

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.86 of 2015

Arising Out of PS.Case No. -36 Year- 2010 Thana -ASARGANJ District- MUNGER

- =====
1. **Dashrath Singh**, son of Late Maozi Singh
 2. **Rajesh Kumar @ Raju @ Rajesh Kumar Singh**, Son of Genalal Singh
 3. **Rupal Singh**, son of late Maozi Singh, all are resident of Village- Mangrappa, P.S.- Asharganj, Distt. Munger

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 88 of 2015

Arising Out of PS.Case No. -36 Year- 2010 Thana -ASARGANJ District- MUNGER

=====

Genalal Singh, S/o Late Maoji Singh, R/o Village Mangrappa, P.S. Asarganj, District Munger.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No.86 of 2015)

For the Appellant/s : Mr. Ajit Kumar Singh-Advocate

For the State : Mr. Sujeet Kumar Singh- A.P.P.

For the Informant : Mr. Ajit Kumar Singh-Advocate

(In CR. APP (SJ) No.88 of 2015)

For the Appellant/s : Mr. Ajit Kumar Singh-Advocate

For the State : Mr. Sujeet Kumar Singh- A.P.P.

For the Informant : Mr. Ajit Kumar Singh-Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 08-12-2017

Cr. Appeal (S.J.) No.86 of 2015 wherein Dushrath Singh,

Rajesh Kumar @ Raju @ Rajesh Kumar Singh and Rupan Singh are

the appellants and Cr. Appeal (S.J.) No.88 of 2015 wherein Genalal



Singh is the appellant commonly originate from the judgment of conviction dated 10.12.2014 and order of sentence dated 12.12.2014 passed by the Adhoc Additional Sessions Judge-8th, Munger in Sessions Trial No.66 of 2011/ 51 of 2014, on account thereof, heard together and are being disposed of by a common judgment.

2. All the appellants named above have been found guilty for an offence punishable under Section 147 of the I.P.C. and sentenced to undergo R.I. for one year, under Section 148 of the I.P.C. and sentenced to undergo R.I. for two years as well as to pay fine appertaining to Rs.1,000/- and in default thereof, to undergo S.I. for one month, additionally and under Section 307/ 149 of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for three months, additionally while appellant Rupan Singh and Rajesh Kumar Singh @ Raju have further been found guilty for an offence punishable under Section 27(1) of the Arms Act and sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs.1,000/- and in default thereof, to undergo S.I. for one month with a further direction to run the sentences concurrently, with a further direction to set off relating to the period already undergone during course of trial in terms Section 428 of the Cr.P.C.

3. PW-3 Pankaj Kumar Singh gave his fard-bayan on



21.05.2010 while he was admitted at Rajeshwar Hospital, Patna in presence of Manoj Kumar Singh and Upendra Kumar Kuswaha disclosing therein that on 31.05.2010, the marriage ceremony of his younger sister was fixed. He had gone to Asarganj market for purchasing of ornaments, other items along with his father and cousin brother Raj Kamal on 18.05.2010. At about 4.30-5.00 p.m. after doing some marketing while they were returning from Asarganj market over motorcycle and reached near graveyard of village-Kharwa, they slowed the speed of motorcycle on account of road being damaged. All of a sudden, his co-villagers Gaina Lal Singh and his three sons namely Anil Singh, Rajesh Kumar @ Raju Singh and Shyam Singh, brother of Gaina Lal namely Dushrath Singh and Rupan Singh along with two unknown persons appeared and encircled him. They were armed with pistol and musket. Till then, his father and cousin, who were on another motorcycle also reached. Gaina ordered to snatch money as well as to murder, whereupon Shyam Singh shot at him causing injury over his left thigh as a result of which, he fell down. Then Dushrath Singh said that he is not dead, whereupon Anil Singh fired on his chest as a result of which, he sustained injury over his left Panjar. Again Dashrath Singh ordered to kill his father as well as cousin brother over which, Rajesh Kumar Singh and Rupan Singh fired from their pistol, but they have got miraculous escape as the assailants missed the aim. Then thereafter, they took away cash



appertaining to Rs.70,000/- as well as ornaments appertaining to Rs.1,00,000/-. He became unconscious. When he regained sense, he found himself admitted at Rajeshwar Hospital where he was undergoing treatment.

