I. for two years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo S.I. for six months, additionally, vide judgment of conviction dated 19.11.2014 and order of sentence dated 21.11.2014 passed by the Additional Sessions Judge-6th, Bhagalpur in Sessions Trial No.131 of 2002.

2. Ritu Kumari (PW-3) gave her fard-bayan at Jawahar



Lal Nehru Medical College and Hospital Emergency Ward, Bhagalpur on 17.02.2001 at about 5.00 p.m. alleging inter alia that on the same day at about 3.30 pm. his brother Gopal Prasad Sah was sitting near his shop in front of his house after closing his shop. She was also sitting near about. At that very time, Ranjeet Das, Bula Das came and demanded one cigarette whereupon her brother said that shop is closed so same will not be provided. On account of denial by her brother, they both indulged in an altercation and during course thereof, Bula Das took out pistol and gave to Ranjeet Das with a direction that he be murdered whereupon Ranjeet Das shot at her brother causing injury over his neck. Her brother sustained injury and fell down. Her mother and sister arrived there. All the miscreants escaped towards railway line. They lifted the injured to hospital where her brother is going under treatment. As brother is not in a position to speak so, she is giving fard-bayan. It has further been claimed that the instant occurrence has been committed by the accused persons with an intention to commit murder of her brother.

3. On the basis of aforesaid fard-bayan, Kotwali (Ishakchak) P. S. Case No.112 of 2001 was registered whereupon investigation commenced and after concluding the same, chargesheet was submitted which ultimately led to trial, during course of which Kaushalya Devi as well as Surendra Gupta, Sanjay Gupta (since



acquitted) were also summoned invoking Section 319 of the Cr.P.C. vide order dated 25.11.2004 and subsequently thereof, trial recommenced and concluded in a manner, the subject matter of instant appeal.

4. 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. To support the same, defence had also examined two DWs viz. DW-1 Tuntun Das and DW-2 Dinesh Das.

5. In order to substantiate its case, prosecution had examined altogether eight PWs, who are PW-1 Mahesh Prasad Sah, PW-2 Rajni Kumari, PW-3 Ritu Kumari, PW-4, Sushila Devi, PW-5 Manmohan Gupta @ Pappu Sah, PW-6 Gopal Prasad Sah, PW-7 Dr. Sunil Kumar Sinha, PW-8 Dharendra Deo Rai, the I.O. Side by side, had also exhibited, Exhibits-1 and 2 successive injury reports issued by the doctor on examination of injured Gopal Prasad Sah (PW-6), Exhibit-3 fard-bayan, Exhibit-4 formal F.I.R. As stated above, two DWs have also been examined on behalf of defence viz. DW-1 Tuntun Das, DW-2 Dinesh Das.

6. While assailing the judgment of conviction and sentence, it has been submitted on behalf of learned counsel for the



appellant that the judgment impugned happens to be capricious in the background of the fact that in spite of having definite averment that there was dispute amongst Surendra Gupta, Kaushalya Devi and Sanjay Gupta, who are Mause, Mause and Mause Bhai of the informant and with whom, land dispute was going on, who had threatened at an earlier occasion and who happens to be instrumental and on the basis thereof, they were summoned under Section 319 of the Cr.P.C. and after their appearance, the trial recommenced whereunder similar nature of evidences were adduced on behalf of prosecution, they were acquitted on account of inconsistency, contradiction, exaggeration having in the evidence of the PWs, then in that event, similar kind of treatment would have been given by the learned lower Court with regard to appellant also. Denying the same followed with recording of conviction and sentence by the learned lower Court in the facts and circumstances of the case, itself speak with regard to non-appreciation of the materials available on the record in its right perspective.

7. To substantiate such plea, it has been submitted that from the evidences available on the record, it is apparent that appellant had got no animosity with the prosecution party nor he was in any way connected with their affair. However, he has been made scapegoat whereupon, he has been found guilty in consonance with



recording of sentence.

8. It has also been submitted that from the evidence of material witnesses, more particularly PW-6, the injured in consonance with the other family members, it is evident that they have substantially developed the prosecution case deflecting from initial version and on account thereof, their evidences lost its reliability, credibility as well as trustworthiness.

