

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.473 of 2015**

Arising Out of PS.Case No. -122 Year- 2005 Thana -KARAKAT District- SASARAM (ROHTAS)

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1. Ramesh Singh son of Late Ram Chandra Singh resident of village Kandh Bahuara, P.S. - Karakat Gorari, District - Rohtas.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikramdeo Pd. Singh, Adv.
Mr. Sadanand Roy, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 06-04-2018**

Appellant, Ramesh Singh has been found guilty for an offence punishable under Section 307 IPC and sentenced to undergo RI for 1 year as well as to pay fine of Rs. 5000/- and in default thereof, to undergo SI for one month, additionally, vide judgment of conviction dated 15.07.2005 and order of sentence dated 22.07.2015 passed by 5th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 412/2006.

2. Jagarnath Singh (PW 7) while was admitted at Primary Health Centre, Gorari on 19.12.2005 at about 9.00 PM gave his Fard-e-beyan alleging inter alia that during course of election of Shiksha Samiti, his nephew Sheomuni has won the post of Chairman. Ramesh Singh, his co-villager was one of the members of the Shiksha Samiti. In the aforesaid background, today at about 7.00 PM, his



nephew, Sheomuni Singh and Ramesh indulged in an altercation in front of his house whereupon he along with his son, Upendra Singh and a relative, Ram Janam Singh, Dinesh Singh, Mahendra Singh came. During course of altercation, Ramesh, Jaiprakash, Guru Charan, Babu Nand, Ram Nagina, Hiranand Singh, Dinesh Singh arrived and began to assault him as well as others with leg, fists and slaps, brick particles, Danda, Gadai. It has further been disclosed that Hiranand Singh gave Gadai blow over head of Upendra Singh, he was assaulted with Gadai over his head by Guru Charan Singh. During course thereof, Ramesh fired causing injury over Dinesh as well as Ram Janam Singh.

3. After registration of Karakat PS Case No. 122/05 investigation commenced and concluded by way of submission of charge-sheet at different occasions, however, trial commenced against all of them conjointly, during course of which, others have been acquitted while appellant has been found guilty in a manner as indicated hereinabove, whereupon, sentenced, subject matter of 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. It has also been pleaded that on the alleged date and time of occurrence the prosecution party raided their house,



fired causing self inflicted injury and for that, Karakat PS Case No. 123/05 was registered wherein charge-sheet was also submitted after concluding investigation and for that, ocular as well as documentary evidence have been adduced.

5. During course of trial though belatedly, case and counter case have been compromised and to substantiate the same, same has also been made an exhibit of the record.

6. In order to substantiate its case, prosecution had examined altogether 8 PWs out of whom PW-1, Upendra Singh, PW-2, Mahendra Singh, PW-3 Suresh Prasad, PW-4, Dinesh Singh, PW-5, Ram Janam Singh, PW-6, Rajeev Kumar Singh, PW-7, Jagarnath Singh and PW-8, Ram Keshwar Prasad Sahu as well as had also exhibited Ext-1, Signature of informant, PW-7 over Fard-e-beyan, Ext-2 Series, injury report relating to injured, Dinesh Singh, Mahendra Singh, Jagarnath Singh, Ram Janam Singh and Upendra Singh respectively while Ext-3 Series, final injury report relating to Upendra Singh, Ram Janam Singh and Dinesh Singh.

7. Defence had also adduced two DWS out of whom DW-1, is appellant/accused, Ramesh Singh while DW-2 is Ram Shankar Singh. Side by side had also exhibited as Ext-A, C.C. of judgment dated 18.01.2014 relating to GR No. 877/05/ Ext-B, C.C. of charge-sheet relating to Karakat PS Case No. 123/05, Ext-C, C.C. of



evidence of informant relating to Karakat PS Case No. 123/05, Ext-D, Compromise petition, Ext-D/1, signature of informant over compromise petition, Ext-D/2, signature of Upendra Singh over compromise petition, Ext-D/3, signature of Ram Janam Singh over compromise petition.