4. Motive for the occurrence has been shown as in the Year 2006, Gaina Lal had murdered his elder father Keshav Singh wherein he was a witness. In the aforesaid case, they were convicted. After remaining under custody for two years, they got bail and since thereafter, they were threatening that they will take revenge.

5. The aforesaid fard-bayan was transmitted to the concerned Police Station, whereupon Asarganj P. S. Case No.36 of 2010 was registered. Consequent thereupon, investigation was taken up and concluded by way of submission of chargesheet at different stages. It is further evident from the record that five accused persons namely Genalal Singh, Shyam Singh, Dushrath Singh, Rupan Singh and Rajesh Kumar Singh were proceeded and during midst thereof, Shyam Singh, a custodial accused died on 28.05.2014, whereupon on an information furnished by the Superintendent of Jail, Munger vide order dated 03.06.2014, trial was dropped against the aforesaid accused Shyam Singh. As such, trial continued against remaining accused, who vide judgment impugned have been found guilty and accordingly, sentenced, subject matter of instant appeal.



6. 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. Furthermore, it has also been pleaded that prosecution party themselves happen to be notorious person, whereupon they might have sustained injury at different place in different manner and in the background of persisting dispute amongst the parties, accused persons have been falsely implicated. In order to substantiate the same, apart from the documentary evidence, oral evidence has also been adduced.

7. In order to substantiate its case, prosecution had examined altogether six PWs, who are PW-1 Raj Kamal Singh, PW-2 Lakhan Prasad, PW-3 Pankaj Kumar Singh @ Sapan Kumar, PW-4 Rama Nand Singh, PW-5 Dr. Kumar Ranjan and PW-6 Kamal Kant Prasad, the Investigating Officer. Side by side, had also exhibited viz. Exhibit-1, fard-bayan, Exhibit-2 series, injury report, Exhibit-3 formal F.I.R., Exhibit-4, certified copy of judgment of Sessions Trial No.763 of 2006, Exhibit-5, order dated 27.11.2007 passed in connection with Sessions Trial No.763 of 2006. Defence had also examined one DW namely Md. Kayum Khan. Side by side, had also exhibited viz. Exhibit-A series, certified copy of final form of Asarganj P. S. Case No.13 of 2009, certified copy of final form of Asarganj P. S. Case No. 39 of 2007, certified copy of final form of Asarganj P. S. Case No.33



of 2010, Exhibit-B certified copy of Lagan Fixation Case No.09 of 1989-90 and Exhibit-C, F.I.R. of Asarganj P. S. Case No.13 of 2009.

8. While assailing the judgment of conviction and sentence, the learned counsel for the appellants has submitted that the prosecution case suffers from inherent improbability as well as impalpability and that being so, none of the witnesses including that of injured (PW-3) are reliable one. Once their testimony are rejected, then in that circumstance, the judgment of conviction and sentence recorded by the learned lower Court would not find favour. To substantiate such plea, it has been submitted that there happens to be inordinate delay in institution of instant case and for that, prosecution failed to explain by cogent reason rather kept silence during course of evidence intentionally, purposely, malafidely whereupon, the whole prosecution case is fit to be brushed aside, more particularly in the background of the fact that both the parties happens to be on strained relationship since before. Furthermore, it has also been submitted that enmity is a double edged sword. It may be a motive for commission of an offence. Simultaneously, it happens to be a motive for false implication. The probability is to be seen and the Court has to perceive the same. Considering the evidence available on the record, conduct of the prosecution, it is apparent that it happens to be a case of false implication under the garb of injury whatever been sustained



by the PW-3 and that being so, appellants are entitled for clean acquittal.

9. Furthermore, it has also been submitted that none of the witnesses that means to say, PW-1, PW-2 and PW-4 happen to be an eye witness to occurrence. From their deposition, it is apparent that they have thrust themselves to become an eye witness in order to lend support to the version of PW-3, so called injured. The improbability visualizing from their evidences also rules out authenticity of version of the PW-3, so called injured and that being so, the manner, genesis of occurrence coupled with place of occurrence is not at all found in consonance with the allegation whatsoever been. In its continuity, it has been submitted that aforesaid theme found intangible from the evidence of I.O. (PW-6).

