

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.204 of 2003**

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| 1. Thakur Chand , Son of Jaimangal Mahton<br>2. Kari Lal, Son of Maniyar Mahton<br>Residents of village Sherpur, P.S. Asthawan, Dist – Nalanda. | .... .... Appellant/s  |
| Versus                                                                                                                                          |                        |
| State of Bihar                                                                                                                                  | .... .... Respondent/s |

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**Appearance :**

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.  
Miss. Swati Sinha, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**

**ORAL JUDGMENT**

**Date: 05-04-2018**

This appeal is directed against the judgment of conviction and order of sentence dated 31-03-2003, passed by Awadhesh Kishor Prasad Singh, Presiding Officer, Additional Court No. I, Nalanda in Sessions Trial No. 275 of 1989, 47 of 2002, by which the appellants, Thakur Chand and Karu Lal were convicted under Section 324 of the IPC and Section 27 of the Arms Act and were sentenced to undergo R.I. for two years.

2. During pendency of the appeal I.A. No. 842 of 2016 has been filed on behalf of the appellants stating therein that appellant No. 2 Karul Lal has died on 31.07.2013 and he has also annexed the certified copy of death certificate. As such, this appeal with regard to appellant no. 2 stands abated.

3. Prosecution case in short is that on 12.06.1977, there was polling relating to Bihar Legislative Assembly in his village and on



that day about 10.00 A.M. , he was going to caste his vote but in the way accused Karu Lal met him and asked him to vote in favour of Congress Party, on which the informant said that he is a worker of Janata Party and will caste his vote in favour of Janata Party. Accused Karu Yadav told to teach him a lesson. Thereafter, informant after casting his vote returned to his house and on the same day, at about 7.30 P.M., when the informant was coming after easing out himself and when he reached towards south west corner of the house of accused Karu Lal, then accused Karu Lal armed with gun, appellant Thakur Chand, Bhajan @ Nagendra armed with pistol, Bhola Prasad armed with pistol, Kanhaiya Prasad armed with *bhala* and Ashutosh Prasad armed with *saif* were present there and there was wordy duel between the informant and Karu Lal with regard to casting of vote. Thereafter accused Karu Lal handed over his gun to appellant Thakur Chand and asked him to kill the informant, on which appellant Thakur Chand fired on the informant, which hit his testicles and he fell down. The occurrence was witnessed by Krishna Ballav Singh, Etwari Mahto, Ram Pratap Mahto, Om Prakash Mahto, Pragash Gope and others, who carried the informant on the cot and brought him to the hospital.

4. On the basis of the aforesaid statement of informant, F.I.R was registered against the accused persons. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came



to the file of Awadhesh Kishor Prasad Singh, Presiding Officer, Additional Court No. I, Nalanda, for trial and disposal.

5. Charges were framed under various sections of IPC.

6. To prove its case, prosecution examined altogether six witnesses. They are: P.W. 1 – Krishna Ballav Singh, uncle of the informant, P.W. 2 Rampratap Mahto, uncle of informant, P.W. 3 – Om Prakash Singh, cousin of informant, P.W. 4 – Pragash Yadav, supposed to be independent witness, P.W. 5 – Deonandan Prasad, informant and injured, P.W. 6- Dr. Mahendra Narain Mallick, the doctor who examined the injured and P.W. 7 – Mahendra Prasad Singh, Investigating Officer.

7. Defence of the accused person is of complete denial of occurrence and of false implication and also of innocence.

8. On conclusion of trial, the Trial Court, though not found the appellant guilty under Section 307 or 307/149 of the IPC, however, convicted the appellant Thakur Chand and accused Karu Lal (since died) under Section 324 of the IPC and under Section 27 of the Arms Act and sentenced him in the manner aforesaid. By the said judgment, the trial court has acquitted all other co-accused of this case from the charges levelled against them.

