

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.208 of 2015

Arising Out of PS.Case No. -183 Year- 2007 Thana -PAROO District- MUZAFFARPUR

=====

1. Madan Sahni son of Late Sarjug Sahni
2. Julum Sahni son of Late Sarjug Sahni
3. Pramod Sahni son of Late Sitaram Sahni
4. Kailash Sahni son of Sri Julum Sahni
5. Kishun Sahni son of Sri Sonar Sahni
6. Binod Sahni son of Late Sitaram Sahni
7. Bishun Sahni son of Sri Julum Sahni
8. Sonar Sahni @ Sunar Sahani, son of Late Sarjug Sahni
9. Subodh Sahni son of Sri Madan Sahni All residents of Village- Raghunathpur,
P.S. Paroo, District Muzaffarpur

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. U.K. Shukla, Adv.
Mr. Rajesh Ranjan, Adv.
For the State : Mr. Parmeshwar Mehta, APP
For the Informant : Mr. Amit Kumar Rakesh, Adv.
Mr. Poonam Kumari, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 21-03-2018

Appellants, Madan Sahni, Julum Sahni, Pramod Sahni, Kailash Sahni, Kishun Sahni, Binod Sahni, Bishun Sahni, Sonar Sahni @ Sunar Sahani and Subodh Sahni have been found guilty for an offence punishable under Section 148 IPC and each one has been sentenced to undergo RI for 3 years as well as to pay fine of Rs. 2000/- each in default thereof, to undergo RI for 9 months, under Section 307 IPC, each one has been sentenced to undergo RI for 10 years as well as to pay fine of Rs. 5,000/- in default thereof, to undergo RI for 1 year additionally, under Section 304 Part-II/149 IPC,



each one has been sentenced to undergo RI for 10 years as well as to pay a fine of Rs. 5,000/- and in default thereof, to undergo RI for 1 year additionally, with a further direction to run the sentences concurrently by the Additional Sessions Judge-II, Muzaffapur in Sessions Trial No. 537/08/538/08 vide judgment of conviction dated 13.03.2015 and order of sentence dated 20.03.2015.

2. Bashisht Sahni (PW 7) gave his Fard-e-beyan on 28.09.2007 at about 9.30 PM while he was admitted at Paroo Hospital in an injured condition disclosing therein that on the same day at about 7.30 PM he along with his father Chandeshwar Sahni was sitting at his Darwaza, at that very time his covillagers, Madan Sahni armed with country made pistol, Bishun Sahni armed with Bhala, Subodh Sahni armed with Dab, Julum Sahni, Bishun Sahni, Sonar Sahni and Kailash Sahni armed with Lathi respectively, Pramod Sahni armed with pistol and Binod Sahni armed with sword forming an unlawful assembly came and began to abuse. They further said that why his she-goat has gone to their field over which he replied that it will not go but don't abuse whereupon all the accused persons began to assault him as well as his father. His mother, Saraswati Devi, Bhabho, Urmila Devi and cousin brother Ramlal rushed in rescue who were also brutally assaulted by them. They raised alarm whereupon villagers came and rescued them. During midst of assault, Pramod had



given a blow by butt of pistol over his head as a result of which, he sustained injury whereupon, blood oozen out. His father became unconscious. They all were lifted to hospital. His father, being under precarious condition, has been referred to SKMCH. It has also been disclosed that Pramod Sahni, during midst of occurrence, took away mobile belonging to his father.

3. Initially, Paroo PS Case No. 183/2007 was registered under Sections 147, 148, 149, 447 323, 324, 307, 504 of the IPC but during course of conduction of investigation, as Chandeshwar died while undergoing treatment at SKMCH, on account thereof, vide order dated 19.11.2007, Section 302 of the IPC was added and in the aforesaid background charge-sheet was also submitted at different stages inconsonance with appearance of the accused persons whereupon two sessions trial bearing Sessions Trial No. 537/2008 as well as Sessions Trial No. 538/2008 were drawn up but, before stage of framing of charge vide order dated 20.07.2009 both the Sessions Trial were amalgamated and accordingly, proceeded meeting with ultimate result, subject matter of the instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial of the occurrence. It has also been pleaded that the prosecution party were aggressors who brutally



assaulted the members of accused persons and for that they have instituted a criminal case and only to put safeguard upon their interest got this case instituted. However, neither oral nor documentary evidence has been adduced on behalf of defence.

5. In order to substantiate its case, prosecution had examined altogether 11 PWs, those are, PW-1, Jaliya Dev, PW-2, Urmila Devi, PW-3, Champa Devi, PW-4, Ram Lal Sahni, PW-5, Mantosh Kumar, PW-6, Sarswati Devi, PW-7, Bashistha Sahni, PW-8, Ramanand Tiwari, PW-9, Dr. Mahesh Prasad, PW-10, Dr. Om Prakash and PW-11, Sachindra Sahni. Side by side had also exhibited Ext-1, 1/1, Signature of witnesses over Fard-e-beyan, Ext-2, Formal FIR , Ext-3 Series, injury report of respective injured, P.M.-X for identification. As stated above neither oral nor documentary evidence has been adduced on behalf of defence.