10. Now, coming to the assertion, allegation as levelled by PW-3, injured, it has been submitted that he happens to be a liar. To substantiate the same, it has been submitted that there happens to be specific disclosure at the end of the PW-3 that first firing was made by Shyam Singh, which caused injury over his left thigh as a result of which, he fell down on the ground and then thereafter, on an order of Dashrath Singh, Anil Singh had fired causing injury over his left side of chest, but the doctor (PW-5), who had examined the victim, had not found any kind of firearm injury over left thigh. That means to say,



the first part of occurrence is found completely vanished and that is due to reason of falsity. Furthermore, it has also been submitted that PW-5 had not deposed that when PW-3 was presented before him for the treatment, he was unconscious and so, the assertion of the prosecution, more particularly PW-3 that after sustaining injury, he became unconscious and after regain sense, found himself admitted at Rajeshwar Hospital, is again ill designed. The cumulative effect, in the aforesaid facts and circumstances of the case, happen to be that prosecution miserably failed to substantiate its case and that being so, the judgment of conviction and sentence is not at all found maintainable.

11. On the other hand, learned Additional Public Prosecutor assisted by the learned counsel for the informant has submitted that whatever points have been raised on behalf of appellants are not at all relevant for consideration on account of own lapses having at their part. It has been submitted that appellants have an opportunity during course of cross-examination of fard-bayan to have tested the witness on all score including that of, which has been raised at the present moment, but having failed now legally forbidden, more particularly in the background of the fact that witnesses have got no opportunity to explain under what circumstances those events visualized. With regard to inconsistency having found in the evidence



of PW-6 relating to place of occurrence, it has been submitted that P.O. happens to be a road. Date of occurrence happens to be dated 18.05.2010, while place was visited by the I.O. on 26.05.2010, during midst thereof, it was expected to have the blood stain or the articles spread over the road will remain intact.

12. It has also been submitted that though there happens to be some sort of disclosure at the end of PW-3, casting doubt over presence of PW-1 as well as PW-4 at the place of occurrence during course of occurrence, but as the evidence in its entirety is to be considered, then in that circumstance, it is apparent that they have succeeded to show their presence at the place of occurrence and so, their evidences are fit to be accepted. Accordingly, it has been submitted that prosecution has succeeded in substantiating its case, whereupon the finding recorded by the learned lower Court is to be confirmed.

13. PW-5 is the doctor. After going through his evidence, it is apparent that on account of his carelessness during course of deposition, some sort of anomaly cropped up though is found completely explained. PW-3 was taken to Sadar Hospital, Munger on the date of occurrence itself i.e. on 18.05.2010 and as per Exhibit-2, he was examined by the PW-5 on 18.05.2010 at about 8.47 p.m. Furthermore, it is evident that I.O. had made requisition on



16.06.2010 for issuance of injury report and Exhibit-2 (injury report) was issued on 16.06.2010 itself. In the aforesaid background, when the evidence of PW-5 is gone through, it is apparent that in mechanical manner, he had deposed that on 16.06.2010, while he was posted at Sadar Hospital, Munger, he had examined PW-3, Pankaj Kumar Singh at 8.47 p.m. and found the following:-

Lacerated scapular wound of size ½" x circular diameter on left side of chest anterior of to left breast and wound of entry.

- *Lacerated wound of size 1" x ½" averted margin on left posterior part of chest infra scapular region.*
- *Lacerated wound size 1" x ½" x ¼" on left front of thigh.*

Injury Nos.1 and 2 were corresponding to each other were caused by firearm. However, nature reserved while Injury No.3 simple in nature caused by hard and blunt substance. During cross-examination at Para-5, he had stated that there was only one injury present over the person of injured caused by means of firearms, but he had not found the cartridge inside the wound. He had further stated that Injury No.1 would have been caused only after having firing from front side. He had further stated that he had not issued the injury report in between 18.05.2010 to 16.06.2010. He had denied the suggestion that he had shown injury of other than that of injured. So, the controversy



persisting in the evidence of PW-5 as disclosed hereinabove is found duly explained at the end of appellants themselves and that being so, is not at all found adverse to the prosecution case. Therefore, presence of corresponding single firearm injury over the person of victim is found duly substantiated.