9. Apart from this, it has also been pleaded that all the witnesses happen to be family members. From the evidence available on the record, it is evident that area happens to be densely populated having every prospect of presence of independent witness and had there been commission of occurrence in a manner, as suggested by the prosecution, then in that event, their presence could not have been ignored. That being so, non examination of independent witness without having cogent, reasonable explanation, would cast doubt over genesis as well as manner of occurrence as per such trivial issue, no one could expect commission of such kind of occurrence. In the aforesaid background, it has been submitted that that happens to be reason behind change in initial version and for that, the prosecution itself made the informant unreliable as, they have stated that in spite of urging that minor should not be compelled to become informant,



she had been at the end of police official though as per prosecution version itself, she was an eye witness. That being so, prosecution case suffers from basic infirmities and on account thereof, is fit to be rejected.

10. On the other hand, the learned Additional Public Prosecutor controverting the submission made on behalf of learned counsel for the appellant has submitted that all the witnesses are consistent irrespective of nature of the evidence, they adduced in the background of dispute relating to share amongst both sisters, identifying the appellant to be the sole assailant of injured, PW-6 and that being so, appellant has rightly been convicted and sentenced. Accordingly, appeal is fit to be dismissed.

11. Before coming to ocular evidence, the evidence of doctor (PW-7) is to be taken first. The PW-7 had examined the injured on 17.04.2001 at 3.20 p.m. and found following injuries:-

I) Wound of entry circular one inch in diameter with chart margin at left side of neck with multiple small burnt areas around the wound.

II) Wound of exit over lacerated wound with averted margin at right side of mandible in the middle.

M.I.-Small old scar left side of face. Nature of injury-



Patient referred to P.M.C.H. for investigation and treatment. Opinion may be taken from P.M.C.H.

Nature of weapon-May be firearm. It may be countrymade pistol. This injury may be caused from the close range and this injury may be dangerous to life. This injury report dated 17.02.2001 was signed by me on 17.04.2001 after collecting all documents and reports of the injured. This injury report is in my pen and signature. The patient was not referred by me to P.M.C.H. rather he was referred to P.M.C.H. by the department of Surgery. This injury report has been marked as Exhibit-4.

12. That being so, presence of firearm injury over person of injured is found properly exposed. During cross-examination, nothing has been elicited to discredit his testimony, save and except that he had not received any report from P.M.C.H. nor any document has been filed at the end of prosecution issued by P.M.C.H.

13. PW-1 had stated that victim is his son. He was shot at by Ranjeet Das on 17.01.2002. Firing was aimed over his neck. bullet passed through his neck. Occurrence took place at about 3.00-3.30 p.m. At that very time, he was on duty. At that very time, his mother-in-law Laxmi Devi, his wife Sushila Devi, three daughters namely Pinki, Rajni and Ritu were present apart from his son Gopal (victim). They all have seen the occurrence. He had further stated that



his mother-in-law resides with him. At about 4.30 p.m., his daughter Rajni Kumari telephoned him and disclosed regarding the occurrence whereupon, he came to hospital and had seen his son admitted in emergency ward. He was informed by his family members that Ranjit Das had shot at Gopal over his neck. Thereafter, Gopal was referred to P.M.C.H. whereupon he was taken to P.M.C.H. and was treated there. Then had deposed that asking for a cigarette was mere an excuse. The real cause is that as Kaushalya Devi, Surendra Gupta have not been able to get the land from his mother-in-law Laxmi Devi on account thereof, they conspired with Ranjit Das in order to commit such offence. He had further narrated that P.O. is his house, which is expanded in an area of three kattha. Over one and half kattha, the building stands while remaining one and half kattha belongs to be his mother-in-law. Whole land belonged to his father-in-law Basant Sah. Half land appertaining to an area one kattha and ten dhoors has been sold away by his mother-in-law in favour of his wife. Basant Sah died of ailment. Loan was incurred by the family for providing treatment. His mother-in-law sold away the land in order to set off the loan amount as well as also for performing shradh. Agreement was executed in between Laxmi Devi as well as Kaushalya Devi, Sanjay Gupta, Surendra Gupta, Mahesh Prasad Sah and Sushila Devi subsequently. As per terms of agreement, the land was to devolve