6. Learned counsel for the appellants, while challenging the finding of conviction and sentence, has submitted that the learned lower court completely misconstrued the materials available on the record and that being so, the judgment impugned would not survive. In order to buttress his plea, the learned counsel for the appellants has submitted that from the evidence available on record, it is apparent that majority of the witnesses have admitted presence of counter-case for the same occurrence at the end of the



appellants and that being so, the learned lower court should have considered that prosecution had suppressed the genesis as well as manner of occurrence on account of their failure to explain injuries whereupon, judgment of conviction would not have been recorded. Apart from this, it has also been submitted that whoever been examined in this case, are family members and that being so, their evidences are to be taken into consideration in the background of the fact that they happen to be accused in counter-case coupled with the fact that there happens to be absence of independent witnesses and in the aforesaid facts and circumstances, the whole scenario of the occurrence as alleged became suspicious one whereupon, instant appeal justifies annulment of the judgment impugned.

7. Furthermore, it has also been submitted that when the evidence of each of the witnesses is taken up individually as well as collectively inconsistency over manner of occurrence as well as genuineness of occurrence is found duly exposed affecting upon the genuineness of the prosecution version. Moreover, when the evidences are taken together along with the objective finding of the Investigating Officer, it is found that prosecution case is found out of breath. It has also been submitted that when the evidence of both the doctors are taken together inconsonance with the ocular evidence, are found inconsistent to each other casting doubt over trustworthiness of



the PWs and so, cumulative effect did not justify the finding having been recorded by the learned lower court.

8. On the other hand, learned APP while supporting the finding recorded by the learned lower court, has submitted that after perusal of the judgment impugned, it is crystal clear that all pros and cons visualizing in the facts and circumstances of the case, have duly been considered by learned lower court and after explaining the same with cogent, legal reasons ultimately, concluded that the prosecution case having been duly substantiated and that being so, the judgment of conviction did not attract interference.

9. PW-10, Dr. Om Prakash had examined the injured on 28.09.2007 at 10.45 PM onwards and found the following:-

A. Urmila Devi

(i) Lacerated wound $\frac{1}{2}$ " x $\frac{1}{2}$ " x skin deep (bleeding) on right temporal region on scalp.

(ii) Bruise 4" x $\frac{1}{2}$ " red in colour with swelling and tenderness 4" x 3" on right shoulder and upper part of back of chest caused by hard and blunt object.

Nature— Simple,

Age of Injury— within six hours.

B. Basistha Sahni

(i) incised wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{6}$ ", bleeding middle of forehead.

(ii) Pain and tenderness on right elbow. Caused by injury no.(i) by sharp cutting instrument and (ii) hard and blunt.

Nature— Simple,

Age of Injury— within six hours.

C. Saraswati Devi

(i) Swelling 1" x $\frac{1}{2}$ " with abrasion $\frac{1}{2}$ " x $\frac{1}{2}$ " bleeding on lower hip.

(ii) Swelling 2 $\frac{1}{2}$ " x 2" on right side of forehead.



(iii) Pain and swelling back of right shoulder, caused by hard and blunt substance.

Nature— Simple,

Age of Injury— within six hours.

D. Ram Lal Sahni.

(i) Incised wound 1" x ¼" x skin deep. Bleeding on upper part of left ear.

(ii) Pain and swelling 2" x 1" on right middle finger, caused by:- Injury No. (i) by sharp cutting instrument and No. (ii) by hard and blunt substance,

Nature— Simple,

Age of Injury— within six hours.

E. Chandeshwar Sahni.

(i) He was found stupre condition and not responding to command. Pupil (right)

(ii) Swelling on scalp 3" x 3" on right temporal region and 3" x 2 ½" on left temporal region.

(iii) Swelling 2" x 1" near left wrist with abrasion 2" x ½" red in colour, caused by hard and blunt object. The patient was treated at this PHC on conservative line. Then patient was referred to SKMC, Muzaffarpur for further treatment.

10. PW-9 is Dr. Mahesh who conducted the postmortem over the dead body of Chandeshwar Sahni and found the following:-

Chandeshwar Sahni

(i) Bruise on entire part of right hand.

(ii) Abrasion on darson of right hand below wrist 1" x ¼".

(iii) On opening of scalp blood clot was found on skull with fracture of right parietal bone. On opening of skull was found.

Cause of death:- Shock haemorrhage and coma.

Cause of injury:- Hard and blunt substance.

Time elapsed since death:- 4 to 18 hours.

11. From the evidence of both the doctors, it is



evident that deceased, Chandeshwar Sahni had sustained injuries caused by hard and blunt substance. From the evidence of PW-9, Doctor it is evident that he was not at all cross-examined with regard to his finding rather, he was cross-examined otherwise whether those ante-mortem injuries could be caused on fall from roof or by motor accident and he had shown probability of aforesaid eventualities on that very score. That being so, presence of ante-mortem injuries over person of deceased Chandeshwar Sahni as well as injuries over person of other injured is found duly substantiated. In the aforesaid background, now evidence of PWs is to be seen.

