

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.330 of 2015

Arising Out of PS. Case No. -132 Year- 2010 Thana -NAUGACHIA District- BHAGALPUR

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CHANDAN KUMAR YADAV @ CHANDAN YADAV SON OF SUBODH
YADAV RESIDENT OF VILLAGE - BHAWANPURA, POLICE STATION -
KHARIK, DISTRICT - BHAGALPUR.

.... **APPELLANT/S**

VERSUS

THE STATE OF BIHAR

.... **RESPONDENT/S**

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Appearance:

For the Appellant/s : Mr. Bimlesh Kumar Pandey, Adv.,

Amicus Curiae

For the State : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. JUDGMENT

Date: 28-03-2017

As the learned counsel for the appellant failed to appear on account thereof, Mr. Bimlesh Kumar Pandey, learned advocate has been requested to assist the court as an Amicus Curiae.

2. From perusal of the lower court record, it is evident that instant case has been registered against two named accused, namely, Pappu Singh as well as Chandan Kumar Yadav along with three unknown persons. After completing investigation, charge sheet was submitted against Chandan Kumar Yadav as well as Pappu Singh, showing Pappu Singh as an absconder. After commitment, Sessions, Trial No.1189 of 2010 was registered but on account of absence of Pappu Singh, his trial was separated and for that Sessions Trial No.1189A of 2010 was registered. Subsequent to Pappu Singh's arrest, the trial commenced and concluded against him also having conviction and sentence whereupon Cr. Appeal (SJ) No.252 of 2015 has been filed as a result of which, both the two appeals have been heard though separately and judgment are being independently pronounced but on the same day on account of having been originated from the same P.S. case.

3. Appellant/convict Chandan Kumar Yadav @ Chandan



Yadav has been found guilty for the offences punishable under Section 148 IPC, 149 IPC, 326IPC, 307/149 IPC, 504 IPC as well as 27(ii) of the Arms Act and sentenced to undergo R.I. for 10 years, fine of Rs.10,000/- and in default of payment of fine, to undergo S.I. for six months under Section 307/149 IPC, R.I. for 10 years under Section 326 IPC, imprisonment of 2 years under Section 504 IPC, imprisonment for 3 years under Section 148 IPC, imprisonment of 3 years under Section 149 IPC, R.I. for 10 years under Section 27(ii) of the Arms Act, with a further direction to run the sentences concurrently vide judgment of conviction dated 10.02.2015, order of sentence dated 18.02.2015 by the Second Additional Sessions Judge, Naugachia Bhagalpur, in Sessions Trial No.1189/2010.

4. Banti Singh @ Bineet Singh (PW.4), an injured while was admitted at J.L.N.M. College and Hospital, Bhagalpur gave his fardbyean on 06.08.2010 at 05:00 P.M. alleging *inter alia* that on 05.08.2010 he has come to attend court of Second Additional Sessions Judge, Naugachia as the date was fixed for judgment. He was acquitted. Then, thereafter, he along with his uncle Ashutosh Singh (PW.1) and co-villager Manoranjan Singh (PW.3) came out from the court room and proceeded towards his vehicle parked south to the court of Sri Prakash Malwiya, Judicial Magistrate, 1st Class. At about 04:30 P.M. while he was about to his vehicle, all on a sudden Pappu Singh, Chandan Kumar Yadav along with three unknown persons armed variously came near him. Out of them, Pappu Singh ordered to kill over which Chandan shot at causing injury over his back as a result of which he fell down and became unconscious. After regaining his sense, he found himself admitted at hospital where treatment was going on. Rajesh Singh (not examined) stood as FIR attesting witness.

5. On the basis of the aforesaid fardbeyan, Naugachia P.S.



Case No.132/2010 was registered and after concluding investigation, charge sheet was submitted in a manner as indicated above facilitating trial which ended by way of recording guilt against the appellant and accordingly, sentenced for, the subject matter of instant appeal.

6. Defence as pleaded by the appellant so perceived by way of cross-examination of the witnesses as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. Furthermore, it has also been pleaded that on the alleged date and time of occurrence appellant has come to court to get the residential certificate and during course thereof, he was mistakenly apprehended. However, neither any D.W. nor any chit of paper has been exhibited in defence.

