

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.53 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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1.	Birendra Yadav Son of Late Sukhan Yadav	
2.	Nand Jee Yadav, Son of Deon Yadav	
3.	Rameshwar Yadav, Son of Deon Yadav	
	All resident of Village – Suhia, P.S. – Shahpur, District – Bhojpur.	
		 Appellant/s
	Versus	
	State of Bihar	
		 Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Surendra Kumar Singh, Adv. Mr. Sudha Chandra, Adv. Mr. Tulika Singh, Adv.
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 12-01-2018

This appeal is directed against the Judgment of conviction dated 17.01.2003 and order of sentence dated 21.01.2003, passed by Shri Amlendu Kumar Sinha, Additional Sessions Judge- Cum – Presiding Officer, FTC –IV, Ara, in Sessions Trial No. 325/91, by which the appellant Birendra Yadav stood convicted under Sections 307 of the Indian Penal Code (hereinafter referred to as the “IPC”) and under Section 27 of the Arms Act and was sentenced to undergo R.I. for seven years under Section 307 of the IPC and R.I. for three years under Section 27 of the Arms Act and appellants, namely, Nand Jee Yadav and Rameshwar Yadav were convicted under Sections 307/34, 324 and 337 of the IPC and were sentenced to undergo R.I.



for seven years under Section 307/34 of the IPC, R.I. for two years under Section 324 of the IPC and R.I. for one year under Section 337 of the IPC. All the sentences were directed to run concurrently.

2. Prosecution case as per the fardbeyan of informant recorded on 03.06.1990 that there was a land dispute between the accused – Nand Jee Yadav Yadav and Hariwansh Yadav and on the day of occurrence, Hariwansh Yadav told him and the Mukhiya Ram Pyare that accused – Nand Jee Yadav has fenced the disputed land, on which informant and the said Mukhiya along with Hariwansh Yadav proceeded to inspect the disputed land. In the way, when they reached near the house of accused - Nand Jee Yadav, where accused– Birendra Yadav was also present with a pistol in his hand and on the order of Nand Jee Yadav, accused – Birendra Yadav fired at the informant causing injury in his abdomen and he instantaneously fell down. Thereafter, accused – Nand Jee Yadav and Rameshwar Yadav started assaulting the informant by brick bats, which caused injury on his head. In the meantime, villagers, namely, Jhapsi, Umapati (P.W. 1) and Ram Byas arrived there, who brought the injured to hospital for his treatment. On the basis of the above *fardbeyan*, Shahpur P.S. Case No. 72 of 90 was registered against the accused persons.

3. Upon charge-sheet being filed, cognizance of the offence was taken and the case was committed to the court of sessions, which



ultimately came to the file of Shri Amlendu Kumar Sinha, Additional Sessions Judge- Cum – Presiding Officer, FTC –IV, Ara.

4. To bring home the charge, prosecution has examined seven witnesses.. They are; P.W. 1 Umapati Yadav, P.W. 2 Hariwansh Yadav, P.W. 3 Rambyas Yadav, P.W. 4 Sheoji Yadav - informant and injured, P.W. 5 Munmun Byas, a formal witness, P.W. 6 Garkeshwar Prasad, a formal witness and P.W. 7, Kamleshwari Mishra, is the doctor, who examined the injured/informant at PMCH, Patna. In this case I.O. has not been examined.

5. Apart from that following documents have been brought on record and marked as; Ext. 1 – injury report of appellant – Nand Jee Yadav, Ext. 2 – Formal F.I.R, Ext. 3to 3/A – Injury report of injured – Sheoji Yadav, Ext. 4 – Injury letter and Ext. 5 Case diary.

6. From the side of defence also one witness has been examined, who proved Ext. A, sale deed, Ext. B – rent receipt issued in favour of the appellant, Ext. C – Certified copy of judgment in case no. 31/90 and Ext. D – Mutation order passed by Circle Officer Shahpur.

7. On examination of appellants under Section 313 Cr.P.C., and from trend of cross examination - defence of the appellants is that it is the informant and others, who came variously armed and started assaulting accused - Nand Jee Yadav, in which he received injuries and when one of the persons from informant side fired at Nand Jee



Yadav, he bend down and the said firing hit the informant causing injury to him. Further case of the defence that they have falsely been implicated on the background of land dispute and several other cases.

8. Post trial, the learned trial court, after considering the facts and circumstances as well as materials available before him, convicted the appellants in the manner stated above.