12. PW-1 is Jalia Devi, wife of informant. She had deposed that on the alleged date and time of occurrence, she was cooking. Madan Sahni, Julum Sahni, Pramod Sahni, Kailash Sahni, Kishun Sahni, Binod Sahni, Bishun Sahni, Sonar Sahni @ Sunar Sahani and Subodh Sahni armed variously came and began to abuse her husband, father-in-law and during course thereof, they have assaulted both of them with Lathi, Danda, fists and slaps and on account thereof, her husband sustained injuries over his head. Her father-in-law was so brutally assaulted that he began to vomit excreta. Her mother-in-law was also assaulted over her head. Her Gotni was also assaulted over her head as well as over other parts of body. She was also assaulted with Lathi over her neck. They were taken to



Government Hospital and therefrom, her father-in-law was referred to Medical College, Muzaffarpur where he died during course of treatment. Identified the accused in dock. During cross-examination at para-7, there happens to be some sort of contradiction. At para-8, she had further stated that they have got no dispute with the accused persons since before the occurrence. At the relevant time, she was possessing 8-9 she-goats. Her she-goat had grazed crop of Julum Sahni and for that, Madan Sahni had complained. Madan and Julum are both full brothers and in the aforesaid background Mar-peat took place. She had further admitted that Julum was also assaulted. she had further admitted that Julum had also instituted case against them. She had further stated that Julum was not admitted at the hospital. In para-10, she had disclosed that her Darwaza and field is contiguous. Mar-peat took place at Darwaza. At that very time, she was cooking. After hearing sound of commotion, she came out and had seen her father-in-law, husband, Gotni unconscious. Ramlal Sahni and other came subsequently. Then thereafter, they gave water to the injured whereupon they regained sense and then, they were taken to police station and then to hospital. Statement of her husband was recorded at the police station. She had further stated that whatever been disclosed by her husband as well as Gotni, on the basis thereof, she had deposed.



13. PW-2 is Urmila Devi. She had stated that on the alleged date and time of occurrence, she was inside her Angan, having been engaged in cooking. As the lamb had gone to the field of accused in the aforesaid background, Madan Sahni, Julum Sahni, Pramod Sahni, Kailash Sahni, Kishun Sahni, Binod Sahni, Bishun Sahni, Sonar Sahni @ Sunar Sahani and Subodh Sahni armed with Lathi, Pistol came and began to hurl. During course thereof, they assaulted her inlaws. Bashisht Sahni, herself, her Devar, Ramlal were also assaulted while they had gone to rescue. Then thereafter, they had gone to Paroo police station wherefrom they were immediately sent to hospital where Fard-e-beyan of Bashisht Sahni was recorded. Seeing the condition of Chandeshwar critical, he was sent to Medical College where during course of treatment, died. Identified the accused. During cross-examination, she had stated that her statement was recorded by the police. She had also stated that she had stated before the police that accused persons have assaulted with Lathi, pistol and Sonta. At para-7, she had stated that it was a dark night. There was flood and on account thereof, ingress and outgress was difficult. In para-9, she had stated that Pramod Sahni took away mobile. In para-10, she had stated that she came out from her house after hearing alarm. In para-11, she had stated that her father-in-law, mother-in-law, Bhainsur were conscious even after sustaining injuries. Blood was oozing out from



the wound. Her father-in-law was lying on the ground. Blood was oozing out from his head, nose, mouth. In para-12, she had further stated that apart from aforesaid three, her Devar, Ramlal was also present. She had further stated that she was also assaulted by Lathi. She was given 5-6 blows, as a result of which, she sustained injuries over her head as well as other parts her body. She had further stated at para-17, that she had also seen in Julum Sahni in an injured condition. She had further admitted at para-18 that counter case has been instituted at their end wherein Bashisht Sahni had gone to jail.

14. PW-3 is Champa Devi. She had narrated that on the alleged date and time of occurrence, she was inside her house. After hearing sound of alarm, she rushed to the house of Chandeshwar Sahni where she saw, Bashishth, Ramlal, Upendra, Chandeshwar and their family members were being assaulted by Madan Sahni, Julum Sahni, Pramod Sahni, Kailash Sahni, Kishun Sahni, Binod Sahni, Bishun Sahni, Sonar Sahni @ Sunar Sahani and Subodh Sahni with Lathi and Sonta. On account of assault, Chandeshwar died at Medical College, Muzaffarpur where he was undergoing treatment. Rest injured were treated at Paroo Hospital. Identified the accused. During cross-examination at para-5, she had stated that during course of her statement before the police, she had stated that on hearing uproar, she rushed to the house of Chandeshwar where all the accused (named)



had assaulted the victims. She had also stated that Chandeshwar was murdered by them. In para-6, she had stated that deceased Chandeshwar was her brother. She remained at her Naihar making frequent visit to her Sasural. In para-8, she had given her presence by way of stating that her house as well as house of Chandeshwar is intervened by two houses. Binda Sahni, Bhuthar Sahni had got their houses in the vicinity of Chandeshwar. In para-9, she had further stated that parties were not on strained relationship since before relating to land. She had further stated that Mar-peat took place before registration of the case. In para-10, she had stated that all the accused persons belong to one party while her brother Chandeshwar happens to be of another party. In para-11, she had stated that at the time of occurrence, she was taking food. In para-12, she had stated that there is no electric connection in her village. It was moonlit night. In para-13, she had stated that after hearing uproar, she rushed to the place of occurrence where she saw Chandeshwar in an unconscious and injured condition. He was alive, blood was oozing out from his injuries. Son of Chandeshwar and daughter-in-law were present. Jamun, Parmeshwar and her husband were also present. They were talking about treatment.

