

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.152 of 2015**

Arising Out of PS.Case No. -1 Year- 1999 Thana -GOH District- AURANGABAD

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1. Sitaram Paswan S/o Yukti Paswan Resident of Village Pakari, P.S. Goh, District Aurangabad Appellant/s

Versus

1. The State of Bihar Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathy, Amicus Curiae

For the Respondent/s : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 20-12-2017

On repeated calls, none appears on behalf of appellant and on account thereof, Mr. Arun Kumar Tripathy, learned Advocate has been requested to assist the Court as an Amicus Curiae which he conceded.

2. Sole appellant, Sitaram Paswan has been found guilty for an offence punishable under Section 307 IPC as well as 27 of the Arms Act and sentenced to undergo RI for 10 years as well as to pay fine of Rs. 5,000/- in default thereof, to undergo SI for six months (without properly identifying the head) by the 3rd Additional Sessions Judge, Aurangabad (Bihar) vide judgment of conviction dated 12.02.2015 and order of sentence dated 16.02.2015 with regard to Sessions Trial No. 232/1999/221/2014.

3. On 01.01.1999 while injured Rajendra Paswan was admitted at Primary Health Centre, Goh, his full brother Ram Bali



Paswan (PW 2) gave his Fard-e-beyan to the effect that on the same day at about 7:00 AM, Sitaram Paswan, his Gotia was cutting bamboo from his bamboo cluster whereupon, Rajendra Paswan forbade him claiming the same whereupon, Sitaram Paswan abused. As his brother protested, Sitaram began to assault with Lathi. Seeing this, he rushed and caught hold Lathi of Sitaram. Then thereafter, Sitaram rushed to his house and came out with fire arm and shot at causing injury over chest, face and other parts of the body of Rajendra Paswan as a result of which, he fell down and became unconscious. He has been lifted to hospital where treatment was going on.

4. On the basis of aforesaid Fard-e-beyan, Goh PS Case No. 01/1999 was registered followed with an investigation as well as submission of charge-sheet whereupon, the trial commenced and concluded in a manner subject matter of the instant appeal.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the CrPC is that of complete denial. Furthermore, it has also been submitted that no such type of occurrence had ever taken place rather prosecution party encroached upon their land which was protested as a result of which, they duly armed with fire arms as well as other weapons came and assaulted his family members and for that, a criminal case has been instituted and only to meet the allegation, this



case has been filed. However, neither oral nor documentary evidence has been adduced.

6. In order to substantiate its case, prosecution had examined altogether four PWs out of whom PW-1, Ram Ugrah Paswan, PW-2, Ram Balli Paswan, PW-3 Rajendra Paswan and PW-4, Deomuni Devi, as well as had also exhibited signature on the Fard-e-beyan as Ext-1.

7. Learned Amicus Curiae while challenging the judgment of conviction and sentence has submitted that the finding recorded by the learned lower court is not at all maintainable. To substantiate such plea, it has been submitted that the dispute happens to be with regard to cutting of bamboo from a bamboo cluster. From the evidence of the prosecution witnesses, it is apparent that both the parties are Gotia. Furthermore, from the evidence of informant, it is evident that the plot over which bamboo cluster stands is recorded in the name of grandfather of the appellant and on account of absence of positive, concrete document to the effect that during course of partition aforesaid plot has been allotted to the prosecution party, they were aggressors, they had assaulted the appellant's family during course of which there was every possibility in getting the victim injured at their own end, should have been properly considered by the learned lower court which, the learned lower court completely failed.



8. Apart from this, it has also been submitted that all the witnesses who have been examined in this case are the brothers as well as wife of injured. Non presence of independent witnesses, in the facts and circumstances of the case, could be seen with suspicious eye with regard to authenticity of the prosecution version. That being so, it happens to be another jolt to the prosecution case. It has also been submitted that though the witnesses have stated that injured PW-3 had sustained fire arm injury but on account of non examination of the doctor as well as on account of non exhibit of injury report on the record as well as non examination of Investigating Officer, the assertion is found completely demolished and that being so, the finding so recorded by the learned lower court is not at all legally sustainable whereupon, is fit to be set aside.

9. Per contra, it has been submitted on behalf of learned APP that true it is, that only family members have deposed. True it is that there happens to be counter case at the end of appellant. True it is that Investigating Officer and doctor have not been examined. It is also an admitted fact that injury report is not an exhibit of record but from the evidence of the respective witnesses, it is apparent that they are consistent over the genesis as well as manner of occurrence and that being so, the appellant being assailant by means of fire arm is out of question. Section 307 IPC is bifurcated in two parts. The first part



deals with the situation whereunder no hurt is caused though, there happens to be an activity at the end of the accused with intention or knowledge that the activity which he has taken up might lead to the death of the deceased and that being so, in spite of absence of injury report as well as non examination of doctor, the first part of Section 307 IPC would be attracted and on account thereof, the finding recorded by the learned lower court is found fit to be confirmed.