9. Contention of the appellants is that the trial court has erred in appreciating the material facts that admittedly there was land dispute between the appellant – Nand Jee Yadav and Hariwansh Yadav (P.W. 2) and as alleged the occurrence took place due to land dispute and there was no occasion for the appellant – Birendra Yadav, who is neither the family member of appellant – Nand Jee Yadav nor there is anything to show that he had any interest in the land in dispute, to have participated and made firing in the said occurrence and that too on the informant, with whom he had no dispute, whereas, it is the informant side, who had assaulted the appellants and others and in the said assault appellant – Nand Jee Yadav, who sustained injuries, which stood substantiated by Ext. 1 (injury report of Nand Jee Yadav). It has been submitted that if the prosecution case is believed to be true, there was no motive for other appellants, namely, Birendra Yadav and Ramashish Yadav to have participated in the said occurrence as admittedly the dispute was between the appellant –



Nand Jee Yadav and Hariwansh Yadav (P.W. 2). Further the trial court failed to appreciate the fact that the land in question was a purchased land of appellant – Nand Jee Yadav, which will appear from the sale deed (Ext. A), rent receipt issued in favour of appellant – Nand Jee Yadav (Ext B) and copy of the judgment passed in Section 145, Cr.P.C. proceeding by Executive Officer in favour of appellant – Nand Jee Yadav (Ext. C) and mutation order passed by Circle Officer (Ext. D). Further contention of learned counsel for the appellants is that the doctor (P.W. 7), who examined the informant, has found injury no. 1, grievous in nature, however, he has failed to give any basis to arrive at this finding and so far injury no. 2 is concerned, it has been opined that the same might also be caused from a gun shot, however, it is the admitted fact, as per prosecution case, that only one gun – shot injury was received by the informant. Further he has also failed to give the age of injury and the doctors, who have primarily treated the informant in Shashpur Referral Hospital and Sadar Hospital, Ara, has not been examined in this case. It has also been argued that there was case and counter case between appellant – Nand Jee Yadav and informant, in which appellant – Nand Jee Yadav, had also received injuries, as such, no case under Section 307/34 of the IPC is made out against the appellants and in this case I.O. has not been examined, which has caused serious prejudice to the appellants



as had he been examined, defence would have got opportunity to cross-examined him on the point of place of occurrence as well as manner of occurrence and the trial court without appreciating all these facts has convicted the appellants, which is out and out bad and not sustainable in the eye of law.

10. On the other hand, learned counsel for the respondent – State has supported the finding of guilt recorded by the trial court and has submitted that there are consistent and reliable evidence available on record to show that appellant Birendra Yadav fired on the informant and other appellants assaulted him by brick bats, which caused serious injuries to him and informant being injured in this case, veracity of his evidence cannot be doubted and the said fact has also been substantiated by the injury report (Ext. 3), where two injuries were found on the person of the informant and further the weapon used in the offence, clearly suggest the intention of appellants and, therefore, there is no illegality in the impugned Judgment and conviction of the appellants is just and proper.

11. Heard both sides.

12. P.W. -4 is the informant in this case and on close scrutiny of his evidence, it appears that he has supported the genesis and manner of occurrence. His evidence disclosed that on the day of occurrence, when Hariwansh Yadav (P.W. 2) told him and Ram Pyare (Mukhiya)



that on his land, fencing was done by the appellant – Nand Jee Yadav, he along with Mukhiya and Hariwansh Yadav (P.W. 2), went to the *darwaza* of the Nand Jee Yadav to complain about the fencing done by him on the disputed land and requested him to remove the said fencing. In the meantime, appellant – Birendra Yadav on the order of appellant – Nand Jee Yadav fired from his country made pistol, which hit him causing injuries in his abdomen. His evidence also disclosed that Birendra Yadav again fired at him, however, he managed to escape and, thereafter, other appellants – namely, Nand Jee Yadav and Ramashish Yadav assaulted him with brick bats. His evidence further disclose that he was brought to the hospital, where his *fardbeyan* was recorded. This witness in his cross-examination, has stated that he does not know that Nand Jee Yadav and his brother has purchased and mutated the land in question in their favour. He has also stated in para -10 of his cross-examination that he does not know as to whether proceeding under Section 145 Cr.P.C. was decided in favour of the accused or not. This witness has admitted that he has nothing to do with the disputed land. In para 13, this witness has stated that there had been a dispute over the land in question since long. This witness has also stated in para 23 of his cross-examination that he had not seen any mark of assault on the body of appellant – Nand Jee Yadav and further in para – 25 he has stated that he received two injuries



from the assault by brick bats and also a denied a suggestion that on the day of occurrence, he was armed with a country made pistol, which accidentally got fired.