9. Learned counsel, appearing on behalf of the appellant has drawn my attention towards para 11-12 of evidence of P.W. 1 to state that he is not the eye witness of the occurrence as from perusal of his evidence, it appears that though the has supported the prosecution



case but his evidence in para 11-12 disclosed that he heard the sound of firing, when he reached there and after firing he saw the informant Deonandan Prasad (P.W. 5) fallen on the ground and he was bleeding profusely. Similarly, learned counsel for the appellant draw the attention of this court towards para -7 of the evidence of P.W. 2, which shows that when he was adjacent to the house of Rajesh Mahto, he heard hulla and also heard the sound of firing and saw the accused putting the gun on the chest of P.W. 5 Deonandan Prasad and saw the P.W. 5 Deonandan Prasad fallen on the ground. Further learned counsel for the appellant has drawn the attention of the court towards para 10 of P.W. 3, which shows that on hearing the sound of firing, he went towards the south and found Deonandan Prasad in unconscious condition in the eastern lane near the house of Kailash. Further submission of learned counsel for the appellant is that the aforesaid evidence of P.W. 1 and 3 disclosed that when they reached near the place of occurrence, they saw the P.W. 5 fallen on the ground and so far evidence of P.W. 2 is concerned, when he reached there he saw the accused putting the gun on chest of P.W. 5 and saw him firing, however, there is no injury on chest. Further the evidence of P.W. 4 shows that he is the chance witness and his evidence shows that no election was held in the village on that day and if his evidence is believed then it will make the whole prosecution story as far as genesis of occurrence, false. Learned counsel for the appellant has further submitted that there is contradiction between the evidence of



witness and medical evidence and the evidence of P.W. 4 discloses that appellant fired on the chest of the informant, evidence of P.W. 5 discloses that he received injury on his testicles, whereas the evidence of doctor shows that he found only one injury and he extracted three bullets from the buttock of injured and he sent the same to Asthawa police station and further the evidence of P.W. 7 (I.O.) shows that he did not find any incriminating material at the place of occurrence. It has also been submitted that evidence of P.W. 7 (I.O. ) in para 6 shows that he could not say as to whether, there was election on that day or not. On the basis of the above, learned counsel for the appellant argued that the trial court without considering all the above infirmities has convicted the appellant under Section 324 and 27 of the Arms Act, which is not sustainable in the eye of law.

10. On the other hand, learned counsel for the respondent – State has defended the judgment of trial court and submitted that there are consistent evidence of witnesses that on the date of occurrence, appellant Thakur Chand on the instigation of accused Karu Lal fired on P.W. 5 causing injury to him and doctor has also found bullet injury on the person of P.W. 5 and had extracted three bullets from his body, therefore, there is no infirmity in the impugned judgment of Trial Court and conviction of appellant under Section 324 and 27 of the Arms Act, is just and proper.

11. In the background of submission of the parties, from perusal of the evidence, it appears that P.W. 5 is the informant in this case and



he has supported the prosecution case so far time, place and manner of occurrence is concerned and his evidence disclosed that he was shot by the appellant Thakur Chand, causing injury on his testicles and he received injuries and other witnesses have also supported the prosecution case but as discussed above, so far evidence of P.W. 1 and 2 are concerned, they does not appear to be eye-witness of the case and so far evidence of P.W. 3 is concerned, it appears that he has stated that appellant put the gun on chest of P.W. 5 and fired. Had it been so, there must be an injury on the chest of P.W. 5 but the doctor has extracted three bullets from the buttock of P.W. 5. Further, it also appears that the Investigating Officer has also not recovered any incriminating articles from the place of occurrence that creates a shade of doubt about so far manner of occurrence is concerned. Further evidence of P.W. 4 disclosed that there was no election in the village on that day of occurrence and I.O. in his evidence could also not say as to whether there was any election in the village or not. If the evidence of these witnesses is believed to be true, then it is evident that the prosecution has not been able to establish the genesis of occurrence as alleged by the prosecution. No doubt, where there is contradiction between the ocular evidence and medical evidence, the ocular evidence has to prevail but if the medical evidence also. However, the trial court has failed to consider that medical evidence is so in this case that contradicts the whole prosecution evidences, so far manner of occurrence is concerned, then it certainly casts a reasonable



doubt about the prosecution case. But the learned Trial Court has not considered the aforesaid infirmities, while convicting the appellant under Section 324 of the IPC and Section 27 of the Arms Act.

12. Accordingly, this appeal is allowed. Judgment of conviction and order of sentence dated 31-03-2003, passed by Awadhesh Kishor Prasad Singh, Presiding Officer, Additional Court No. I, Nalanda in Sessions Trial No. 275 of 1989, 47 of 2002, is hereby set aside.

13. As the appellant, Tahkur Chand is on bail, he is discharged from liability of bail bond.

**(Vinod Kumar Sinha, J)**

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