

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.266 of 2003

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

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1. Sakaldeo Yadav, son of Late Vano Yadav
2. Dilip Yadav, son of Ram Bilash Yadav
3. Ram Bilash Yadav, son of Late Tilo Yadav, all residents of village Mahuatola,
Laxmipur, P.S. Khagaria, District Khagaria

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Vivekanand Singh with Mr. Aarsh
Kumar, Advocates

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 27-02-2018

All the appellants stand convicted under Sections 307, 341 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for five years for the offence under Section 307 IPC and a fine of Rs.2000/- each with default clause and further convicted under Section 341 IPC to undergo R.I. for six months and also sentenced to undergo R.I. for three years and a fine of Rs.1000/- each with default clause for the offence under Section 27 of the Arms Act and the sentences were directed to run concurrently vide judgment dated 3.5.2003 and order dated 5.5.2003 passed by Sri Govind Chandrayan, the then Additional Sessions Judge-III, Khagaria, in Sessions Case No.106 of 1999.

2. Prosecution case, which was initiated on the basis of



fardbeyan of Damodar Yadav (P.W.8) recorded by S.I., in short, is that while he was coming to attend call of nature on the way accused persons, including the appellants armed with fire arms surrounded him and people assembled and on the order of accused Dilip Yadav, accused Ram Bilash Yadav opened fire on the informant which hit him on left side near the ear on which he fell down. Further prosecution case is that accused Roop Chand Yadav opened fire which hit villager Bhola Rajak near below his right eye, chest and left thigh. Accused Sakal Yadav opened fire which hit Rajesh Kumar, accused Dilip Yadav opened fire which hit Tarun Kumar and accused Lal Bahadur Yadav opened fire which hit Sanjay Kumar on his thigh.

3. On the basis of aforesaid fardbeyan Khagaria P.S.Case No. 6 of 1999 was registered and after investigation police has submitted charge sheet against the appellants and on cognizance the case has been committed to the court of sessions which ultimately came to the file of Sri Govind Chandrayan, the then Additional Sessions Judge-III, Khagaria for trial and disposal.

4. During trial charges were framed under Sections 307, 324, 341 IPC and 27 of the Arms Act against the appellants.

5. Prosecution has examined altogether 12 witnesses in support of its case, they are P.W.1 Tarun Kumar, who is injured witness and nephew of informant, P.W.2 Bhola Rajak, who is injured,



P.W.3 Rajesh Kumar, who is injured, P.W.4 Sanjay Yadav, who is injured, P.W.5 Rambahadur Yadav, who is injured, P.W.6 Manoj Yadav, who has been tendered for cross examination, P.W.7 Anjan Kumar, who has been tendered for cross examination, P.W.8 Damodar Yadav, who is informant and injured in this case, P.W.9 Debo Yadav, who has been tendered for cross examination, P.W.10 Anik Yadav, who has been tendered for cross examination, P.W.11 Dr. Purushottam Kumar Sinha, who has examined the injured persons and P.W.12 Amerika Ram, who is I.O. in this case and has proved the formal FIR.

6. It further appears that some documents have been taken into evidence as Exhibits, they are Ext.1 signature of informant on the fardbeyan, Exts. 2 to 2/d, the injury reports and supplementary injury reports were marked as Exts. 3 to 3/d, Ext.4 is FIR and Ext.5 is endorsement on the FIR.

7. On behalf of defence one witness has been examined, he is Rajdeo Singh, who has proved the fardbeyan as Ext.A and formal FIR of Khagaria P.S.case No.8 of 1999 as Ext.B.

8. On conclusion of trial learned trial court has convicted the appellants under Sections 307, 341 IPC and 27 of the Arms Act and sentenced them as stated above.

9. Contention of learned counsel for the appellants is that



almost all the prosecution witnesses are relatives of the informant except P.W.2 and his evidence does not inspire confidence on the background that counter case has been filed by appellant Sakaldeo Yadav, who has brought on record Ext.A and he has also received injuries which will appear from the evidence and there is enmity between them from before. It is also submitted that though it is alleged that appellants had fired on the informant but Doctor has found pellet like substance and not found pellet injuries which is evident from the cross examination of Doctor itself. Further submission is that there are vital contradictions in the evidence of witnesses from their earliest statement made before police, in which specific allegation of firing on all the appellants and causing injuries to different injured has been made but in the evidence in court, it is stated that appellant Ram Bilash Yadav made firing on the informant causing injuries to him and thereafter there was indiscriminate firing by the accused persons and in such a situation there is no material finding by the I.O. as he has not found any empty cartridge or pellet from the place of occurrence and he has not found any blood stained earth and in the cross examination the I.O. has not supported the prosecution case. Further submission of learned counsel for the appellants is that there is case and counter case between the parties and injuries are simple in nature and in such a situation the conviction



of the appellants under Section 307 IPC is not sustainable in the eye of law.