8. At the present moment, it looks desirable to incorporate that informant of this case Jagarnath Singh who was earlier examined as PW-7 was produced as DW-2 and his examination-in-chief was recorded on 01.08.2014. Then thereafter, a petition was filed on behalf of learned APP objecting the same whereupon, hearing was made and vide order dated 18.01.2014 the learned lower court had allowed the prayer of the prosecution derecognizing his status and further delisting the examination-in-chief.

9. Because of the fact that other accused persons are found acquitted and further, there happens to be allegation of firing having been made solely against the appellant, on account thereof, considering the evidence coupled with that of PW-8, doctor who had found gun shot injuries over the person of two injured, namely, Dinesh Singh as well as Ram Janam Singh. That being so, the evidences of the witnesses are considered to the extent of interest of the appellant only. This is also to be noted down as is evident from the



judgment impugned that the learned lower court acquitted the appellant for an offence punishable under Section 27 of the Arms Act in the background of the fact that firing so alleged has been made by the appellant from his licensee gun and so, no offence under Section 27 of the Arms Act is made out.

10. PW-8 had examined Dinesh Singh on 19.12.2005 at PHC, Karakat and found the following:-

Dinesh Kumar

(1) Single pellet injury on interior part of upper right thigh and mid of medial left thigh fresh bleeding point and charred margin. Age of injury within four hours and mode of injury fire arm.

Ram Janam Singh

Multiple pellet injuries with fresh bleeding point at following sights with charred margin. (I) Anterior part of chest (II) Anterior part of abdomen, (III) Root of nose, (IV) Right forearm and posterior aspect of hand, left index finger and both thigh. Age of injury within four hours and mode of injury fire arm.

Because of the fact that no X-ray plate was produced, subsequently thereof, the opinion which was reserved by the doctor at an earlier occasion, was furnished later on which is as follows:-

“Final report of injured Dinesh Kumar, Ext-2, X-ray report was not given to me. Hence, injury should be treated as simple.



Final report of injured Ram Janam Singh, Ext-2/3, X-ray report was not made available to me. Injury should be treated as simple.”

11. During cross-examination, nothing has been elicited from the doctor over nature of injury as well as cause of injury. In the aforesaid background, first of all evidence of these two injured witnesses is to be taken note of. However, injuries found to be charred whereupon, it could be said that the firing was made from close range covering distance of approximately, 2-4’.

12. Dinesh Kumar is PW-4. He had deposed that occurrence is of the year 2005, it was *Aghan* month, evening time with regard to school, there was Mar-peet in between Sheomuni and Hiranand and during course thereof, Hiranand had assaulted Upendra with Gadal. Ramesh fired causing injury over his thigh as a result of which, he became unconscious. He was treated. Identified the accused. During cross-examination at para-2 had stated that at the time when Sheomuni and Hiranand quarreled, it was moonlit night. Firing was made from the roof of Ramesh. After hearing about quarrel, he along with Ram Janam were running towards the house of Ramesh from their house. In para-3, he had stated that his father is also witness of this case. His house as well as house of informant happens at the same place. House of Ramesh lies 100 yards south



from his house. After hearing hue and cry, he along with his *Mama*, Ram Janam who was at his house rushed towards the house of Ramesh. When they reached at Darwaza of Ramesh then, sustained gun shot injury. In para-4 he had stated that the house of Ramesh happens to be single storey. The height of roof is 10' having fenced all around. In para-5, he had shown his ignorance with regard to presence of counter case. He had further stated at para-6 that for the first time he is deposing before the court regarding the occurrence. Then had denied the suggestion that they were aggressors, assaulted Ramesh and during course thereof, at the provocation Hira, Shashi and Pappu fired from their pistols which caused injury to him as well as his maternal uncle.