14. PW-3 is the informant. He had deposed that the occurrence is of dated 18.05.2010, it was 6.00-6.30 p.m. Marriage of his sister was fixed on 31.05.2011 and for that, he along with his father Ramanand Singh and cousin brother Raj Kamal had gone to Asarganj market over two motorcycles. He was alone over his motorcycle while his father was the pillion rider of Raj Kamal. They have given ornaments appertaining to Rs.1,00,000/- for cleaning, which they were carrying the same. He had withdrawn Rs.70,000/- from the bank which he was also carrying. When they reached near Kharwa village, Genalal Singh, Dushrath Singh, Rupan Singh, Anil Singh, Shyam Singh, Rajesh Singh armed with pistol were present since before, encircled him. On an order of Genalal Singh, Shyam Singh fired from his pistol as a result of which, he sustained injury over his left thigh as a result of which, he fell down along with motorcycle. Subsequently thereof, Dashrath Singh directed that he is not dead, so he be again shot at, whereupon Anil Singh fired causing injury over his chest, left side. Then thereafter, they have fired two



rounds upon his father as well as Raj Kamal. Accused persons fled away along with articles (ornaments, cash). He became unconscious and so, he was not in a position to disclose what had occurred since thereafter. He regained sense on 21.05.2010 at Rajeshwar Hospital, Patna where his fard-bayan was recorded. Then identified the accused. Motive for the occurrence has been shown as the accused persons had committed murder of his elder father on 06.06.2006, wherein they have been convicted. They got bail from High Court and since thereafter were pressurizing to compromise which they refused and on account thereof, they have attempted upon his life. He happens to be one of the witness in the aforesaid murder case.

15. During cross-examination at Para-4, he had stated that his fard-bayan was recorded at Rajeshwar Hospital, Patna on 26.05.2010. Then had said that he had not disclosed the name of ornaments' shop, name of goldsmith to the I.O. as he had not inquired from him. Then had denied the suggestion that he had wrongly deposed on that very score. In Para-5, he had stated that for the first time, when he saw the accused persons, they were at a distance of ten feet. After seeing them, he had not become afraid of. Till the time his father arrived near him. The accused persons have already gone after shooting him as well as taking away the articles. He had further stated that he was shot at from a distance of 2-3 feet. He had further stated



that accused persons were of similar physical feature than he has. In Para-6, he had stated that accused persons after protecting his hand forward had fired. They fired from left side. At that very time, his face was towards left side and then, there was confrontation of face to each other. He tried to escape, but could not as till then accused persons had already shot him. He raised alarm. He had fallen towards left side. In Para-7, he had stated that he had fallen down after sustaining first shot. He was wearing full-paint, shirt and a helmet at that very moment. Blood oozen out. His cloth soaked with blood. After fleeing of accused persons, his father and Raj Kamal had lifted him. In Para-8, he had stated that at the time of his fard-bayan, his father was not present. He had further stated that his father had not come to hospital. Then had said that he had not shown motorcycle to the I.O. He is unable to say whether his father had shown or not. He had further stated that he had not shown blood stain cloth to the police. In Para-10, he had stated that he was admitted at Rajeshwar Hospital, but he is unable to say how many days he remained there. He had not shown the relevant papers relating thereto before police. Then had denied the suggestion at Para-11 that as he was not at all confronted with the aforesaid occurrence on account thereof, he had not shown motorcycle to the I.O., cloth to the I.O. and in the background of the animosity prevailing amongst the parties, got this



false case filed.

16. PW-1 had deposed that the occurrence is of dated 18.05.2010 at about 6.00-6.30 p.m. On account of fixation of marriage ceremony of his cousin sister on 31.05.2010, he along with his uncle Ramanand Singh and cousin brother Pankaj Kumar Singh had gone to Asarganj market on two motorcycles. They have conducted marketing, took ornaments appertaining to Rs.1,00,000/-. Pankaj Kumar Singh had gone to bank and withdrawn to Rs.75,000/-. Then thereafter, they returned back to their house. Pankaj Kumar Singh was proceeding ahead. After covering some distance, when they reached village-Kharwa, as the road was damaged on account thereof, they had slowed the speed of the vehicle. During course thereof, Genalal Singh, Dashrath, Rupan Singh, Anil Singh, Rajesh Kumar @ Raju, Shyam Singh along with one unknown person encircled Pankaj Kumar Singh. They were armed with firearms. Genalal Singh had ordered to commit murder, whereupon Shyam Singh fired from his pistol as a result of which, Pankaj Kumar Singh sustained injury over his left thigh. Dashrath Singh had said that he has not died, be murdered, whereupon Anil Singh fired causing injury over his chest, left side. Dashrath also said that he along with his uncle should also be murdered, whereupon Rupan Singh and Rajesh Kumar Singh fired, but they missed their aim. Then thereafter, they took away cash,