7. While assailing the judgment of conviction and sentence, the learned Amicus Curiae has submitted that the finding of the learned lower court is not at all based upon sound principle of law consequent thereupon, is fit to be set aside.

8. To substantiate the same, learned amicus curiae has submitted that the fardbeyan of Banti Singh, alleged victim would not have been accepted as a fardbeyan because of the fact that same is found hit by Section 162 of the Cr.P.C. Elaborating furthermore, it has been submitted that from the evidences of the PWs it is apparent that investigation commenced before recording of the fardbeyan, and on account thereof, lost its status.

9. Furthermore, it has also been submitted that factual position have also not been properly considered by the learned lower court. In its continuity, it has been submitted that there happens to be specific disclosure made by the witnesses that appellant was chased and apprehended along with firearm as well as cartridges but the same has not been made an exhibit of this case. In likewise manner, it has also been submitted that there happens to be absence of ballistic report to



indicate that the alleged firearm recovered from the possession of the appellant was effective as well as used during commission of the crime.

10. Apart from this, it has also been submitted that there happens to be inconsistency amongst the evidence of the PWs on all the material aspect which completely ruled out proper identification of the appellant to be assailant of the victim and so, the cumulative effect completely nullify the finding recorded by the learned trial court. That being so, the judgment of conviction and sentence recorded by the learned lower court is fit to be set aside.

11. On the other hand, the learned Additional Public Prosecutor while controverting the submission made on behalf of appellant has submitted that the finding recorded by the learned trial court is based upon material having adduced by the prosecution during course of trial and further, to arrive at a conclusion, the learned lower court made meticulous scrutiny of the same. That being so, the judgment of conviction and sentence is fit to be confirmed.

12. In order to substantiate its case prosecution had examined altogether ten PWs out of whom PW.1 is Ashutosh Singh @ Asha Singh, PW.2 is Nand Kishore Sharma, PW.3 is Manoranjan Singh, PW.4 is Banti Singh, PW.5 is Binay Kumar Singh, PW.6 is Dr. Mritunjay Kumar, PW.7 is Jai Ganesh Pathak, PW.8 is Dr. Maseech Aajam, PW.9 is Ras Narain Singh and PW.10 is Joyoti Kumar. The prosecution also exhibited, Ext.1- Signature of informant over fardbeyan, Ext.2-Fardbeyan, Ext.2/1- Endorsement over fardbeyan, Ext.-3-Seizure list, Ext.3/1,3/2-Signature of respective seizure list witnesses, Ext.4, 4/1-Charge sheet.

13. After going through the record, it is evident that appellant had defended himself in most casual, irresponsible manner. Neither the informant/victim PW.4 has been cross-examined nor PW.2 one of the constable who apprehended the appellant within the Naugachia court



campus has been cross-examined.

14. Because of the fact that evidence of an injured lies on higher pedestal and further, unless and until there happens to be cogent reason to disbelieve him, in normal course the same would not be rejected. In ***Jodhan vs. State of Madhya Pradesh*** reported in **(2015) 11 SCC 52**, it has been held:

“**28.**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: (SCC p. 271, para 28)

“**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.”

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, *Balraje v. State of Maharashtra*(2010) 6 SCC 673 and *Jarnail Singh v. State of Punjab*(2009) 9 SCC 719.

29. From the aforesaid summarisation 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.”

15. Therefore, the evidence of PW.4, informant an injured is to be taken at a first instance. He had stated that on 05.08.2010 at about 04:30 PM while he was returning from the court of ADJ, IInd after hearing



judgment of acquittal, and was in a way towards his vehicle having parked in the court campus and while he was to reach near the same, he found Pappu Singh and Chandan Kumar Yadav standing since before near about the same. No sooner than their arrival Pappu ordered to kill, whereupon Chandan fired at him causing firearm injury over left side of his back. He fell down and became unconscious. His uncle Ashutosh and co-villager Manoranjan with the help of others took him to J.L.N.M., College and Hospital, Bhagalpur where he was treated. His fardbeyan was recorded at that very place which he exhibited. He had further stated that he came across the news at the hospital itself that assailant was apprehended along with weapon. He identified the accused in dock. On account of non cross-examination of the witness, his testimony remained unchallenged and further, there happens to be no occasion to disbelieve.