13. PW-5 is Ram Janam Singh who during his examination-in-chief had deposed that on 19.12.2005 at about 7.00 PM, Sheomuni and Ramesh quarreled and during course thereof, Ramesh, Dinesh, Guru Charan and others assaulted Bhola Singh, Upendra Singh and Dinesh Singh. Ramesh fired from his gun causing injury upon him as well as Dinesh. Dinesh sustained injuries over his leg while he sustained over his belly, hand, chest. Guru Charan had assaulted Bhola with Gadal, Upendra was assaulted by Hira Lal with Gadal. Identified the accused. During cross-examination at para-2 had shown his relationship with the informant, Jagarnath disclosing that



his sister has been married with nephew of Jagarnath. Hiralal is his brother-in-law. Then had stated that there was no dispute amongst the parties before the aforesaid occurrence. He had further stated that house of Ramesh lies at substantial distance from the house of informant. At para-3, he had stated that at the time of occurrence darkness had fallen down. When he reached at the place of occurrence after hearing hue and cry which happens to be Darwaza of Ramesh, he found 25-30 persons. He sustained gun shot injury. At that very time, he was approximately 40 yards south to the Darwaza of Ramesh. Then had disclosed that house of Jagarnath lies 50-60 Yards away from house of Ramesh. When he sustained gun shot injury, none was present along with him. Others were present 4-5 yards away from him. At para-4, he had admitted presence of counter case. Then there happens to be contradiction under para-5 of his cross-examination relating to manner of occurrence.

14. PW-1 had stated that on the alleged date and time of occurrence he was at his house. After hearing hue and cry, he came out and then, saw an altercation going on with Sheomini Singh. When he reached there, he found Hiralal, Ramesh, Jaiprakash, Dinesh, Babu Nath, Guru Singh, Ram Nagina, came and then indulged in pushing Sheomuni as well as Jagarnath. During midst thereof, Babu Nath came with Lathi and assaulted Shoemuni and Mahendra. Guru Singh



assaulted Jagarnath with Gadal as a result of which, Jagarnath sustained injury over his head. He was assaulted by Hiranand with Gadal. Ramesh and Jaiprakash had gone over roof. Ramesh fired from his double barrel gun causing injury over Ram Janam and Dinesh. Jaiprakash pelted stones causing injury over his eyes. Then had disclosed motive for occurrence was election of Shiksha Samiti wherein Sheomuni won. During cross-examination at para-2 he had admitted that he happens to be son of Jagarnath (informant). He had further admitted that house of Ramesh lies at the distance of 100 Yards from his house. At para-4, he had stated that occurrence also took place at the darwaza of Ramesh. In para-5, he had stated that he is not remembering whether it was a moonlit night or dark night. Para-6 is the cross-examination relating to other activity. In para-7, he had admitted presence of counter case. In para-8, he had admitted that while they were coming out from the hospital, they had also seen Rajesh and Asha Devi coming for treatment (nephew and wife of Ramesh). In para-9, he had stated that when he heard hue and cry at that very time, Shoemuni and his father Jagarnath were at Darwaza of Ramesh. Ramesh was engaged in grappling with his father. At that very time, Ram Janam and Dinesh were near the drain. In para-10, he had stated that he had not seen Ramesh firing from his roof. Then there happens to be contradiction. He denied the suggestion relating to



counter case.

15. PW-2 is Mahendra Singh who had deposed that on the alleged date and time of occurrence, he came out from his house and then saw Ramesh armed with licensee gun over his roof. Guru Singh was armed with Gadal. Hira was also armed with Gadal. Babu Nand Singh with Lathi, Dinesh Singh and Ram Nagina Singh with Lathi. Jaiprakash Singh was also present. Guru Singh assaulted with Gadal upon Jagarnath Singh. Hira Nand assaulted with Gadal upon Upendra Singh. Babu Nand Singh assaulted him with Lathi. Ramesh fired causing injury over Ram Janam and Dinesh disclosed the motive for occurrence. Identified the accused. During cross-examination at para-2, he had admitted he is the nephew of Jagarnath. His house lie 50 Yards north to Suraj and 50 Yards south to Ramesh. Disclosed the motive for the occurrence. In para-4 he had stated that he alone came out of his house. It was moonlit night. When he reached at the place of occurrence, had seen persons in injured condition. Brick particles were being pelted. How many persons were there, he is unable to disclose. Brick particles were pelted from the roof of Ramesh. Door of residential house of Ramesh was opened. In para-5, he had stated that occurrence took place at Darwaza of Ramesh. In para-7 there happens to be contradiction. He had admitted presence of counter case at para-8 and for that, he was also suggested which he denied.