15. PW-4 had deposed that on the alleged date and time of occurrence he along with his brother Shyam Lal was at his



house. After hearing alarm he rushed to house of Chandeshwar Sahni where saw, Madan Sahni armed with Lathi, Julum Sahni, Bishun Sahni, Sonar Sahni and Kailash Sahni armed with Lathi and danda and were engaged in assaulting Chandeshwar Sahni and Bashishta Sahni. They were assaulting with Lathi, Danda, rod and sword. They were also abusing. They were also saying as to why they put their she-goat in their field. Chandeshwar Sahni, Bashishta Sahni happen to be his uncle as well as cousin brother respectively. Wife of Chandeshwar, namely, Saraswati Devi was also assaulting. He was also assaulted at left temporal region. Urmila, wife of Sachindra was also assaulted. Jagiya Devi wife of Bashishta was also assaulted. They were taken to Paroo hospital for treatment. He had made statement before the police. He had further stated that Chandeshwar was referred to medical college where during course of treatment died. During cross-examination at para-7, he had stated that before institution of this case both the parties have not indulged in fighting. In para-8, he had further stated that Bashishta Sahni was not assaulted relating to theft case. In para-10, he had stated that he was present at his house on the alleged date of occurrence. When he reached at the place of occurrence. He saw Chandeshwar lying. Blood was present over the ground. In para-11, he had further stated that his brother Shyam Lal, Sarswati Devi, Jagiya Devi, Urmila Devi, Santosh ,



Sachindra, Champa, Tulsi, Jamuna and others were present since before. In para-12, he had stated that Chandeshwar was conscious and was wriggling. In para- 13, he had stated that he was assaulted by Madan Sahni with Lathi whereupon, he fled away. In para-14, he had further stated that he is not knowing whether Julum Sahni had instituted any case whereunder he happens to be one of the accused. Then at para-16, there happens to be contradiction relating to assault over Saraswati Devi, Urmila Devi as well as he himself by assaults by Madan Sahni. In para-18, he had again stated that female members were present. All have sustained injuries. Blood was oozing out. He had also sustained injury. In para-19, he had stated that after receiving assault, he escaped therefrom. In para-20, he had stated that blood had fallen over the ground from the injuries of the respective injured. In para-21, he had stated that he stayed for half an hour at the place of occurrence. He had further stated under para-22 that save and except Chandeshwar all the injured were conscious. He had talked with other injured. In para-24, he had stated that he was treated by the doctor. He had denied the suggestion that being brother of the informant, he had falsely deposed.

16. PW-5 is Matosh Kumar. On the date of examination he was 16 years of age. Occurrence happens to be about 3 years ago and so, at that time, he was aged about 12-13 years.



During course of his examination-in-chief, he had deposed that on the alleged date and time of occurrence, he was reading at his Bathan. After hearing alarm, he came to his house and saw Madan Sahni, Julum Sahni, Pramod Sahni, Kailash Sahni, Kishun Sahni, Binod Sahni, Bishun Sahni, Sonar Sahni @ Sunar Sahani and Subodh Sahni indulged in assaulting his grand-father, Chandeshwar Sahni (since deceased), Bashisht Sahni (uncle) Sarswati Devi (grand-mother), Urmila Devi (mother) and Jagiya Devi. His grand father was lying. When he intervened, he was assaulted by Madan Sahni with Lathi over back. Then thereafter, the accused persons ran away therefrom. All the injured were taken to Paroo hospital wherefrom his grand-father was sent to Medical College where, during course of treatment, died. Police had recorded his statement. During cross-examination at para-6, there happens to be contradiction. In para-7, he had further asserted that he was also examined by the doctor at Paroo Hospital. In para-8, he had stated that the accused persons had not assaulted them prior to the instant occurrence. In para-11, he had stated that his Bathan lies three laggi west to his house intervened by the house of his uncle. In para-12, he had stated that it was moonlit night. In para-13, he stated that when he reached at place of occurrence, he had found all the persons in injured condition. Blood was coming out from the wounds. In para-14, he had stated that all the injured except his



grand-father were conscious. In para-15, he had stated that when he reached at the place of occurrence, apart from injured, Madan, Julum, Pramod and others including accused persons as well as Champa Devi, Tulsi Devi, Ram Lal were present. In para-16, he had stated that accused persons fled away towards their house. Then had stated that on his alarm, Tulsi, Champa, Jamuna and others came. In para-18, he had stated that blood had fallen from the wounds of the respective injured over their clothes, ground. Then had denied the suggestion that on account of being nephew of the informant, he had deposed falsely.