10. On the other hand, learned counsel for the State has supported the judgment on the ground that accused appellants have made indiscriminate firing in order to kill the informant causing injuries to different injured and specific allegation of firing is against Ram Bilash Yadav, causing injury to informant Damodar Yadav and Doctor has found injuries over the persons of all injured, including informant Damodar Yadav, caused by fire arm, as such, there is no infirmity in the impugned judgment which does not require any interference by this Court.

11. In the background of rival submissions and on examination of evidence of P.Ws. it appears that P.W.8 is informant in this case and in his evidence in court he has stated that accused appellants armed with fire arms surrounded him 40-50 yards away from near the water ways dam at about 7/8 A.M. while he was returning from the call of nature, on which he raised alarm and on his alarm Tarun Yadav, Rajesh Yadav, Bholu Rajak and Sanjay Yadav came there and on the order of Dilip Yadav, appellant Rambilash Yadav fired his gun which hit near his left ear and he fell down and thereafter accused Dilip Yadav, Sakaldeo Yadav and Rupchand Yadav made indiscriminate firing which hit Tarun Yadav, Rajesh



Yadav, Bhola Rajak and Sanjay Yadav and they were taken to hospital in injured condition. His evidence has been corroborated by his earliest version made before police except that in his earliest version, informant (P.W.8) has stated about firing by appellants, causing injuries to the injured specifically, whereas in the evidence in court, he has stated about firing by Ram Bilash Yadav causing injury on ear and stated about indiscriminate firing by others, causing injuries to Rajesh, Sanjay, Bhola and Tarun, P.Ws. 3, 4 2 & 1 respectively. Apart from that, P.Ws. 1, 2, 3 and 4 are injured witnesses in this case and their evidence in court found corroboration by the evidence of P.W.8 and they have stated that in the morning while appellants surrounded P.W.8 while he was coming from call of nature and on the order of accused Dilip Yadav, the accused appellant Rambilash Yadav fired on the informant causing injury to his ear and thereafter all the accused appellants made indiscriminate firing causing injury to P.Ws. 1 to 4. P.W.5 though he was not injured witness but he has supported the prosecution case in toto. P.Ws.6, 7, 9 and 10 have been tendered for cross examination and there is nothing in their cross examination to doubt the prosecution case. P.W.11 is the Doctor, who has treated the injured persons and from his evidence in court it appears that he has examined Tarun Kumar (P.W.1), Rajesh Kumar (P.W.3), Damodar Yadav (P.W.8), Sanjay Yadav (P.W.4) and



Bhola Rajak (P.W.2) and found the following injuries on the persons of injured :

Tarun Kumar : (i) one small round lacerated wound 1/8" in diameter blacken margin sub continently in front of chest in middle part 3" below Manu Bram sterna. Advised X-Ray chest-P.A

(ii) one lacerated round wound 1/8" over left arm front and upper part inverted margin- muscle deep

(iii) one lacerated round wound 1/8" in diameter over right leg lateral aspect in upper part. X-Ray right leg advised.

(iv) one lacerated wound 1/8" diameter skin deep blacken margin over left forearm lateral side.

Injury No. (i) to (iv) caused by fire arm. Opinion reserved for injuries (i) to (iii). Nature of (iv) injury was simple in nature. Injuries (i) to (iii) were simple in nature.

Rajesh Kumar : (i) one small round lacerated wound 1/6" in diameter blacken and inverted margin over right forearm, upper part and lateral aspect- Advised X-Ray right forearm A.P. lateral view,

(ii) one small lacerated wound 1/6" diameter blacken and inverted margin over right thigh middle part lateral aspect- Advised X-Ray right thigh.

Injuries (i) and (ii) were caused by fire arm. Nature of injuries was simple in nature.

Sanjay Kumar : (i) two small round lacerated wounds 1/8" diameter and inverted margin , skin deep over left thigh upper part posterior lateral aspect.



Advised X-Ray left thigh upper part. A.P. lateral view. Opinion, Simple injuries.