10. PW-3 is the injured. He had deposed that on 01.01.1999, he had gone to village on account of some domestic work. When he returned back, saw Sitaram Paswan engaged in cutting his bamboo whereupon he forbade but Sitaram did not oblige. At the other end, he began to abuse. As he protested, Sitaram had gone to his house and came with Lathi, then began to assault. During midst thereof, his brother Rambali came and caught hold Lathi. Then thereafter, Sitaram again had gone to his house and came along with fire-arm and then shot at him causing injury over different parts of body. His right eye became completely damaged as result of aforesaid fire arm injury. Then thereafter, he was taken to hospital where he had undergone treatment. Then had said that motive for occurrence happens to be land dispute as well as on account of cutting of bamboo. He had further stated that assault was made with an intention to commit murder. Identified the accused. During cross-examination



at para-6, 7, he had admitted status of Ramugraha Paswan (PW 1), Rambali Paswan (PW 2) to be his full brother and Sitaram to be his cousin brother. In para-9, he had admitted that one case has been launched for the same date of occurrence by the accused person whereunder there happens to be allegation with regard to assault having over the wife of Sitaram. At para-13, he had stated that land is his Khatiyani. Khatiyani has been recorded in the name of Tetar Paswan who happens to be grandfather of accused. Then at para-14 had stated that there was partition in the family. Partition was effected through written Panchnama. It was during life time of his father. He is unable to disclose the exact date and time as, till then he had not taken birth. At para-16, he had stated that occurrence took place for five minutes only. In para-19, he had stated that as soon as he received injury, he fell down and became unconscious. So he is unable to say who came subsequently and what event materialized thereafter. In para-20, he had stated that all of a sudden, he (accused) came and shot at. He (accused) came with revolver which he had seen. In para-21, he had stated that he had not fled therefrom as, he happens to be resident of that place so where he should have gone after fleeing therefrom. In para-22, he had stated that he had not raised alarm, others had. He was aimed at from a distance of 10 feet. In para-25, he had stated that on account of firing his clothe as well as body became



porous. In para-26, he had stated that there was only one round of firing. He sustained injury and fell down. Again he had said that he is unable to say what occurred subsequently as became unconscious. In para-27, he had stated that he is not knowing whether blood had fallen on the ground or not. In para-28, he had stated that he is not knowing whether empty cartridges were found at the place of occurrence or not. In para-29, he had stated that accused is also claiming land. In para-31, he had stated that he had sustained injury from the revolver only.

11. PW-1 is Ram Ugrah Paswan who had stated that on the alleged date and time of occurrence, he was at his Darwaza. During course thereof, he had seen altercation going on amongst Sitaram and Rajendra over cutting of bamboo. Sitaram was engaged in cutting of bamboo. As a result of which, Sitaram began to assault Rajendra with Lathi. Balli had gone and snatched away Lathi whereupon Sitaram had gone to his house and came with pistol and then, with an intention to commit murder shot at Rajendra as a result of which he sustained injuries over his chest, eye. Rajendra became unconscious. Blood had oozen out from the injuries. He was taken to hospital. Identified the accused. At para-3, he had admitted Rajendra and Ramballi to be his own brother. At para-3, he had further stated presence of bamboo cluster at a distance of 5 feet from his house. He further stated that he



is not remembering it plot no. In para-4, he had stated that only three brothers are witness in this case. In para-5, he had stated that Sitaram gave five Lathi blows over Rajendra. Balli was not assaulted by Sitaram. Sitaram left the place saying that just after returning he will teach a lesson. Even then, neither Rajendra nor Balli escaped therefrom nor he had instructed them to go therefrom. In para-6, he had stated that there was two firing. Firing was made from front side. Both firing had caused injuries. It was pellet. In para-7, he had stated that Rajendra regained sense at the hospital after two days. In para-7, he had stated that after regaining sense Rajendra had disclosed regarding the occurrence. At that very time, his brother and Bhaujai were present. Para-10 happens to be the contradiction. In para-11, he had stated that Sitaram is not claiming the land. He had further stated that both parties are fighting since 01.01.99 relating to the land. In para-12, he had further admitted that all the three brothers are accused in a case having been launched by the accused. The aforesaid occurrence also happens to be that of Maar-peet.

12. PW-2 is the informant. He had stated that the occurrence is of dated 01.01.99 at about 7:00 AM. On that very time, he was at his house. After hearing alarm, he rushed to bamboo cluster where he had seen Sitaram assaulting Rajendra. He snatched away Lathi. Then Sitaram had gone to his house and returned back with