17. PW-6 is Saraswati Devi, wife of late Chandeshwar Sahn. She had deposed that on the alleged date and time of occurrence, she was in her courtyard. At that very time, Madan Sahni, Julum Sahni, Pramod Sahni, Kailash Sahni, Kishun Sahni, Binod Sahni, Bishun Sahni, and others (altogether 9) came and assaulted her son, daughter-in-law and caused murder of her husband. After occurrence they were taken to Paroo Hospital where they were treated. Her husband was sent to Medical College where, during course of treatment, succumbed. Police had recorded his statement. During course of cross-examination at para-5, she had admitted that Bashishth once upon a time, had gone to jail relating to Loot-maar. In para-6, she had stated that they have not sustained assault before the



present occurrence. Then at para-11 had denied the suggestion that her husband was suffering from TB. In para-13, she had stated that she is not remembering whether it was moonlit night or a dark night. In para-15, she had stated that she along with Bashisth is residing in the same house. In para-16, she had stated that the house of accused lies north (after some distance), south, land of accused lies, East- house of Tatwa lies in west of the PO land. In para-17, she had stated that at the time of occurrence her daughter-in-law was cooking while she was staying in the courtyard. In para-18, she had stated that when she came out form the courtyard, she saw her husband lying unconscious. Bashishth and Urmila were in injured condition. At that very time, none was present familiar to her. In para-21, she had stated that save and except her husband, other injured were conscious. Then had denied the suggestion that being the mother of Bashishth, she had deposed falsely.

18. PW-7 is informant Bashishtha Sahni. He had deposed that on the alleged date and time of occurrence, he along with his father was staying at his Darwaza. At that very time, Madan Sahni, Julum Sahni, Pramod Sahni, Kailash Sahni, Kishun Sahni, Binod Sahni, Bishun Sahni, Sonar Sahni @ Sunar Sahani and Subodh Sahni came duly armed with. During course thereof, Madan was armed with pistol while others were armed with sword, lathi and danda. They



began to assault them. On hearing hue and cry, his Bhabho, mother, brother, Ram Lal, Shyam Lal came in rescue who were also assaulted. Villages came and rescued. Then thereafter, they were taken to Paroo Hospital where police came and recorded his Fard-e-beyan, (identified). He had further stated that during course of occurrence Pramod had assaulted over his head by butt of pistol. Pramod took away mobile of his father. His father was referred to Medical College where during course of treatment, he died. During cross-examination at para-6, he had stated that house of accused persons lies East-south to his house. There happens to be no land dispute amongst them. On the date of occurrence, the dispute arose relating to grazing of crop by his she-goat. In para-7, he had disclosed relationship with other injured as Mantosh happens to be his nephew, Jagiya to be his wife, Urmila to be his Bhabho, Champa to be his Phua, Ram Lal, his cousin brother and Saraswati to be his mother. In para-11, he had stated that it was a dark night. In para-12, he had stated that during course of occurrence, pistol, sword, bhala were also used. Then had denied to be assaulted relating to theft case. In para-17, he had admitted that he had gone to jail twice. He happens to be accused relating to 3-4 cases. In para-19, he had stated that he had seen the accused persons in the morning hour, evening hour and even at the time of assault. In para-22, there happens to be contradiction relating to discloser made to



police regarding carrying of sword by the accused persons. In para-23, he had stated that statement of Sachindra, his brother was recorded at Medical College. At para-26, 27, 28 there happens to be cross-examination relating to cases having against him. In para-29, he had admitted Ram Lal one of the witness to be his bailor. At para-31, he had stated that at the time when Sachindra gave his statement, he was conscious. Because of the fact that he happens to be illiterate, he had not gone through the statement of Sachindra Sahni. He regained sense after 1 ½ hours. Police had prepared inquest after death of his father whereupon he had not signed. In para-32, shown boundary of PO, North- Field of Manoj, South- His house, East-House of accused, West-Ram Lal and others. In para-35, he had stated that in the Fard-e-beyan, he had detailed the status of the accused who was armed with what weapon. In para-37, he had stated that first of all altercation took place for 2-4 minutes and then thereafter, they were assaulted. At that very time, all the accused persons were duly armed with. First of all, he was assaulted with fists and slaps, legs, weapon for 10-15 minutes. He is not remembering who possessed sword. Then had said that for the present he is not remembering who was armed with what weapon. He, after sustaining injury, fell down. Blood had fallen over the clothe as well as ground. In para-38, he had stated that after assault, he became unconscious for a while but regained sense. Then informed



Chowkidar. He had further stated that after regaining sense he had seen injuries over his father. His father was lying over the ground while other injured were standing. At that very time, so many persons were present there. In para-41 he had stated that his alarm attracted others also. In para-42 he had stated that witnesses have seen the occurrence. Injured have already disclosed regarding the occurrence and he also had deposed the same thing what he had perceived. In para-43, he had stated that his father was unconscious being in injured condition. In para-44, he had stated that occurrence took place for half an hour. In para-45, he had stated that accused persons have taken land on Batai which lies north to his house. House of Birbal Shankar lies north to that plot. In para-48, he had denied to have seen injury over person of Julum Sahni. In para-50, he denied the suggestion that he happens to be hardened criminal and have got frequent visit of criminals at his place and during course thereof, he quarreled with them, sustained injury whereupon falsely implicated the accused persons.