16. PW-3 is Suresh Prasad who had stated that on the alleged date and time of occurrence while he was in a Gali of the village, darkness had fallen down at that very time. Brick particles were being pelted. There was gun shot firing whereupon he ran away. Later on, he came to know that 3-4 persons have sustained gun-shot injuries. During cross-examination, he had stated that he is unable to disclose who were pelting stones.

17. PW-6 is Rajeev Kumar Singh who had stated that on the alleged date and time of occurrence he was at his Darwaza. After hearing sound of uproar, he rushed to Darwaza of Ramesh and then saw family members of Ramesh were engaged in pelting stones over Shoemuni and Jagarnath as a result of which, Jagarnath and Upendra sustained injuries. Then thereafter, firing was made whereupon he ran therefrom. He had not seen who fired. Dinesh and Ram Janam had sustained injuries. During cross-examination, he had stated that he is not able to remember whether it was dark night or a moonlit night. Both sides were indulged in pelting stones who sustained injuries by whom, is unable to say. Ramesh had also instituted a case against Sheomuni and others.

18. PW-7 is the informant, Jagarnath Singh. He had stated that on the alleged date and time of occurrence at about 7 PM, there was election of Shiksha Samiti wherein his nephew Shoemuni



had won. At the time of occurrence, Shoemuni indulged in an altercation and during course thereof, he also arrived there. Mahendra, Ram Janam also arrived there. During course thereof, they arrive at the Darwaza of Ramesh where they saw Ramesh, Nagina, Jaiprakash, Guru, Dinesh and others. His son Upendra also came. The aforesaid persons assaulted him as well as his son Upendra. He was assaulted with Gadal by Guru. Upendra was assaulted by any of the accused with Gadal. Ramesh had gone over roof and began to fire from his licensee gun causing injury over Dinesh who happens to be son of Mahendra. Ram Janam also sustained fire arm injury. Police had recorded his Fard-e-beyan (exhibited). During cross-examination at para-4 had stated that his house as well as house of Sheomuni lie at one place. House of Ramesh lies north to his house intervened by barren land. In para-5, he had stated that Sheomuni happens to be his nephew. He is not remembering whether it was a moonlit night or a dark night. Then there happens to be cross-examination over manner of assault. Then had stated that in front of his house Sheomuni and Ramesh indulged in an altercation where he also arrived. His son and others also arrived where accused persons began to assault. At para-7, he had stated that during course of Mar-peet stone particle were also thrown. Blood had fallen down in front of his house. Police had inspected the place of occurrence on the same day. He had also



admitted presence of counter case. At para-8, he had stated that at the time of occurrence he was 10 steps away from the house of Ramesh. Height of roof of Ramesh is eleven feet and is fenced from all around. At para-9, he had stated that 3-4 rounds were fired. After hearing sound of firing people assembled but he is unable to disclose their names. In para-10, he had stated that he had got no information that on the following morning empty cartridges were found in front of Darwza of Sheomuni by Pramukh, Hazari Singh. At para-11, his attention has been drawn towards development made during trial in consonance with earlier version (repetition of para-5). Then had denied the suggestion that they were aggressors. While they were assaulting, Pappu and Shashi fired from pistol on the provocation of Hira causing injury to Dinesh and Ram Janam.

19. Defence by way of examination of two DWs as well as exhibiting relevant documents on the score of compromise having effected subsequent to the examination of all the PWs and on the basis thereof, witnesses of this case got acquitted.