upon her two daughters namely Kaushalya Devi as well as Sushila Devi after death of Laxmi Devi with a condition that both the daughters will maintain, look after Laxmi Devi. Whoever be at fault, will not get anything in terms of agreement. In that case, Laxmi Devi will dispose of the land according to her own choice. As per terms of agreement, they are maintaining Laxmi Devi. On the other hand, Kaushalya Devi refused to maintain Laxmi Devi. On the other hand, she began to demand her half share from Laxmi Devi and for that, she began to quarrel. He used to intervene and for that, Kaushalya Devi, Surendra Gupta and Sanjay Gupta were regularly threatening. Kaushalya Devi used to go to the place of Ranjit Das for hatching a conspiracy whenever she indulged in quarrel with Laxmi Devi. About 10-15 times, they have been threatened at their end. He had not lodged Sanha considering the inter se relation. On 20.02.2004, they have threatened that at an earlier occasion, Gopal Prasad escaped, but this time, he will not and for that, on 23.02.2004, he had filed informatory petition before the Magistrate, Bhagalpur. He had further stated that in case, land had been given to Kaushalya Devi, then in that event, occurrence would not have happened. He had further stated that they have not perceived threatening at their end to be disastrous even they could not succeed in getting land. Ranjit Das used to direct Gopal to get the land transferred from his maternal grandmother



otherwise he will not be allowed to survive. He used to follow him. He had filed protest petition during course of investigation. During cross-examination at Para-16, there happens to be suggestion that his daughter had fallen in love with somebody else, which was not liked by them and for that, Gopal had entered into an altercation having in possession of a firearm and during course thereof, he sustained injury at his own. He had further denied the suggestion that his wife had tried to console him during course of which, he sustained injury. He had further denied the suggestion that only to wrap the incidence of love affair, he has deposed contrary to the first information report. In Paras-18, 19, 20, there happens to be contradiction relating to his earlier police statement. In Paras-21, 22, 23, 24, 25, there happens to be some sort of cross-examination relating to inter se relationship in between him as well as Kaushalya Devi, Surendra Prasad as well as over family affair. In Para-26, he had stated that occurrence did not take place in his presence. He had further stated that he came to know regarding the occurrence, after talk with his family members. In Para-27, he had shown the boundary of the house as North-Birendra, South-Late Ram Kishun Sah, East-Prem Mistri, Visheshwar Mistri, West-Road. He had further stated that he is unable to file any kind of document with regard to conspiracy having in between Ranjit Das, Bula Das and Surendra Gupta. He had denied the suggestion that



mother of Ranjit was engaged by him as a maid-servant and during course of said employment, a dispute arose relating to salary as a result of which, she left the job whereupon Ranjit Das has been falsely involved.

14. PW-2 had deposed that injured Gopal Prasad happens to be her brother. On 17.02.2001, Ranjit Das had shot at Gopal Bhaiya over his neck in order to kill him. The occurrence took place at about 3.00 p.m. The occurrence took place adjacent to her house at the shop of her maternal grandmother. At that very time, she was inside her house. Her maternal grandmother Laxmi Devi, her brother Gopal and sister Ritu were sitting at the shop of her maternal grandmother and were chatting. She along with her mother Sushila and her another sister Pinki were inside the house in same room. She along with her sister was studying while her mother was knitting. All of a sudden, she heard sound of firing as well as cry of Gopal whereupon she along with Pinki and mother came out from her house. They saw Ranjit Das fleeing there from with pistol. Simultaneously, seen her brother lying on the ground and blood was coming out from his wound. Her maternal grandmother was trying to stop bleeding while his her sister Ritu was stunt. Gopal disclosed that Ranjit Das shot at him and fled away. She along with her maternal grandmother, mother, Ritu, Pinki all have heard. Then thereafter, lifted Gopal to hospital where the



treating doctor directed to shift immediately to Patna and accordingly, he was taken to Patna where he had undergone treatment for 40 days. Then thereafter, returned back. At the time of occurrence, her father was at Sabour Agriculture College and was accordingly, informed by telephone. While statement of Ritu was being recorded on the same day at about 5.00 p.m., her sister Pinki had stated before the police officials that Ritu happens to be a child and so, she should not be stamped as an informant. But the police official did not pay heed to it. Asked from Ritu with regard to occurrence. She had further stated that on 18.02.2001, I.O. had taken statement of her mother and father, but he had not taken statement of her maternal grandmother as well as herself. On the same day, at about 8.00 p.m. the I.O. had recorded further statement of Ritu and then, she returned back along with maternal grandmother. Then, there happens to be detailed disclosure regarding dispute with her Mausi Kaushalya Devi and Mause Surendra Gupta relating to property possessed by her maternal grandmother and so, in the aforesaid background, it has been alleged that they conspired in order to eliminate Gopal whereunder Ranjit Das shot at. During cross-examination at Para-13, had stated that police had not recorded her statement. Then had deposed that her house lies in a Mohalla, which is very big. Then had given topography of her house North- building of Ganesh, Mahesh, South-Ram Kishun Sah