16. At the present moment, the evidence of those police officials who were deployed at the civil court campus as well as who had come to depose in a case before another court and on account thereof, their presence was at the civil court, Naugachia is to be taken in its continuity.

17. PW.2 happens to be bodyguard of A.C.J.M., Naugachia. He had deposed that on 05.08.2010 at about 04:30 P.M. while he was standing at the gate of court room of ACJM, he heard sound of firing as a result of which there was commotion. He rushed towards the same. He saw one person fleeing towards western direction near the court of Shri P. Malviya, Judicial Magistrate, who was being chased by A.S.I., Vinay Kumar. He also rushed and then, all of them succeeded in apprehending him along with firearm. On query, he disclosed that he had shot at his co-villager Banti Singh. On search, from his possession live cartridges as well as empty cartridges were recovered. On query he disclosed his identity as Chandan Kumar Yadav. He had also seen the victim in an injured condition. He identified the accused in dock. This witness was



also not cross-examined and on account thereof, his testimony is found un-shakened.

18. PW.5 is S.I, Binay Kumar Singh. He deposed that on 05.08.2010 at about 04:30 P.M. he was waiting to get next date from the court of Sri Prakash Malviya where his evidence was to be recorded. Unfortunately, his examination was not materialized on that day. At that very moment, in front of gate of a court having asbestos roof there was firing over which, he proceeded towards that direction. There was commotion. Somebody disclosed that assailant is fleeing. He saw one person fleeing towards betel shop of Rajesh Chaurasia and then he changed his direction. He also seen arm in his right hand. He chased and was joined by other police officials, advocates, local persons, whereupon, he (culprit) was apprehended. Thereafter, he snatched arm and then he (culprit) was searched out in presence of two witnesses and during course thereof, five live cartridges of .315 bore and one cartridge of .303 bore was recovered. On query, he disclosed his identity as Chandan Kumar Yadav, son of Subodh Yadav. He had prepared seizure list relating to the arm and ammunitions recovered from his possession. He also came across regarding shooting of one person whom he saw being carried to hospital over a vehicle. At that very moment, the local police arrived before whom he had filed his written report, seizure list as well as also handed over the seized arm, ammunition, apprehended accused. He had identified the accused in dock. During cross-examination at para-4 he had stated that he had not seen the accused aiming at the injured. He saw the accused fleeing after firing and then was apprehended. In para-5, he had given the topography of the court campus. In para-6 he had stated that he had seen the victim being carried on jeep. He had no subsequent information with regard thereto. In para-10, he had named the bodyguard of ACJM, but failed to disclose the name of advocates and other persons.



In para-11 he had stated that accused was carrying firearm in his right hand. He heard only one firing sound. He had himself apprehended the accused others have facilitated the same.

19. So from the evidence of these two PWs, it is evident that apprehension of the appellant in continuity is found duly substantiated within the civil court campus as well as, sustaining of firearm injury by the injured and being taken to hospital for immediate treatment. At the present moment it looks desirable to place the other material coming out from the record wherefrom, it is evident that two independent cases were registered one on account of apprehension of accused with firearm and for that Naugachia P.S. Case No.131 of 2010 was registered on the written report of Binay Kumar Singh, PW.5 as is evident from para-7 of PW.7, Jai Ganesh Pathak, I.O. and the second for the present occurrence. Therefore, the submission having raised on behalf of appellant that investigation proceeded before institution of the present case is found completely impaled. Furthermore, the accused/appellant was taken under custody relating to Naugachia P.S. Case No.131 of 2010 from where, the appellant was remanded in the present case, subsequently.

20. PW.6 is the doctor whose evidence is of no use as injury report was not issued by him. Victim was virtually examined by PW.8 who had found following injuries over the person of the injured whom he examined on 05.08.2010 at 05:05 P.M. at J.L.N.M. College and Hospital, Bhagalpur (Emergency Ward):-

Injury No.1 – Penetrating wound 1" x ½" cavity deep over left side of the back with charring present around the wound.

Injury No.2 – A hard foreign body felt in trigastric region whereupon he was operated upon. Laparatomy was done on 05.08.2010. There was through



and through rent in body of stomach and middle part of transverse colon. Both rent closed in two layers.