ornaments. On hue and cry, villagers came, with their help, Pankaj Singh was lifted and then, was taken to Munger Hospital, identified the accused. During cross-examination at Para-3, he had stated that he had not gone to hospital. He remained at his house. At Para-4, he had stated that his statement was recorded by the police on 21.05.2010. He denied the suggestion that his statement was recorded on 16.06.2010. In Para-5, there happens to be contradiction. In Para-6, he had stated that he is not knowing the name of the shopkeeper from whose shop, ornaments were purchased. In Para-7, he had stated that after lifting Pankaj Kumar Singh, he was taken to their house and then, was taken to Munger hospital. He had not enquired why they were not taken to Asarganj hospital. Then had said that on the direction of Dashrath Singh, Rupan Singh and Rajesh Kumar @ Raju fired at them, but they missed the aim. In Para-8, he had stated that at the time of occurrence, he was at a distance of 100 meter away from Pankaj Singh. When Pankaj stopped, he came nearer to him. He had seen the occurrence from 15-12 feet. Accused persons were 2-4 steps away from Pankaj Singh. Firing was made from 2-4 steps. He had further stated that he had seen the occurrence and further, the firing having made by particular accused had struck over and which part of the body of injured. In Para-9, he had stated that after 6-7 days, he met with the victim. He had not made conversation with any of the villagers with regard to the occurrence. In Para-10, he had stated that they are on



strained relationship with the accused persons. They have committed murder of his elder father. There also happens to be the land dispute. Then had denied the suggestion that no such type of occurrence had ever taken place nor he happens to be an eye witness to the occurrence.

17. PW-2 is Lakhan Prasad Singh. He had deposed that on the alleged date and time of occurrence, Pankaj Kumar was returning from market on motorcycle followed by Raj Kamal and Ramanand Singh on another motorcycle. Then had stated that Anil Singh and Shyam Singh had shot at Pankaj as a result of which, he sustained injury over his thigh as well as chest, left side. Genalal Singh, Rupan, Dushrath, Anil, Raju and Shyam were also there. Rupan and Raju had fired upon Raj Kamal from a distance of ten hands, but fortunately, they missed the aim. In Para-2, he had stated that all the accused persons were armed with musket and pistol. They were threatening since before that in case of giving evidence against them, they will be murdered. They took away Rs.75,000/- cash, ornaments. Identified the accused. During cross-examination, he had stated that at the time of occurrence, he was at his house which lies at a distance of half kilometer. He had not seen the occurrence rather he had heard about the occurrence. He had stated before the police that he had not seen the occurrence. In Para-4, he had stated that Pankaj Singh happens to be his nephew. They both have got common house.



Then had detailed presence of alternative road to go to Asarganj market from his village. In Para-6, he had stated that Raj Kamal happens to be his son.

18. PW-4 is Ramanand Singh, father of PW-3, who had deposed that on 18.05.2010 at evening hour. They all were returning from Asarganj market. Pankaj Singh was alone over one motorcycle while he along with Raj Kamal was on another motorcycle. When Pankaj Singh reached 200 yards ahead from a graveyard lying at village-Kharwa, Genalal Singh, Shyam Singh, Anil Singh, Raju, Dushrath, Rupan along with two unknown persons encircled him. On an order of Genalal Singh to murder, Shyam shot at Pankaj causing injury over his left thigh, whereupon Pankaj fell down. Again Genalal had ordered to kill, whereupon Anil Singh had fired causing injury over his chest, left side. Dushrath had ordered to kill them, whereupon Rupan and Rajesh had fired. As they missed the aim, on account thereof, there was narrow escape. They have also taken away ornaments and cash appertaining to Rs.70,000/-. Identified the accused. During cross-examination at Para-3, he had stated that he is not litigating with the accused. Then had said that one murder case relating to his brother is going on. Then had said that he had not escaped from the place of occurrence after sustaining of injury by Pankaj Singh. He had not raised alarm, Raj Kamal had raised alarm.