West-Road, then house of Dinesh, Lakhan Das, Ranjit Das. It has further been disclosed that after the house of Ram Kishun road lies and after road, house of Sohan lies. In Para-14, she had stated that she had not disclosed with regard to occurrence during the intermediary period to anyone. In Para-17, she had stated that at the time of occurrence, she was inside her house along with her sister Pinki and was studying while her mother was knitting. Then had stated that her shop as well as shop of her maternal grandmother lies adjacent to each other. In Para-18, she had stated that after alarm of her maternal grandmother, she along with her sister, mother rushed. She had seen blood over cloth of maternal grandmother. The aforesaid cloth was not handed over to the police. His brother was lying while he was taken to hospital, his brother was unconscious. Because of the fact that she was not at the place of occurrence at the time of occurrence. So, she had not raised alarm. Thereafter her father was informed as he was present at his office. She had further denied the suggestion that mother of Ranjit Das was engaged as maid-servant and in the aforesaid background, there was dispute about payment of wages. So, he has been falsely named in this case. The subsequent cross-examination relates with acquitted accused Surendra Gupta, Sanjay Gupta, Kaushalya Devi, her Mause, Mausi and Mause brother, which relates with share as well as entitlement relating to the



properties possessed her maternal grandmother.

15. PW-3 is another sister of the victim. She had deposed that Kaushalya Devi happens to be her Mausi, Surendra Gupta her Mause and Sanjay Gupta her Mause brother. Both of them are on strained relationship on account of land dispute. On 17.02.2001, they have conspired with Ranjit Das, who came at 3.00-3.30 p.m. and shot at his brother as a result of which, he sustained injury over his neck. She along with her brother Gopal Prasad was talking while sitting at the shop of her maternal grandmother. Her mother Sushila Devi and remaining two sisters Rajni and Pinki were inside the house. Her father was at Sabour Agriculture College. Ranjit Das came and asked for a cigarette from her brother over which, her brother disclosed that the shop is closed, he would not provide the same. After opening of the shop, the same will be provided. Over this, Ranjit Das returned back and then, came at an interval of 5-10 minutes. Sat near her brother and then, shot at. After hearing sound of firing as well as alarm of her brother, her mother and both sisters came out from the house and have seen Ranjit Das fleeing there from having pistol in his hand. They have also seen brother lying in an injured condition. Her brother also disclosed to her mother that Ranjit Das has shot him. She also disclosed in detail with regard to occurrence. They have tried to prevent bleeding. They took away her brother to Mayaganj Hospital



where he was admitted. She also informed her father, who later on came. During course of treatment, her brother was referred to P.M.C.H., police had recorded her statement as well as statement of her sisters, father and mother. In spite of forbidding at the end of Pinki, police had recorded her statement as fard-bayan and stamped her as an informant. Then, She had stated that police had taken her signature over blank paper. On the following day, her parents took away injured to P.M.C.H. where he was admitted for 40 days in plastic surgery ward. Identified the accused. She has also stated that she had filed protest petition. She had also stated that on account of denial by her mother-in-law to part with land in favour of her Mausaa, Mausi and Mausera bhai., they conspired and got the occurrence committed at the end of Ranjit Das. From Para-12 to Para-22, there happens to be cross-examination relating to Mausaa, Mausi and Mausera bhai (since acquitted). From Para-23 to 32, there happens to be cross-examination at the end of the appellant. In Para-23, she had given topography of the P.O. In Para-24, she had deposed that shop of her maternal grandmother as well as her brother happens to be distinct. Both are grocery shops. Then had said that they have not taken licence. Her brother's shop remains closed from 12.00 noon to 4.00 p.m. while shop of her mother-in-law remains opened throughout. She had further stated that she happens to be regular