Nature of the injury has been found grievous caused by firearm. Time elapsed within six hours. Injury report was exhibited but with objections as it was not the original. During cross-examination, it is evident that defence could not be able to demolish with regard to his finding relating to the injury having caused by a firearm over person of injured and further, presence of charring wound suggest that the victim was shot at from close range. So far status of injury report is concerned, it is a photocopy of the original, having duly attestation by the Registrar, J.L.N.M. College and Hospital which never been challenged. Further its authenticity has not been challenged nor its admissibility.

21. PW.10 is another constable who was deployed at the civil court who had deposed that on the alleged date and time of occurrence, after hearing sound of firing, he along with other police officials chased the miscreant and apprehended him with pistol having in his hand who disclosed his identity as Chandan Kumar Yadav. Furthermore, he had shot at Banti Singh causing injury over his person. Identified the accused.

22. During cross-examination at para-2 he had stated that he had not seen the accused firing over Banti Singh but he had seen Banti in an injured condition. Though he has been cross-examined at length but those are not at all over factum of his arrest with firearm.

23. Now coming to remaining witnesses, PW.1 Ashutosh Singh whose presence as per fardbeyan itself happens to be along with the victim. He during his examination-in-chief admitted his status to be uncle of Banti. He had further stated that he along with Banti Singh had come to court as the date was fixed for judgment. Banti was acquitted. Then, thereafter, they proceeded towards southern side of the court compound where all on a sudden Pappu, Chandan and three unknown persons



came from eastern side. On an order of Pappu Singh, Chandan shot at Banti causing injury over his back. Banti Singh fell down. Then thereafter the persons along with police constable being present there, chased the assailant and one of Jamadar apprehended him. He took injured to hospital and during course thereof, his statement was also recorded by the police. He identified the accused in dock. During cross-examination he had admitted that Chandan and he himself happens to be co-villager. Furthermore, from para-14 it is evident that blood had oozen out and fallen over ground. In para-15 he had specifically stated that police had recorded his statement on next day. In the aforesaid background the statement of this PW under para-13 that police had taken his signature is not going to discredit his testimony as the same has not been confronted with the investigating officer, PW.7.

24. PW.3 is Manoranjan whose presence is also found right from inception of the prosecution. He had stated that on the alleged date and time of occurrence, he was sitting near the vehicle parked in the court campus. Banti Singh was coming towards vehicle. At that very moment Chandan and Pappu was also seen by him following Banti. Then he saw Chandan Yadav taking out pistol and shot at Banti. Injury was caused at back. Banti Singh fell down. Pappu ran towards Aasam road while Chandan ran towards shop. He along with others raised alarm over which police personnel chased and apprehended Chandan. He identified the accused in dock. During cross-examination at para-4 he had stated that he was sitting outside the bolero jeep. He had further stated that he was sitting having eastern front. Accused came from northern side. Banti was coming from North to South. There were 4-5 miscreants out of whom he identified only two. In para-8 he had further stated that driver Chaman was inside the vehicle. When he saw the culprit, they were 4-5 yard away from Banti. In para-16 he had stated that soon after occurrence Banti



Singh was lifted to hospital and so, he could not say about the dimension of the injury as it was tied with the towel of Ashutosh. In para-21 he had stated that Chandan had shot only one round. In para-29 he had stated that police had taken his signature after the occurrence but he is unable to say the nature of the paper. He had further stated in para-36 that he had not chased the accused.

25. PW.7 is Jay Ganesh Pathak, Investigating Officer. He had stated that on the alleged date and time of occurrence he was posted at Naugachia P.S. as ASI. He had further stated that he had recorded fardbeyan of Banti Singh at J.L.N.M, College and Hospital where he along with Officer-in-charge Pramod had gone. Accordingly, exhibited the same, also exhibited formal FIR, endorsement over fardbeyan. Then had stated that investigation was entrusted to him whereupon he reached at the place of occurrence which happens to be Naugachia court compound. He inspected the same. He found blood stain on earth which was seized and for that seizure list was prepared (exhibited). Recorded statement of witnesses. He could not procure injury report however submitted charge sheet against the accused. In cross-examination he had stated at para-15 that he came across the news of commission of the occurrence on 05.08.2010 at evening hour. In para-16 he had detailed the information. In para-17 he had stated that after getting information they rushed to P.O. and then to J.L.N.M. College and Hospital. At that very time, Banti Singh was unconscious and so his fardbeyan was not taken. He was not permitted to take statement of other person by the Officer-in-charge on account thereof, he had not recorded statement of the others. He had further stated that he had not sent the seized blood stain earth for chemical examination.