19. PW-11 is Sachindra Sahni who had deposed that on the alleged date and time of occurrence, he was at his house. As his she-goat had gone to the field of Madan Sahni, in the aforesaid background, Madan Sahni, Julum Sahni, Pramod Sahni, Kailash Sahni, Kishun Sahni, Binod Sahni, Bishun Sahni, Sonar Sahni @



Sunar Sahani and Subodh Sahni began to abuse. His father protested whereupon all the accused persons began to assault with lathi and danda and he along with his brother, mother and other family members rushed in rescue whereupon they were also assaulted. His father became severely injured. With the help of villagers they came to Paroo Hospital where they were treated while his father was referred to Medical College where during course of treatment he died. He had also identified his signature over Fard-e-beyan. During cross-examination at para-2, he had stated that it was a dark night. In para-3, he had further disclosed that they were on strained relationship since before the occurrence but he had got no document. Then there happens to be contradiction at para-4. In para-5, he had further stated that Fard-e-beyan of his brother was recorded before proceeding to Muzaffarpur from Paroo Hospital. He was present at that very time. He had signed over the same. In para-6, he stated that as his brother was unconscious on account thereof, he had made statement before the police. His brother and father became unconscious at the house itself. He had further stated that his father did not regain sense. He had further admitted with regard to going to judicial custody by his brother once, twice at an earlier occasion. In para-8, he had stated that his she-goat had grazed mustard crop of accused from southern flank. Maar-peat took place for half an hour. In para-9, he had stated that at



the time of occurrence accused persons were armed with Bhala, pistol, sword. They have used the same. All the injured have sustained injuries over their head. After the occurrence, accused persons fled away. People arrived at their alarm. They remained at Paroo Hospital whole night. Then had denied the suggestion that his brother happens to be criminal and on account thereof, there happens to be frequent visit of the renown criminals during course thereof, there was scuffle and on account thereof, they were assaulted. Getting an opportunity, got this case instituted against the accused putting false and frivolous allegations.

20. PW-8 is the Investigating Officer. He had deposed that Fard-e-beyan of Bashishta was recorded on 28.09.2007 at Paroo Hospital (Exhibited the same). Then exhibited formal FIR. On account of entrustment of investigation, he proceeded therewith. He recorded further statement of the informant. He had also exhibited injury report/requisitioned prepared by O/C relating to injured Champa Devi, Urmila Devi, Ram Lal, Saraswati Devi, Jagiya Devi. Visited place of occurrence which lies in the Sahni Tola of village-Raghunathpur which happens to be Parti land lying in front of house of informant as well as village road. He identified the place of occurrence. North-Sahan Zameen of the informant and then field of Manoj, South-Field of Pramod, East- soiling road and house of Saryu



Sahni, West-house of Shyam Lal. He had seen drop of blood spread over. On 29.09.2007, he had arrested some of the accused. He had received supervision report issued by DSP on 05.10.2007. On 28.09.2007, Chandeshwar was referred to SKMCH. On 30.09.2007, he received telephonic information relating to death of Chandeshwar during course of treatment at SKMCH. He had received postmortem report from Ahiyapur PS. He had received injury report of respective injured. Then thereafter, keeping the investigation pending against others submitted charge-sheet against six accused (detailed). During cross-examination at para-5, he had stated that though he had not mentioned the fact in the case diary that injured Chandeshwar was unconscious but he had not recorded his statement on account of being unconscious. He had further stated that he had got no personal knowledge regarding criminal antecedent of the informant. He had further stated who shown the place of occurrence, he had not mentioned in the case diary. In para-6, he had further stated that he had not seized blood stained earth from the place of occurrence. In para-7, there happens to be contradiction relating to witness Jagiya Devi, in para-8, relating to witness Urmila Devi, in para-9 relating to Ramlal Sah and in para-10 relating to witness, Mantosh. In para-12, he had admitted the fact that accused Julum Sahni had also instituted a case. Then had denied the suggestion that his investigation happens to



be cryptic one.

21. With regard to deceased, Chandeshwar Sahni, from the evidence of PW-9, the doctor who had conducted postmortem over dead body of Chandeshwar on 30.09.2007, apart from ante-mortem injuries over his right hand, on opening of scalp, the doctor had found fracture of parietal bone as well as injury was found thereupon. The aforesaid finding is found duly substantiated with the evidence of PW-10, another doctor who had earlier examined all the injured including deceased, Chandeshwar Sahni. At that very time, Chandeshwar Sahni was not responding as well as injuries were found over his scalp as well as hand showing duly inter-supportive.

22. In likewise manner, injuries as found by PW-10 over person of other injured did support the allegation out of whom over person of Urmila, one injury was found over temporal region of scalp though simple in nature. One incised wound over Bashishtha Sahni, though simple in nature. One injury over forehead of Saraswati Devi, one incised injury over upper part of left year though simple in nature over Ramlal Sahni. From the ocular evidence, it is apparent that they had substantiated the manner of assault as well as place of occurrence.

23. From the deposition of witnesses, it is evident that witnesses had admitted regarding presence of counter-case having



at the end of one of the appellants, Julum Sahni coupled with presence of injury over Julum Sahni but, during course of trial neither any DW has been examined nor the injury report, FIR of the counter case has been made an exhibit of the record whereupon the nature of the injury if any sustained by appellant/accused, Julum Sahni, is not at all found properly surfaced. There happens to be consistent finding that mere presence of counter case or injuries over the person of accused, will not cast any kind of obligation over the prosecution to explain unless and until the injuries are grievous in nature.