13. From perusal of the evidence of this witness, it appears that this witness has supported the story of assault to him by appellant Birendra Yadav, Nand Jee Yadav and Ramashish Yadav, however, this witness has admitted in his cross-examination that there was a long standing dispute over the land in question and he has nothing to do with the disputed land.

14. P.W. 7 is the doctor, who has examined the informant- injured (P.W. 4) at PMCH, Patna and his evidence disclosed that he examined the injured on 03.06.90 at 7.30 P.M. and found following injuries:-

(i) Multiple small lacerated wound over abdomen slightly right side and upper of the umbilicus charring over the surrounding area circular small holes.

(ii) One stitched wound 1" long on right temporal area. X-ray Plate of abdomen showing eleven small foreign bodies simulating pellets.

In the opinion of doctor (P. W.7) injury no. 1 was found to be grievous in nature and stated that the case was referred to him from Sadar Hospital, Ara, vide Regn. 273 dt. 3.6.90 and further with respect to age of injury or cause of injury no. 2, it has been stated that primary report may kindly be had from the hospital, where the injured



was first treated. However, he has also stated in his evidence that injury no. 2, may also be caused by fire arm. This witness has been cross-examined at length and in his cross – examination, this witness has stated that though injury report was prepared on 3.6.90, it was signed on 25.07.90 after perusing operation register. He has denied a suggestion that in the report the word “lacerated hole” has been interpolated as “ lacerated holes” later on as according to him, it was only an overwriting.

15. Looking to the evidence of this witness, it appears that he had proved injury report (Ext. 3), which shows that the injured was earlier treated at Referral Hospital, Shahpur, Doctor (P.W. 7) has also proved the primary injury report (Ext. 4), issued by Doctor, Referral Hospital, Shahpur. It also appears from the evidence of this witness that he opined the injury no. 1 being grievous in nature, however, he has not disclosed as to on what basis, he found injury no. 1 grievous in nature. Further neither the Doctor, who has treated the informant (P.W. 4) at Sadar Hospital, Ara, has been examined nor injury report of Sadar Hospital, Ara has been brought on record.

16. P.W. 7 is the uncle of informant (P.W. 4) and at the time of occurrence he was at his house and on *hulla* he went to the place of occurrence and saw the occurrence. This witness in para -3 of his cross-examination has admitted that land in dispute was purchased by



appellant - Nand Jee Yadav and was mutated by him in his favour.

17. P.W. 2, Harwansh Yadav. According to the F.I.R, land in dispute was his land, which was fenced by the appellant – Nand Jee Yadav and due to that alleged occurrence had taken place. Evidence of this witness disclosed that when he had come along with Ram Pyare Yadav (Mukhiya) and Sheoji Yadav (P.W. 4), to complain about the fencing of his land, appellant – Birendra Yadav fired at Sheoji Yadav (P.W. 4) from his country made pistol and appellants - Nand Jee Yadav and Rameshwar Yadav assaulted him by brick bats. In his cross – examination in para -2, this witness has admitted that large number of cases were going on between him and appellant - Nand Jee Yadav. His evidence also disclosed that on firing, he fled away as such this witness also does not appear to be eye-witness of whole occurrence. However, he denied the suggestion that he had lost all the cases. This witness has admitted that at the time of occurrence, appellants were in their houses.

18. P.W. 3, Rambyas Yadav has also supported the manner and place of occurrence. His evidence showed that Hariwansh Yadav (P.W. 2) is his cousin brother and the dispute between the parties were going on from before. Evidence of this witness in para -7 also that on hearing the sound of firing, he went to the place of occurrence and found Sheoji Yadav fallen on the ground. From perusal of evidence of



this witness, it appear that he is not the eye-witness of the occurrence.

19. P.W. 5 is the formal witness in this case, who proved injury report of Nand Jee Yadav (Ext. 1) and signature on formal F.I.R.

20. P.W. 6 is also a formal witness in this case, who proved the injury report issued by Doctor – Kamleshwari Mishra (P.W. 7) as Ext. 3. and injury report issued by referral hospital, Shahpur as Ext. 3/A as well as injury slip as Ext. 4.

21. However, it appears that P.W. 5 and P.W. 6 are not the medical expert rather they are advocate clerks and they have only formally proved those exhibits.