Bhola Rajak : (i) one small round lacerated wound sub continently- 1/8” in diameter over right side of the face inverted and blacken margin. Advised X-Ray skull AP lateral view,

(ii) 3 small round lateral wounds 1/8” in diameter sub continently over left chest front and upper part left side of the lower chest and lower part- Advised X-Ray chest P.A. view,

(iii) 3 small round lacerated wounds inverted margin- 1/8” in diameter over left thigh front and middle part- Advised X-Ray left thigh AP lateral view.

Injuries (i) to (iii) caused by fire arm. Nature of all injuries were simple in nature.

Damodar Yadav : (i) one small round lacerated wound 1/6” in diameter. Sub continently over left front temporal region of scalp blacken margin- Advised X-Ray AP lateral of skull,

(ii) one small round lateral wound 1/6” in diameter sub continently over left front parietal region of scalp- Advised X-Ray skull AP lateral view,

(iii) Lacerated wound 1’ x 1/4” x 1/6” over left pinna upper part.

Injuries (i) to (iii) caused by fire arm. Injuries (i) and (ii) were simple in nature.”

This witness has been cross examined also and in his cross examination the Doctor has stated in paragraph-6 that it was not



confirmed from the report that Radio opaque was caused from pellet. He has also stated that when it was not confirmed that injuries were caused by pellet then only pellet like substance is mentioned in the injury report if any pellet injury was found then it is traced out after surgical operation. In paragraph-7 of his cross examination he has stated that injury report does not mention that any pellet was found on the person of injured and it was traced out. He has further been cross examined and he has stated that X-ray report was not made available before him and in paragraph-11 of his cross examination he has stated that layer of human skin is very thin and wound can be made by any substance. However, in paragraph-9 of his cross examination he has stated that such type of injury is possible if a person takes a risk by igniting matches.

12. P.W.12 is the I.O. and he has stated in his evidence that on the basis of fardbeyan he has instituted Khagaria P.S.Case No. 6 of 1999 and taken over investigation and proceeded to the place of occurrence at 9 O'clock and inspected the place of occurrence which is situated south to the Bandh in between plots of Rambilash Yadav and Rajdip Yadav and 15 yards away from the Bandh. The place of occurrence as described by the I.O. supports the case of prosecution as it is the prosecution evidence also that occurrence took place near the Bandh. However, from his evidence it appears that he has not found



crops damaged at the place of occurrence and his evidence also does not disclose that any empty pellet was recovered from the place of occurrence. Apart from that evidence of P.W.4 Sanjay Yadav is that blood was found on the ground, however evidence of I.O. did not disclose that he has not found any blood mark on the earth.

13. It has been argued on behalf of defence that after entering Station Diary Entry police officer ought to have first recorded the fardbeyan before taking the statement of other witnesses but it appears that before recording fardbeyan they started investigation which is not just and proper. However, any laches on the part of police officer will not make the whole prosecution case unbelievable, as investigation is not in the control of the informant and witnesses.

14. On perusal of entire evidence it appears that there is consistent evidence available on record that appellant Ram Bilash Yadav fired at informant Damodar Yadav causing injury to his kanpatti (near the ear). There is also evidence that other accused started indiscriminate firing. However, from perusal of para-9 of the evidence of P.W.8, Damodar Yadav, it appears that he heard sound of four firings and thereafter appellants fled away from the place of occurrence. The evidence of P.W.5 in paragraph-9 also shows that he heard sound of four firings and if the evidence of Damodar Yadav and Rambahadur Yadav is to be believed the prosecution evidence of



indiscriminate firing stands demolished. Apart from that, evidence of P.W.3, Rajesh Kumar, who is son of informant, shows that appellant Ram Bilash Yadav first fired then others fired and continued firing and thereafter fled away. When there is evidence of P.W.8 and P.W.5 of only four round of firing and evidence of P.W.3 discloses that Ram Bilash Yadav continued firing, the prosecution case that thereafter other accused persons made indiscriminate firing does not appear to be probable and firing by Ram Bilash Yadav was considered as indiscriminate firing by the witnesses. There are some contradictions in their evidence and their earlier statement made before police but attention of the I.O. has not been drawn towards those contradictions and due to the above fact, it cannot be said that those are in fact contradictions and omissions.