student of mission school. At the time of occurrence, she was studying in Class-IV at Mokchda School. School runs right from 10.00 a.m. to 4.00 p.m. In Para-25, she had stated that there was no quarrel before shooting. There was quarrel after occurrence. She had made statement before the police. Then there happens to be contradiction with regard to her further statement. In Para-27 relates with the same. In Para-28 and 29, there happens to be cross-examination relating to protest petition. In Para-29, she had stated that after receiving gun-shot injury, her brother became unconscious. He regained sense at Patna, but she is unable to say after how many days. After sustaining firearm injury, none of the persons of surrounding came. After returning from Mayaganj Hospital, she had not spoken to anybody else regarding the occurrence. In Para-30, she had stated that blood had spread over in an area two hands where brother had fallen after sustaining injury. She had not shown to I.O. As I.O. not demanded blood stain cloth on account thereof, same was not given. At the time of firing, mother, sisters were inside the house. She had further stated that she is not remembering the exact date on which, she had seen Ranjit Das at the place of her Mause. She had further stated that her Mause used to visit to place of Ranjit Das, but she is unable to say exact date. Then had denied the suggestion that on account of dispute over wages relating to mother of Ranjit, who was her maid-servant, Ranjit has been falsely



implicated.

16. PW-4 Sushila Devi is the mother of the injured. During her examination-in-chief, she had deposed relating to the land belonging to her mother and having been transferred in her favour. In Para-2, she had deposed that on 17.02.2001 at about 3.00-3.30 pm., Ranjit Das shot at his son Gopal as a result of which, he sustained injury over his neck. At that very time, she along with Rajni and Pinki was inside her house while her mother Laxmi Devi, Gopal and youngest daughter were talking at the shop of her mother and at that very time, Gopal was shot at. Blood was oozing out from the injury. Hearing sound of firing as well as shout of Gopal, she along with Rajni and Pinki came out and had seen Ranjit fleeing having pistol in his hand. She had seen her son in an injured condition. Gopal had disclosed that Ranjit, after shooting him escaped therefrom. Then had disclosed the motive as her sister, brother-in-law conspired with Ranjit to eliminate Gopal being frustrated on account of denial by her mother to part with her property. Gopal was taken to Mayanand Hospital. At that very time, her husband was at Sabour Agriculture University. Rajni had informed him over which, he reached at the hospital. Her son was referred to Patna. Her statement as well as statement of her husband was recorded, although at that very time, they were mentally perplexed. Gopal was taken to P.M.C.H. where he



was admitted for 40 days in plastic surgery ward. Identified the accused. Then at Para-5, she had stated that motive for the present occurrence happens to be denial in providing cigarette, but same has been under garb of conspiracy having hatched by her sister, brother-in-law as well as sister's son due to land dispute and for that, she detailed the event. From Para-8 to Para-17, there happens to be cross-examination at the end of acquitted accused, who happen to be her sister, brother-in-law as well as sister's son and the cross-examination as is evident relate with genealogy, entitlement as well as activity of both the parties including that of mother. During cross-examination having at the end of appellant, Ranjit Das, she had in Para-20 stated that at the time of occurrence, she was inside her house and was knitting. There are four rooms inside the house. Her daughters were reading. When she came out from the house, she found her son lying in an injured condition. She along with her daughters Rajni and Pinki came out from the house conjointly. They have not raised alarm. In Para-21, she had denied the suggestion that during course of statement before the police, she had not spoken that she had seen Ranjit fleeing with pistol. She had further stated that she had seen two injuries over Gopal. Gopal became unconscious after disclosing the event to her. He had stated that Ranjit had shot at. Then had denied that she had not stated before the police that Ranjit had fired. She had further stated



that Laxmi Devi, Ritu, Gopal were gossiping at that very time. She had further stated that apparent motive happens to be with regard to denial by Gopal to provide cigarette, but same happens to be on account of non-providing of land whereupon event has been conspired by her sister and brother-in-law and sister's son. In Para-23, she had stated that when she came out along with Pinki and Rajni, she had seen 2-4 persons of nearby houses present. Her son had fallen over the cover of drainage which happens to be in front of her house. His cloth was soaked with blood. She had not handed over the cloth to the I.O. She had not shown the place of occurrence to the police. Her son regained sense on 19.02.2001. He had sustained injury on 17th February. In Para-24, she had stated that there was no dispute amongst herself with Ranjit since before the occurrence. Mother of Ranjit was not at all engaged as maid-servant then had denied the suggestion that mother of Ranjit was engaged as maid-servant and on account of dispute over wages, Ranjit has been falsely implicated.

17. PW-5 had simply stated that while he was in market, he came to know regarding assault over Gopal, whereupon he was declared hostile.