Firing was going on. He had not tried to save Pankaj. He had not talked with the accused persons. In Para-4, he had stated that Pankaj was shot at while he was distance of ten feet away from him. Blood oozed out from the wound. He himself lifted his son and put him over road. His cloth also sustained blood stain. Blood spread over his hands. Raj Kamal brought vehicle and then, he was taken to hospital. Motorcycle was taken away by somebody else. He had not accompanied his son for treatment. As, he became nervous. He had not shown himself to the doctor. He had not inquired with regard to his son as so many family members were along with him. Manoj was accompanying his son. In Para-6, he had stated that he had not gone to Tarapur P.S. for registration of the case. Police came on 26th. Police had not asked for blood stain cloth. In Para-7, he had stated that marriage of his daughter was fixed and on 31.05.2010 and for that, ornaments as well as cash was along with them. Then had denied the suggestion that accused persons have been falsely implicated in this case.

19. PW-6 is the I.O., who has deposed that he took up investigation on 26.05.2010. He proceeded to P.O. where recorded further statement of the informant, Ramanand Singh. Inspected place of occurrence, which happens to be 1 k.m. away from Kharwa Harijan Toli, which happens to be road. Then disclosed boundary of



the P.O. He had found large size of stone particle having been lied down as a result of which, road became uneven. Recorded statement of witnesses, Rajesh Tanti, Md. Quam, Raj Mangal, Lakhan Damodar, Bachu. Procured injury report. Recorded statement of other witnesses. Received supervision report. Conducted raid and then, after concluding investigation, submitted chargesheet against Dasrath Singh and Rupan Singh keeping investigation pending against others. Exhibited relevant documents. During cross-examination at Para-6, had stated that he had not found blood at the P.O. He had not found articles spread over on P.O. He visited P.O. on 26.05.2010. No blood stained cloth was shown to him. In Para-7, he had stated that he was not shown motorcycle. Name of person, who took the injured to hospital was not disclosed. In Para-8, he had stated that neither he tried to know about the name of shopkeeper nor it was disclosed before him. Para-10 is contradiction relating to informant, while Para-12, 13 relate with witness Raj Kamal.

20. In *Gian Chand and Ors. vs. State of Haryana reported in 2013(4) P.L.J.R. 7 (SC)*, it has been held that when a party left to cross-examine a witness on a particular point, then in that event, it will tantamount to an admission at his end as well as it would be considered that the accused had no grievance. For better appreciation, relevant Para is quoted below:-



“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. [L.Rs. & Anr. v. Bhagwanthuwa \(Dead\) Thr. L.Rs. & Ors.](#), AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in [Section 138](#) of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by [Section 146](#) of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the



witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”

(Emphasis supplied)

(See also: [Ravinder Kumar Sharma v. State of Assam & Ors.](#), AIR 1999 SC 3571; [Ghasita Sahu v. State of Madhya Pradesh](#), AIR 2008 SC 1425; and [Rohtash Kumar v. State of Haryana](#), JT 2013 (8) SC 181)

12. The defence did not put any question to the Investigating Officer in his cross-examination in respect of missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.

21. So far evidence of an injured is concerned, it has conclusively been held that unless and until, there happens to be cogent reason to disregard their evidence in usual course, the same would not be discredited. In ***Mukesh and another vs. State of NCT of Delhi and others reported in 2017(3) P.L.J.R. 248 (SC)***, it has been held:-

“79.....The evidence of an injured witness is entitled to a greater weight and the testimony of such a witness is considered to be beyond



reproach and reliable. Firm, cogent and convincing ground is required to discard the evidence of an injured witness. It is to be kept in mind that the evidentiary value of an injured witness carries great weight. In [Mano Dutt and another v. State of Uttar Pradesh](#) (2012) 4 SCC 79, it was held as under:

“31. We may merely refer to [Abdul Sayeed v. State of M.P.](#) (2010) 10 SCC 259, where this Court held as under:

“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 [Ramlagan Singh v. State of Bihar](#) (1973) 3 SCC 881, [Malkhan Singh v. State of U.P.](#) (1975) 3 SCC 311, [Machhi Singh v. State of Punjab](#) (1983)3 SCC 470, [Appabhai v. State of Gujarat](#) 1988 (Supp.) SCC 241, [Bonkya v. State of Maharashtra](#) (1995) 6 SCC 447, [Bhag Singh v. State of Punjab](#) (1997) 7 SCC 712, [Mohar v. State of U.P.](#) (2002) 7 SCC 606, [Dinesh Kumar v. State of Rajasthan](#) (2008)8 SCC 270, [Vishnu v. State of Rajasthan](#)



(2009)10 SCC 477, [Annareddy Sambasiva Reddy v. State of A.P.](#) (2009)12 SCC 546 and [Balraje v. State of Maharashtra](#) (2010)6 SCC 673.]

29. While deciding this issue, a similar view was taken in [Jarnail Singh v. State of Punjab](#) (2009) 9 SCC 719 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:

‘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, 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 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. 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."

To the similar effect is the judgment of this Court in Balraje (supra)."

22. After perceiving the oral as well as documentary evidence having adduced on behalf of rival parties, it is abundantly clear that both the parties are on strained relationship. As discussed hereinabove, the deficiency which would have adverse impact upon the prospect of the prosecution version have not been questioned



during course of cross-examination of the I.O. as well as the injured (PW-3). Furthermore, it is evident that the firearm injury having over person of injured (PW-3) corroborated by the doctor (PW-5) also not been challenged, save and except presence of injury no.3 at the left thigh of the PW-5, which the doctor had opined to be caused by hard and blunt substance.

23. Because of the fact that during course of appreciation of evidence of PW-3, injured, it is evident that he was not at all cross-examined over delay nor PW-5 (doctor) was cross-examined over issuance of O.D. Slip to the local police as well as patient was unconscious at the time of examination. In likewise manner, PW-6 (I.O.) has not been cross-examined whether he had got information with regard to commission of occurrence whereunder a person was shot at. In the aforesaid background, the delay whatever been is found not adverse to the prosecution case and in likewise manner, non-presence of injury report/ documents of the treatment, which the injured undergone at Rajeshwar Hospital.

24. When the evidence of PW-3, injured has been minutely gone through, it is evident that the defence has not been able to shake his testimony on the point of occurrence. Defence had tried to contradict his testimony taking into account the objective finding having recorded by the I.O. (PW-6) that during course of inspection



of the P.O., he had not found blood at the P.O., is not going to give any kind of dent in the prosecution case. Because of the fact that P.O. was inspected by the I.O. after so many days of the occurrence as well as P.O. happens to be a public road. Even discarding the evidence of other PWs, as the evidence of injured is found reliable and as in terms of Section 134 of the Evidence Act, it is a quality and not the quantity which matters. So, his testimony with regard to injury sustained by him is found fit for acceptance based upon proper consideration of the evidence whereupon as, presence of PW-1 as well as PW-4 is found doubtful on account thereof, conviction and sentence for an offence under Section 27(1) of the Arms Act, relating to appellant Rupan Singh and Rajesh Kumar is not at all found sustainable and is accordingly, set aside. In likewise manner, finding of lower court relating to appellants under Section 148 of the I.P.C. is also not found acceptable whereupon, the same is also set aside. However, conviction under Section 147 I.P.C. as well as under Section 307/149 of the I.P.C. are hereby confirmed.

25. Because of the fact that the appellants are non-assailant on account thereof, the sentence of R.I. for ten years in terms of Section 307/ 149 of the I.P.C. is modified and reduced to R.I. for five years retaining the quantum of fine so inflicted against them by the learned lower Court with a default cause maintaining the



sentence prescribed under Section 147 of the I.P.C. with a further direction to run the sentences concurrently. Furthermore, it is directed that the period already undergone will be set off in terms of Section 428 of the Cr.P.C.

26. With the aforesaid modification, appeal is partly allowed. Appellants are on bail, hence their bail bonds are cancelled with a direction to surrender before the learned lower Court to serve out the remaining part of sentence.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	14.12.2017
Transmission Date	14.12.2017