20. From the record it is evident that Sheomuni has not been examined. There happens to be no discloser in the evidence of the witnesses whether Sheomuni was assaulted or not. Because of the fact that PW-8, doctor had not examined Sheomuni and the witnesses, during course of their evidence, as is evident, tried to conceal



Sheomuni at the place of occurrence as is evident from PWs-2, 3. however, from the evidence of PW-6 it is evident that he had seen the family members of Ramesh assaulting Sheomuni as well as Jagarnath by way of pelting stones. Mar-peat having been taken place in between Sheomuni and Hiral Nand is also found exposed to some extent by PW-4. Another circumstance which is visualizing from the evidence of witnesses is that the initial version relating to the place of occurrence to be in front of house of informant Jagarnath has been shifted to the house of Ramesh, appellant and PW-7. During his examination-in-chief alone had stated that they reached at the house of Ramesh while indulged in an altercation amongst them. The distance in between house of Ramesh and Jagarnath is found exposed by PW-7, informant at para-4, 100-125 Yards. From the evidence of PW-7, it is also apparent that all the members of the prosecution party have already assembled since before. Then in that circumstance, conduct of the parties, is to be perceived in the background of presence of case and counter case, injury and counter injury. There was no occasion for the prosecution party to have gone to the place of Ramesh. On that very score, though there happens to be some sort of conflicting evidences amongst the PWs but, seeing the presence of counter case, injury at the side of appellant, the informant was forced to change the place of occurrence which they had shifted from thier initial version



while regarding Fard-e-beyan showing the place of occurrence in front of his house, shifted to the house of Ramesh. That means to say, presence of prosecution party at the house of Ramesh is admitted one. In likewise manner, from the suggestion having given at the end of the appellant and others fire arm injury having over persons of PWs-4 and 5 is not controverted and for that, they have given an explanation that at the provocation of Hira, Pappu and Shashi had fired which caused injury over Dinesh, Ram Janam and others.

21. Be that as it may, from para-7 of the cross-examination of PW-7, it is evident that appellant was arrested on the same day. None had said that police had seized gun belonging to Ramesh. In the aforesaid background, examination of Investigating Officer would have been must to expose the actual affair (a) whether licensee gun of Ramesh was seized or not, (b) if seized, was chemically examined or not, (c) if chemically examined, firing was made or not, (d) actual distance in between house of informant as well as appellant and, shifting of the place of occurrence right from in front of house of the informant to the place of Ramesh. Furthermore, whether there was any election wherein Sheomuni had won, whether Sheomuni had sustained any injury, whether Sheomuni was examined during course of investigation as he happens to be centre point even as per version of prosecution.



22. Non examination of the Investigating Officer is not at all found pre-judicial to the interest of the prosecution in routine manner but, when there happens to be inconsistency amongst the evidences of the PWs, and there happens to be conflicting version with regard to actual place of occurrence, then in that event, non examination is found fatal to the prosecution.

23. *In Lahu Kamlakar Patil v. State of Maharashtra* as reported in (2013) 6 SCC 417 under para-18, it has been held by the Hon'ble apex Court that non examination of the Investigating Officer is to be perceived in the background of nature of the case as well as evidence having adduced during course of trial in order to infer whether it has caused prejudice to the interest of the accused or not. For better appreciation the same is quoted hereinbelow:-

18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the F.I.R. but has given the excuse that it was taken on a blank paper. The same could have been clarified by the Investigating Officer, but for some reason, the Investigating Officer has not been examined by the prosecution. It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In *Behari Prasad v. State of Bihar* [(1996)2 SCC 317], this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In *Bahadur Naik v. State of Bihar* [(2000) 9 SCC 153], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is



worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in *Arvind Singh v. State of Bihar*[(2001)6 SCC 407], *Rattanlal v. State of Jammu and Kashmir*[(2007)13 SCC 18] and *Ravishwar Manjhi and others v. State of Jharkhand*[(2008)16 SCC 561], has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.

24. Further from the evidence of doctor PW-8, it is evident that injured PW-4 and PW-5 have sustained charred wound, while the witnesses had specifically disclosed that height of roof was 10' or 11', so, there would not have charred injury, in case, firing is made from such distance, moreover PW-6 had stated at that very time, he was away from the house of Ramesh when he sustained fire arm injury. That being so, manner of assault is also found doubtful.

25. Taking into account the totality of the event, presence of case and counter case, shifting of place of occurrence from the house of informant to the house of Ramesh, cast doubt over the authenticity of the prosecution case whereupon, the judgment of



conviction and sentence recorded by the learned lower court did not find concurrence.

26. Consequent thereupon, the same is set aside. Appeal is allowed. Since appellant is on bail he is discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

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