18. PW-6 is the injured, who had deposed that occurrence is of dated 17.02.2001. It was 3.00-3.30p.m. At that very



time, he was sitting in front of shop of his maternal grandmother and was talking with her. Her younger sister Ritu was also there. During midst thereof, Ranjit came and demanded cigarette, whereupon he said that shop is closed, so after opening of the shop, the same will be given. Thereafter, he returned back to his house and 10-15 minutes thereafter, he returned back and sat near him and then, took out pistol and fired over his neck. The bullet passed through his neck, blood oozed out. He fallen down, but was conscious. On hearing sound of firing as well as cry, his mother and other sisters came before whom, he stated that Ranjit Das, after shooting him, ran away. Thereafter, he became unconscious. So, he is unable to say with regard to intermediary event. Later on, he came to know that first of all, he was taken to Mayaganj Hospital, Bhagalpur where his treatment was taken up and then, was referred to P.M.C.H. where he was admitted for 40 days. He identified the accused. He had further stated that his Mause, Mause and Mause Bhai (since acquitted) are also involved in the occurrence and then, he had detailed the event. As the aforesaid accused have already been acquitted, on account thereof, examination-in-chief relating to them as well as cross-examination having made on their behalf is not discussed. He had stated that his statement was recorded on 28.03.2001. From the date of occurrence to 28.03.2001, he was at the P.M.C.H. on account thereof, he had not made statement



at an earlier occasion. He had further stated that after talk with his mother, he became unconscious. He regained sense on 19.09.2001 at P.M.C.H. The shop of his maternal grandmother lies north to his house. Biscuit and toffee are being sold in the shop of his maternal grandmother. Licence has not been taken for that. Then had shown the boundary of that shop North-Ganesh, Mahesh, South-Ram Kishun, Pappu, East-Biso Mistri, West- Road and then, Ranjit Das. At that very time, he along with his maternal grandmother and younger sister Ritu were talking while his mother and sisters Pinki and Rajni were inside the house. In Para-15, he had stated that the house of Ranjit Das lies in front of his house. He does not know what kind of job, mother of Ranjit does. He was on talking term with Ranjit before the occurrence, but after the occurrence, they are not on talking term. In Para-16, he had stated that he had his own shop at the time of occurrence, cigarette was also being sold. His shop lies in the front portion of his house. He has got no licence for the aforesaid shop. Then had said that he has got no paper to substantiate that he was talking with maternal grandmother sitting at her shop. He had not indulged with an altercation with Ranjit, when he refused to provide cigarette. In Para-17, he had stated that after sustaining injury, he fell down. He raised alarm "Bachao-Bachao". After arrival of his sister as well as mother, he talked with them and then, became unconscious.



So, he is unable to say with regard to presence of others. In Para-18, his attention has been drawn up to the effect that he had not earlier stated before the police that Ranjit Das gone and then, returned back. Furthermore, disclosed to his mother that Ranjit after firing escaped. In Para-19, he was cross-examined with regard to application having filed before the Superintendent of Police. In Para-20, he had stated that on the day of occurrence, he worn shirt and paint. Cloth was soaked with blood. He has not been given cloth to the police. He has not tried to handover aforesaid cloth to Police. In Para-21, he had stated that he had not shown P.O. to the police. He had denied the suggestion that on account of dispute over payment of wages as mother of Ranjit was engaged as maid-servant, Ranjit has been falsely implicated.

19. PW-8 is the I.O., who had deposed that on 17.02.2000, he was posted as A.S.I. at Ishakchak Police Station. After receiving information regarding firing having made in mohalla-Bhikhanpur, he along with Officer-in-charge had gone to Bikhanpur Mohalla where he was informed that Gopal had sustained injury and he has been taken to Mayaganj Hospital. They gone to Mayaganj hospital where he found injured unconscious, Ritu Kumari was present, who gave her fard-bayan and the same was recorded by Officer-in-Charge (exhibited). The aforesaid fard-bayan was sent to



Kotwali P. S. for registration (exhibited formal F.I.R. etc.). He was entrusted with the investigation whereupon he took further statement of the informant, Ritu Kumari. Recorded statement of Pinki Kumari at the hospital itself. Gone to the place of occurrence and inspected the same. P.O. happens to be front of shop of Gopal Sah lying at mohalla-Firangi. He had found blood stain over pakka floor. He had shown boundary of P.O. North-Ganesh Prasad, South-Ram Kishun, East-shop of Gopal, West-Gali and then thereafter, house of Dinesh Das as well as Ranjit Das. He had recorded statement of Tetri Kumari. Conducted raid at the house of Ranjit, found absconding. On 18.02.2001 recorded statement of Sushila, Mahesh and Pappu. Received supervision no.1 on 26.03.2001, recorded statement of injured Gopal on 26.03.2001, received injury report of Gopal on 17.04.2001. On 24.04.2001 received supervision note. Then thereafter, concluding the investigation, submitted chargesheet. Cross-examination relating to Kaushalya, Surendra, Sanjay is passed over. In Para-7, he had deposed that he had not prepared sketch map regarding the occurrence. In Para-8, he had stated that he had not recorded statement of Ganesh, Ram Kishun, as he had mentioned in the case diary that other witnesses were searched out, but could not found. In Para-9, he had stated that road lies in front of house of Gopal. Then thereafter, there happens to be building of so many