15. In this case, as per FIR, motive behind the occurrence is land dispute. However, evidence of P.W.5 is complete different as in paragraph-4 of his evidence disclosed that due to the watering of the field by Anjani Kumari there was hot exchange of words and abuse for 10-20 minutes and appellant Sakaldeo Yadav abused his wife also at 7 O'clock and when this witness has come to the field they have disclosed the same and then he searched for Damodar (P.W.8) and he saw Damodar (P.W.8) was surrounded by the accused persons and as such, so far motive is concerned, another story has been developed by



the prosecution. The defence has tried to show that informant Damodar Yadav was convicted in a case of murder of Satto Yadav and as such he might have been killed by others in some other manner but the same has been denied by the prosecution witnesses.

16. Evidence is consistent on the point of firing, causing injuries to P.W.8, Damodar and others and the Doctor has found injuries on the persons of injured and some of the injuries shows blackening mark to show that firing was made from close range. However, no pellet was recovered by the Doctor from the injuries and he has found the injuries caused by pellet like substance and I.O. has not found any empty cartridge from the place of occurrence that creates a shadow of doubt about prosecution story. Moreover, in his earliest statement P.W.8 has stated specifically about other appellants as to whom they caused injuries of firing by Ram Bilash causing injuries to P.W.8 Damodar Yadav, no specific allegation has been made that other appellants caused injuries to whom. There is counter case lodged by Saakaldeo Yadav and P.W.1 has admitted in paragraph-4 that Sakaldeo had injuries on head, which shows doubt about manner of occurrence. In such a situation, possibility of false implication cannot be ruled out and this possibility also cannot be ruled out that P.Ws. 1 to 4 received injuries due to firing made by Ram Bilash Yadav. As discussed above, even according to evidence



of informant and other witnesses, only four round of firings were made and all the witnesses have specifically stated about firing by appellant Ram Bilash Yadav and no specific allegation firing is made against any other appellants.

17. In this case, learned trial court has convicted the appellants under Section 307 IPC. However, when evidence disclosed that there was altercation between the parties and motive of the occurrence was also not so serious and P.Ws. accepted in their evidence that appellant Ram Bilash Yadav first fired, causing injuries to Damodar Yadav (P.W.8) and thereafter there was indiscriminate firing, in such a situation it cannot be said that firing was made aiming anybody, it may be in order to scare the villagers while fleeing away. All the injuries are also simple in nature. However, learned trial court has not considered this aspect of the matter. Nothing has been brought on record to show that fire arm was recovered from the place of occurrence, in such a situation, so far other appellants are concerned, it cannot be said with certainty that they have also fired on the injured Tarun, Rajesh , Sanjay, Bhola Rajan and Rambahadur Yadav, as such, so far other appellants are concerned, they are entitled to the benefit of doubt.

18. Considering the entire discussions made above, the conviction of all the appellants under Section 307 IPC does not appear



to be sustainable in the eye of law. From the discussions made above, appellants cannot be held guilty under Section 307 IPC. However, there is direct allegation against Ram Bilash Yadav of causing injuries to Damodar Yadav (P.W.8) by firearm, hence he may at best be held guilty under Section 324 IPC but so far other appellants, i.e., Sakaldeo Yadav and Dilip Yadav are concerned, in view of discussions made above, they are entitled to the benefit of doubt as prosecution has failed to establish the fact that they caused injuries to other injured by firearms, hence at best they can be held guilty under Section 341 IPC.

19. Accordingly, conviction and sentence of appellant Sakaldeo Yadav and Dilip Yadav under Section 307 IPC and 27 of the Arms Act are set aside. However, conviction of Ram Bilash Yadav under Section 341 IPC and 27 of the Arms Act is affirmed and his conviction under Section 307 IPC is modified to the conviction under Section 324 IPC and conviction of appellants Sakaldeo Yadav and Dilip Yadav under Section 341 IPC is also affirmed.

20. Sentence of appellant Ram Bilash Yadav under Section 27 of the Arms Act is affirmed. As his conviction under Section 307 IPC is modified to conviction under Section 324 IPC, the sentence is also modified to R.I. for two years and his sentence under Section 341 IPC is reduced to R.I. for three months. However, fine of Rs.1000/- under Section 27 of the Arms Act is affirmed and in default he has to



serve simple imprisonment for one month.

21. Conviction of appellants Sakaldeo Yadav and Dilip Yadav under Section 307 IPC and 27 of the Arms Act is set aside and their sentences thereunder are also set aside. However, their conviction under Section 341 IPC is affirmed and their sentence thereunder is reduced to R.I. for three months.

22. With the aforesaid modification in the impugned judgment of conviction and order of sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.03.2018
Transmission Date	01.03.2018