24. In the case of *Rajendra Singh v. State of Bihar* as reported in **2000 Cr.L.J. 2199**, it has been held by the Hon'ble Apex Court as follows:-

3. So far as the question whether non-explanation of the injuries on accused Rajender ipso facto can be held to be fatal to the prosecution case, it is too well settled that ordinarily the prosecution is not obliged to explain each injury on an accused even though the injuries might have been caused in course of the occurrence, if the injuries are minor in nature, but at the same time if the prosecution fails to explain a grievous injury on one of the accused person which is established to have been caused in course of the same occurrence then certainly the Court looks at the prosecution case with little suspicion on the ground that the prosecution has suppressed the true version of the incident. In the case in hand accused appellant Rajender had one penetrating wound, three incised wound and one lacerated wound and of these injuries the penetrating wound on the left axillary area in the 5th inter costal space $\frac{1}{2} \times \frac{1}{3} \times \frac{3}{4}$ was grievous in nature as per the evidence of doctor PW-3 who had examined him. On the basis of the evidence of PW-3



as well as PW-11 the Courts have come to the conclusion that there is no room for doubt that the appellants and their men had injuries on their person on the date of occurrence. The question, therefore, remains to be considered is whether non-explanation of said injuries on accused appellant Rajender can form the basis of a conclusion that the prosecution version is untrue. In Mohar Rai and Bharath Rai vs. State of Bihar (1968) 3 SUPREME COURT REPORTS - 525, this Court had held that the failure of the prosecution to offer any explanation regarding the injuries found on the accused shows that the evidence of the prosecution witness relating to the incident is not true or at any rate not wholly true and further those injuries probalilise plea taken by the accused persons. But in Lakshmi Singh vs. State of Bihar (1976) 4 Supreme Court Cases (Crl.) 671, this Court considered Mohar Rai (Supra) and came to hold that non-explanation of the injuries on the accused by the prosecution may affect the prosecution case and such non-explanation may assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. The question was considered by a three Judge Bench of this Court in the case of Vijayee Singh vs. State of U.P. (1990) 3 Supreme Court Cases 190, and this Court held that if the prosecution evidence is clear, cogent and creditworthy and the Court can distinguish the truth from the falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence and consequently the whole case and much depends on the facts and circumstances of each case. In Vijayee Singhs case (supra) the Court held that non-explanation of injury on the accused person does not affect the prosecution case as a whole. This question again came up before a three Judge Bench recently in case of Ram Sunder Yadav and Others vs. State of Bihar (1998) 7 Supreme Court Case 365, where this Court re-affirmed the statement of law made by the earlier three Judge Bench in Vijayee Singhs case(supra) and also relied upon another three Judge Bench decision



of the Court in [Bhaba Nanda Sarma and Others vs. State of Assam](#) (1977) 4 Supreme Court Cases 396, and as such accepted the principle that if the evidence is clear, cogent and creditworthy then non-explanation of the injury on the accused ipso facto cannot be a basis to discard the entire prosecution case. The High Court in the impugned judgment has relied upon the aforesaid principle and examined the evidence of the four eye witnesses and agreeing with the learned Sessions Judge came to the conclusion that the prosecution witnesses are trustworthy and, therefore, non- explanation of injury in question cannot be held to be fatal, and we see no infirmity with the said conclusion in view of the law laid down by this Court, as held earlier. We, therefore, are not persuaded to accept the first submission of Mr. Mishra, learned senior counsel appearing for the accused appellants.

25. The court should not find influence on mere presence of counter case during course of appreciation of evidence nor, the presence of counter case will affect the credibility of the prosecution version rather, the court is under obligation to search out from the evidence on record whether the materials available on the record did justify the allegation whatever been alleged by the prosecution as held by the Apex Court in *Nathi Lal v. State of U.P. reported in (1990) Supp SCC 145*. However, though admitted the defence failed to place the relevant document, and that being so, would not be taken adverse thereto. They even failed to narrate whether counter case is surviving or not. During course of argument it has also been submitted that there happens to be material



contradiction in the evidence of respective PWs as corroborated by the Investigating Officer, PW-8, paras-7, 8, 9, 10. From perusal of the same, it is evident that those contradictions are not material going to root of the case, shaking credibility of the witnesses. Moreover, in ***Yogesh Singh v. Mahabeer Singh*** reported in **2017 CrLJ 291**, it has been held as follows:-

29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See *Rammi @ Rameshwar Vs. State of M.P.*, (1999) 8 SCC 649; *Leela Ram (dead) through Duli Chand Vs. State of Haryana and Another*, (1999) 9 SCC 525; *Bihari Nath Goswami Vs. Shiv Kumar Singh & Ors.*, (2004) 9 SCC 186; *Vijay @ Chinee Vs. State of Madhya Pradesh*, (2010) 8 SCC 191; *Sampath Kumar Vs. Inspector of Police, Krishnagiri*, (2012) 4 SCC 124; *Shyamal Ghosh Vs. State of West Bengal*, (2012) 7 SCC 646 and *Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr.*, (2013) 12 SCC 796).