persons. He had recorded statement of Pappu Sah, Tetri Devi amongst them. In Para-11, he had stated that he had found blood at the place of occurrence. In Para-12, he had stated that he had not done photography of the P.O. In Para-13, he had stated that it is not a fact that police had taken signature of Ritu Kumari over blank paper. In Para-14, he had stated that he was present at the time of recording of the fard-bayan of Ritu. In Para-15, he had stated that he had not seized blood stain cloth of Gopal as his treatment was going on. Even after his return, he had not seized the blood stained cloth. In Para-17, he had stated that he had not incorporated in the case diary that on account of unconsciousness of Gopal, he had not seized the blood stained cloth. In Para-18, he had said that he had inspected the place of occurrence in presence of Rani Devi, Ram Bilas Das etc. None of the family members of informant had shown P.O. He had not recorded statement of Rani Devi, Ram Bilas Das and Jago Mosmat. In Para-20, he had stated that he inquired from family members of Ranjit Das with regard to his whereabouts, but he has not mentioned the same. In Para-21, 22, 23, 24, 25, there happens to be contradiction relating to statement of Ritu Kumari. In Para-26, he had stated that name of Rajni Kumari (PW-2) has not been disclosed by any witness nor she had made statement before him. In Para-27, he was confronted with regard to statement made by Mahesh Prasad Sah (PW-1) while under



Para-28, happens to be relating to Sushila Devi (PW-4). In Para-31, there happens to be contradiction with regard to injured Gopal Prasad. He had denied the suggestion that his investigation happens to be incorrect, faulty.

20. After going through evidences available on the record, as per evidence of PW-7, doctor, it is evident that injured (PW-6, Gopal) had sustained firearm injury. It is also apparent that injured was admitted at hospital while he was unconscious. Though no document has been placed at the end of prosecution with regard to treatment having been carried out at P.M.C.H., but the fact remains that PW-7 has not been sacked during course of cross-examination with regard to his finding. That being so, apart from oral evidence whatever may be, the medical evidence thoroughly affirms cause of injury by means of firearm.

21. So far status of injured is concerned, it has been settled at rest that the evidence of an injured has got primacy and unless and until, there happens to be exposure of exaggeration or influenced with malicious stoma or is found mixed with falsehood to such extent that it became difficult for the Court to segregate the same, then and then only, the evidence of an injured is to be disbelieved. Apart from this, in terms of Section 134 of the Evidence



Act, it is abundantly clear that it is not the quantity rather quality which matters. That means to say, counting of number of witnesses is not at all material to decide the issue. It will be sufficient to record a finding in case, the evidence of single witness is found trustworthy. In likewise manner, witnesses being the family members could not be a ground to reject their testimony, more particularly when probability of their presence at the P.O. is found duly substantiated. Apart from this, *falsus in uno and falsus in omnibus*, being not applicable and so, an obligation has been put over the shoulder of the Court to search out the truth from falsehood like separating grain from chaff and during course of exercising such event, the part evidence soaked with falsehood may be rejected while rely upon the remaining. In the aforesaid background, classification of witnesses have been identified under three categories:- A) Wholly reliable B) Wholly unreliable C) Partly Reliable and Partly unreliable. With regard to aforesaid two categories, the court is not to be strained while dealing with third category, the court has to indulge in deep in order to scrutinize the same in proper way to search out the truth.