22. From the entire discussions as well as from perusal of evidence of prosecution witness, it appears that evidence of P.W. (4) discloses that he has received injuries by appellant by firing made by appellant Birendra Yadav and other appellants by brick bats. Doctor (P.W. 7) found two fire arm injuries, however, he has found only two injuries caused by fire arm and no injury by brick bats. It is an admitted fact that there was land dispute between the appellant – Nand Jee Yadav and Hariwansh Yadav (P.W. 2) and large numbers of cases were going on between them and neither appellant – Birendra Yadav nor informant/injured (P.W. 4) had anything to do with the said dispute. It also appears that though it is alleged that P.W. 2 and P.W. 4 was accompanied by the one Ram Pyare Yadav (Mukhiya), when the



occurrence took place, however, the said Mukhiya has not been examined in this case, who might have been a very important witness. It further appears from the evidence of P.W. 2 Hariwansh Yadav that he is not the witness of full occurrence and P.W. 3 is also not the eye-witness of the occurrence. Evidence further shows that appellant Nand Jee Yadav had also received injuries (Ext.1), which has been brought on record by the prosecution party. Defence has also come with a story that it is the informant side, who had come variously armed and assaulted the appellants, in which one of the persons from the informant side fired on the appellant – Nand Jee Yadav, however, he managed to escape but the said firing hit the informant. From the evidence discussed above, it appears that admittedly place of occurrence is *darwaza* of the appellant – Nand Jee Yadav, and admittedly the land in dispute was in possession of appellant – Nand Jee Yadav and occurrence took place due to fencing of the said land. Evidence further discloses that appellant – Nand Jee Yadav also received injuries, which will appear from Ext. 1, brought by the prosecution itself, hence the above facts suggest a free – fight between the parties on the alleged date of occurrence. One more important aspect of the matter is that neither appellant – Birendra Yadav nor Sheoji Yadav-injured (P.W. 4) had anything to do with the dispute. The discussions made above clearly cast a shadow of doubt on the



manner of occurrence and it appears that the same has been caused in some other manner. However it is admitted position that injured Sheoji Yadav (P.W. 4) has received gunshot injury. It is also an admitted position of law that Medical evidence plays a key role in administration of justice both in criminal and civil cases. The manner and type of medical evidence provided to the court of law is of utmost importance in arriving at justifiable conclusions and avoiding miscarriage of justice. In the case in hand, It emerges from the evidence available on record that allegation of assault on informant/injured by fire arm is against the appellant - Birendra Yadav, who had fired on the informant causing injury in his abdomen and allegation against other two appellants is of assaulting the informant by means of brick bats and the doctor has also found injury no. 1, which was caused by fire arm, grievous in nature, whereas, injury no. 2, which according to the Doctor, was found to be simple in nature and may also be caused by fire arm. No doubt, prosecution has failed to prove the common intention of the appellants behind the occurrence. Further evidence available on record, disclose a case of free – fight between the parties on the alleged date of occurrence. However, there are sufficient materials available on record that Birendra Yadav had fired causing injury to the informant (P.W. 4). Though there are two gunshot injuries over the person of Sheoji



Yadav (P.W. 4), however, even according to P.W. 4 he only received one gunshot.

23. In view of the entire discussions made above, it appears that conviction of appellants namely, Nand Jee Yadav and Ramashish Yadav under Sections 307/34, 324 and 337 of the IPC suffers from infirmities as discussed above and there is no material against these appellants to prove that they were pre-determined to commit such an offence i.e. to cause injury to Sheoji Yadav (P.W. 4) and further the Doctor (P.W. 7) has also not found any brick bat injuries on the person of the injured. Accordingly, the appeal with regard to appellants, namely, Nand Jee Yadav and Ramashish Yadav is allowed and order of their conviction and sentenced passed by Shri Amlendu Kumar Sinha, Additional Sessions Judge- Cum – Presiding Officer, FTC –IV, Ara, in Sessions Trial No. 325/91, is set aside.

24. Whereas, so far appellant, namely, Birendra Yadav is concerned, there are sufficient materials available to prove that on the alleged date of occurrence, he was armed with a country made pistol and fired twice on the informant (P.W. 4) and one of the shots hit the informant in his abdomen causing injury to Sheoji Yadav (P.W. 4) and the said injury was found to be grievous in nature, as such, I do not find any infirmity in the conviction of appellant under Section 307 of the IPC as well as under Section 27 of the Arms Act. However,



it appears that the occurrence is of the year 1990 and more than 27 years have elapsed and considering the ignominy and distress caused to him during trial, this court takes a lenient view and his sentence to undergo R.I. for seven years under Section 307 IPC is modified and he is directed to undergo R.I. for three years, however, his sentence to undergo R.I. for three years under Section 27 of the Arms Act, which is the minimum sentence under the said Act, shall remain intact. The period already undergone by him in judicial custody shall be set off, in accordance with law.

25. Accordingly, this appeal is partly allowed.

(Vinod Kumar Sinha, J)

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