26. Majority of witnesses are injured witness. How far their status are recognizable and to what extent their evidences are subject to reliability. In *Mukesh v. State of NCT (Delhi)* reported in *2017 (3) PLJR 248 (SC)*, it has been held

79. The injuries found on the person of PW-1 and the fact that PW-1 was injured in the same occurrence lends assurance to his testimony that he was present at the time of the occurrence along with the prosecutrix. 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 770], [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).”



27. Culpable homicide is murder by doing the act by which death is 'caused' with the intention of causing such bodily injury is likely to cause death. That means to say, causing of bodily injury and injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. All the murder is culpable homicide but not vice versa. This is a degree of probability of death which determines whether a culpable homicide is of the grievous medium or lowest degree. In other words, culpable homicide is murder of act which causes death is done with the intention of causing death or is done with an intention of causing bodily injury and injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

28. In *Lachman Singh v. State of Haryana* as reported in *AIR 2006 SC 2763*, it has been held as follows:-

9. The residuary plea relates to the applicability of Exception 4 of Sec. 300 of the Indian Penal Code.

10. For bringing in its operation it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

11. The Fourth Exception of Sec. 300 of the Indian Penal Code covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its



place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Sec. 300 of the Indian Penal Code is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or



without weapons. It is no possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

29. In *Kesar Singh v. State of Haryana reported in (2008) 15 SCC 753*, it has been held as follows:-

9. The distinction between the first part and the second part of [Section 304](#) of the Indian Penal Code, therefore, must be considered having regard to the provisions contained in [Sections 299](#) and [300](#) of the Indian Penal Code. Clause (a) of [Section 299](#) corresponds to clause (1) of [Section 300](#), clause (b) of [Section 299](#) corresponds with clauses (2) and (3) of [Section 300](#) and clause (c) of [Section 299](#) corresponds with clause (4) of [Section 300](#) of the Code.

This can best be understood if [Sections 299](#) and [300](#) of the Code are noticed side by side :

Sections 299	Sections 300
"A person commits culpable homicide, if the act by which the death is caused is done	Subject to certain exceptions culpable homicide is murder, if the act by which the death is caused is done
(a) With the intention of causing death; or	(1) With the intention of causing death;or
(b) With the intention of causing such bodily injury as is likely to cause	(2) With the intention of causing such bodily injury as the offender knows to be likely to



death; or	cause the death of the person to whom the harm is caused; or.
(c) With the knowledge that.... the act is likely to cause death	(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or (4) With the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and there is no excuse for incurring the risk.

10. The distinguishing feature is the mens rea. What is pre-requisite in terms of clause (2) of [Section 300](#) is the knowledge possessed by the offender in regard to the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal. Intention to cause death is not an essential ingredient of clause (2). When there is an intention of causing a bodily injury coupled with knowledge of the offender as regards likelihood of such injury being sufficient to cause the death of a particular victim would be sufficient to bring the offence within the ambit of this clause. For determination of the said question, it would be convenient if the exceptions contained in [Section 300](#) are taken into consideration as if the case falls under the said exceptions, there would not be any question of applicability of the main provision of [Section 300](#) of the Indian Penal Code.

11. The distinction between culpable homicide amounting to murder and not amounting to murder is well known. Culpable homicide is genus, murder is its specie. The culpable homicide, excluding the special characteristics



of murder, would amount to culpable homicide not amounting to murder. The Code recognizes three degrees of culpable homicide. When a culpable homicide is of the first degree, it comes within the purview of the definition of [Section 300](#) and it will amount to murder. The second degree which becomes punishable in the first part of [Section 304](#) is culpable homicide of the second degree. Then there is culpable homicide of third degree which is the least side of culpable homicide and the punishment provided for is also the lowest among the punishments for the three grades. It is punishable under the second part of [Section 304](#).

30. So far ingredients of Section 307 is concerned that has been elaborately dealt with in *Lachman Singh's case* (supra) and for better appreciation, the same is quoted below:-

12. Section 307 of the Indian Penal Code reads:

"Attempt to murder - Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."

13. It is sufficient to justify a conviction u/s. 307 if there is present an intent coupled with some overact in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual



wounds. The Sections makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

14. In Sarju Prasad V/s. State of Bihar, it was observed that the mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim is not itself sufficient to take the act out of the purview of Sec. 307 of the Indian Penal Code.

15. The above position was highlighted in State of Maharashtra V/s. Balram Bama Patil and Ors., Girija Shankar V/s. State of U.P., Vasant Vithu Jadhav V/s. State of Maharashtra, and State of M.P. V/s. Saleem.

31. Giving anxious consideration as well as minute scrutiny of the evidence available on the record, it is found and held that prosecution has succeeded in substantiating its case and that being so, instant appeal lacks merit and is accordingly, dismissed.

32. Appellants are on bail, hence their bail bond are cancelled directing to surrender before the learned lower court within fortnigh to serve out the remaining part of sentence failing which the learned lower court will take proper steps against them as provided under law.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
CAV DATE	07.02.2018



Uploading Date	21-03-2018
Transmission Date	21-03-2018