pistol and then, fired at Rajendra as a result of which, Rajendra sustained injury over his right eye, chest, face, as a result of which, Rajendra fell down and became unconscious. Thereafter, he was taken to the police station and then to hospital. His statement was recorded by the police (exhibited). Also identified the accused. During cross-examination at para-2 had admitted that accused Sitaram happens to be his Gotia. In para-3, he had further stated that Kunti Devi wife of Sitaram had instituted a case against them for the same date and time of occurrence. He had further admitted that Kunti Devi had gone to hospital where she was also treated. In para-5, he had stated that he is not remembering Khata & Khesra numbers of the land under dispute but for the last one year, they are on strained relationship relating to the aforesaid land. In para-6, he had stated that occurrence took place for about 20-25 minutes. After occurrence, so many persons came at the spot. In para-7, he had stated that two lathi blows were given over Rajendra. He was not assaulted. He had not produced Lathi before the police. After snatching of Lathi, appellant had gone to his house silently and then returned back with pistol. Neither he nor his brother ran therefrom seeing the pistol. He was not aimed. Accused aimed at Rajendra. He had not instructed Rajendra to flee. Firing was made from a distance of 10 Feet. There was only one round of firing. In para-9, he had stated that Rajendra regained sense at hospital after two



days. In para-10, there happens to be contradiction.

13. PW-4 is Deomuni Devi wife of Rajendra Paswan. She has stated that on the alleged date and time of occurrence Sitaram was cutting bamboo from bamboo cluster as a result of which her husband had gone to forbid him whereupon, Sitaram shot at her husband causing injury over his chest, arm, thigh. Her husband, after sustaining injuries fell down and became unconscious. He was taken to hospital. Identified the accused. During cross-examination at para-5, she had admitted that accused had also launched a criminal case against them. She had further admitted that Sitaram happens to be her Devar. In para-7, she had stated that Sitaram looks after the bamboo cluster. Her husband usually remains away from the village. In para-8, she had stated that her husband regained sense after eight days. In para-9, she had further stated that the accused persons are insisting upon to compromise the case but they are not acceding thereto. Then at para-10, she had stated that while she was at her house got knowledge that her husband sustained injuries.

14. As stated above, the Investigating Officer and doctor have not been examined. That means to say, the nature of the injury if any, sustained by injured PW-3 is not on the record. However, from the evidence of all the witnesses, it is apparent that they are consistent over manner of assault whereunder appellant, Sitaram had fired at the



PW-3 causing fire arm injuries. Side by side, it is also evident that wife of appellant, namely, Kunti Devi had also sustained injury and was admitted at hospital and for that, a case had also been instituted at their end.

15. From the evidence of PW-3, it is evident that the land whereupon bamboo cluster stands stood in the name of grandfather of appellant. No positive evidence has been shown at the end of the prosecution to suggest that during course of partition the aforesaid land was allotted to their share. The aforesaid eventualities is found further discredited when the evidence of PW-4, wife of injured is taken together more particularly, para-7 whereunder, she had categorically stated that Sitaram was looking after the bamboo cluster. That means to say, there happens to be prima facie evidence in support of Sitaram whereupon presence of prosecution party in order to forbid Sitaram from cutting the bamboo appears to be excessive one and that being so, right of Sitaram by such activity gets infringed. But the aforesaid right followed with the activity is to be seen in the background of the surrounding circumstances. As the defence has hopelessly been conducted whereunder no further complaint at counter case has been exhibited even though having been admitted at the end of the prosecution witnesses, the nature of injuries is not at all found in spite of the fact that PW-2 had admitted that Kunti Devi was



admitted at the hospital where she was treated (PW 2) para-3. It is also evident that prosecution had not explained how Kunti Devi had sustained injuries.

16. Be that as it may, there happens to be consistent view of the Hon'ble Apex Court in the case of *Rajendra Singh v. State of Bihar* reported in *AIR 2000 (SC) 1779* wherein it has been held that if there happens to be consistency amongst the prosecution witnesses over genesis as well as manner of occurrence then in that circumstance, prosecution is not obliged to explain minor injuries having been sustained by the accused persons. In case, the injuries happen to be grievous one, then in that event, the prosecution is under obligation to explain and in case of fault at the end of prosecution will cost dear to the prosecution. Because of the fact that no injury report relating to Kunti is on the record, so whether she had sustained simple injury or grievous injury is not at all found properly placed.

17. It has rightly been argued on behalf of learned APP that Section 307 IPC deals with two independent exigencies, the first one where no hurt has been caused and secondly where hurt is caused. In absence of injury report, it could be said that prosecution failed to place positive evidence regarding nature of hurt having over the person of Rajendra, PW-3 but consistency amongst the evidence of the witnesses regarding assault by means of fire arm, a deadly weapon



whereupon satisfies the first part and so, the appellant is found guilty in terms thereof, and to that extent the finding recorded by the learned lower court is confirmed.

18. But for want of injury report, it does not look safe to concur with the finding of the learned lower court regarding 27 Arms Act and so, to that extent, the judgment of the learned lower court is hereby, rescinded. So far sentence is concerned, in the facts and circumstances of the case as well as appellant facing the ordeal since 1999, it is modified and reduced to already undergone.

19. The appeal is partly allowed. Since appellant is on bail, he is discharged from the liability of the bail bond.

20. The first and the last pages of the instant judgment be handed over to the learned Amicus Curiae for the needful.

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(Aditya Kumar Trivedi, J)

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