26. After analyzing the evidence on the record, it is evident that on account of non-cross-examination of PW.4 Banti Singh, an injured his



evidence remained intact identifying the appellant to be author of the injury. Furthermore, from the evidence of PW.2 as well as PW.5, PW.10 it is apparent that appellant was apprehended at the spot itself on chase with firearm, cartridges and for that, a separate case was instituted and from that case, he was remanded in this case. The appellant has not questioned his apprehension rather his suggestion with regard to his presence happens to be that as he had gone to obtain residential certificate, on account thereof he was apprehended mistakenly which not at all been substantiated at his end. Certain abrasions are found amongst the evidence of PW.1 as well as PW.3 relating to their signature over some paper but is found absonant as the Investigating Officer, never been confronted on that aspect. Moreover, in sum and substance, they have substantiated the manner of occurrence as well as apprehension of appellant at the spot along with firearm and cartridges. Apart from this, the Investigating Officer also properly substantiated the P.O., by means of his objective finding. The most perceptible feature as it appears, non-challenge at the end of appellant regarding his presence, apprehension at court compound, which he suggested but not substantiated.

27. For the purpose of conviction of an accused under Section 307 IPC nature of injury is not at all relevant, though it commands the mode of sentencing, which is itself apparent from plain reading of Section 307 IPC. After going through the same, it transpires that the same is bifurcated in the two parts. The first part is relating to non-sustainance of injury, while later part does. During such consideration, the action of the accused, weapon used during course thereof, part of the body having aimed at, are some of the factors to be taken note of. Furthermore, as is evident only hurt is required to fulfil the requirement. Hurt is defined under Section 319 IPC which also did not speak regarding nature of injury. The only ingredient which is found perceptible for attracting Section 307 IPC is



an action at the end of accused with such intention or knowledge that his act was going to cause death. And these activities could be perceived from the evidences placed on record.

28. In *Fireman Ghulam Mustafa v. State of Uttaranchal* reported in **2015 CR.L.J. 4372**, it has been observed by the Apex Court:

“8. To justify a conviction under Section 307, IPC the Court has to see whether the act was done with the intention to commit murder and it would depend upon the facts and circumstances of the case. Although the nature of injuries caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be gathered from the circumstances like the nature of weapons used, parts of the body where the injuries were caused, severity of the blows given and motive, etc.”

29. From the evidence on record, it is apparent that firearm a deadly weapon was used, aiming at delicate part of body which is found corroborated with the medical evidence which also identified the injury to be grievous, being in conformity with the oral evidence.

30. Now coming to the finding recorded by the learned lower court, it is apparent that conviction and sentence has also been recorded under Section 149 IPC, 326 IPC, as well as 504 IPC also.

31. Section 149 IPC has got no independent identity, as is not a penal one, rather it happens to be supportive attracting the others liable for same sequence that of main offender. So far 326 IPC is concerned though the injury has been categorized as grievous but the same was inflicted while attempting upon life of PW.4 as such it is found governed by the major offence without having its separate identify. Furthermore, Section 504 IPC is also not made out, as the evidence did not support the same. Hence conviction and sentence recorded therefor are set aside and to that extent appeal is allowed.



32. From meticulous as well as close scrutiny of the oral as well as medical evidence, the appellant being sole assailant has rightly been found and held guilty for an offence punishable under Section 307 IPC, 148 IPC as well as 27(ii) of the Arms Act and is affirmed. In likewise manner the sentence inflicted therefor by the learned lower court is confirmed and to that extent, instant appeal is found devoid of merit and is accordingly dismissed. Appellant is under custody, hence is directed to serve remaining part of the sentence. First and last page of judgment be handed over to the learned amicus curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	N.A.F.R.
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