22. In ***Mahavir Singh vs. State of Madhya Pradesh*** reported in 2017 CRI.L.J. 749, it has been held:-

“24. It is the duty of the Apex Court to separate chaff from the husk and to dredge the truth from the



pandemonium of Statements. It is but natural for human beings to state variant statements due to time gap but if such statements go to defeat the core of the prosecution then such contradictions are material and the Court has to be mindful of such statements [See : Tahsildhar Singh v. State of UP, AIR 1959 SC 1012; [Pudhu Raja v. State](#), (2012) 11 SCC 196; [State of UP v. Naresh](#), (2011) 9 SCC 698]. The case in hand is a fit case, wherein there are material exaggerations and contradictions, which inevitably raises doubt which is reasonable in normal circumstances and keeping in view the substratum of the prosecution case, we cannot infer beyond reasonable doubt that the appellant caused the death of the deceased.”

23. In *Yogesh Singh vs. Mahabeer Singh and others* reported in 2017 CRI.L.J. 291, it has been held:-

“50. The learned counsel for the respondents has also sought to assail the prosecution version on the ground of lack of independent witnesses. We are not impressed by this submission in the light of the observations made by this Court in Darya Singh Vs. State of Punjab, AIR 1965 SC 328 = 1964(7) SCR 397, wherein it was observed:



“It is well-known that in villages where murders are committed as a result of factions existing in the village or in consequence of family feuds, independent villagers are generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and might expose them to very serious risks. It is quite true that it is the duty of a citizen to assist the prosecution by giving evidence and helping the administration of criminal law to bring the offender to book, but it would be wholly unrealistic to suggest that if the prosecution is not able to bring independent witnesses to the Court because they are afraid to give evidence, that itself should be treated as an infirmity in the prosecution case so as to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merits.”

51. Similarly, in Raghbir Singh Vs. State of U.P., (1972) 3 SCC 79, it was held that the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. In this connection, general reluctance of



an average villager to appear as a witness and get himself involved in cases of rival village factions when tempers on both sides are running high, has to be borne in mind.

52. Further, in Appabhai and Anr. Vs. State of Gujarat, 1988 Supp (1) SCC 241, this Court has observed :

“Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused.”



24. In ***Jodhan vs. State of Madhya Pradesh*** reported in 2015 CRI.L.J. 3291, it has been held:-

“21. Additionally, we may note with profit that these witnesses had sustained injuries and their evidence as we find is cogent and reliable. A testimony of an injured witness stands on a higher pedestal than other witnesses. In Abdul Sayeed v. State of M.P. (2010) 10 SCC 259, it has been observed that the question of 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. It has been also reiterated that convincing evidence is required to discredit an injured witness. Be it stated, the opinion was expressed by placing reliance upon Ramlagan Singh v. State of Bihar (1973)3 SCC 881, Malkhan Singh v. State of U.P. (1975)3 SCC 311, Vishnu v. State of Rajasthan (2009) 10 SCC 477 and Balraje v. State of Maharashtra (2010)6 SCC 673 and Jarnail Singh v. State of Punjab (2009) 9 SCC 719.



22. From the aforesaid summarization of the legal principles, it is beyond doubt that the testimony of the injured witness has its own significance and it has to be placed reliance upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and inconsistencies. As has been stated, the injured witness has been conferred special status in law and the injury sustained by him is an inbuilt-guarantee of his presence at the place of occurrence. Thus perceived, we really do not find any substance in the submission of the learned counsel for the appellant that the evidence of the injured witnesses have been appositely discarded being treated as untrustworthy by the learned trial Judge.”

25. In *Indira Devi & others vs. State of Himachal Pradesh* reported in 2016 CRI.L.J. 3136, it has been held:-

“7. The proposition of law that an injured witness is generally reliable is no doubt correct but even an injured witness must be subjected to careful scrutiny if circumstances and materials available on record suggest that he may have falsely implicated some innocent persons also as an after thought on account of enmity and vendetta. The trial court erred in not keeping this in mind.”

26. After analyzing the evidences available on the



record, it is apparent that with regard to presence of gun-shot injury over the person of PW-6 is found duly corroborated by the PW-7, doctor. So far author of the injury is concerned, PW-6, injured has categorically identified the appellant to be responsible for the same corroborated by other PWs. Furthermore, the I.O. also, by way of objective finding had substantiated the same. Because of the fact that the appellant failed to shake testimonies of the PWs, nor there happens to be any occasion to infer false implication, nor malicious prosecution. Consequent thereupon, in spite of presence of minor infirmities in the evidence of PWs, but the evidence in its totality are found reliable. That being so, the finding recorded by the learned lower Court did not attract interference. Consequent thereupon, the appeal lacks merit and is accordingly, dismissed. Appellant is under custody, which he shall remain till saturation of the sentence.

(Aditya Kumar Trivedi, J)

Vikash/-

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