

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.373 of 2003

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

- =====
1. Ram Kunwar Bhagat, son of Late Banarsi Bhagat
 2. Paras Bhagat, son of Late Deonarain Bhagat, both resident of village Bairia
Durg, P.S. Uchkagawn, District Gopalganj

.... Appellants

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Neeraj Kumar @ Sanidh with
Mr. Raghav Prasad, Advocates

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

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 24-08-2018

Both the appellants have been convicted under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year vide judgment dated 30.6.2003 and order dated 4.7.2003 passed by Sri Chiranji Singh, the then Presiding Officer, F.T.C. No.1, Gopalganj in Sessions Trial No. 160 of 1987/309 of 2002. However, by the same judgment four other accused persons have been acquitted from the charges leveled against them.

2. Prosecution case as per statement of Deodhari Bhagat (not examined), in short, is that on 7.10.1985 at about 12 noon while he along with his cousin brother Ganga Bhagat was tying the bundle of paddy crop in his field, accused persons, namely, Ram Kunwar Bhagat, Munsi Bhagat, Baleshwar Bhagat, Deonarain Bhagat, Paras



Bhagat and Pahwari Bhagat came there. Appellants Ram Kunwar Bhagat and Paras Bhagat were having country made pistols in their hands, whereas other accused persons were having lathi, bhala, etc. in their hands. All the accused persons, including the appellants asked the informant as to why he was harvesting and tying bundle of paddy crop from the field, on which informant told that the land was of his purchased land and he had grown the paddy crop on it and as such he had harvested the paddy crop and he was tying the bundle of paddy crop. Thereafter appellant Ram Kunwar Bhagat fired with his pistol at the informant and the pellets hit on his hand, leg and stomach and informant fell down in the field of Bishundeo Bhagat. Appellant Paras Bhagat also fired with his pistol which hit Ganga Bhagat on his right hand. Thereafter accused persons fled away from the place of occurrence. The informant was taken to the police station Uchakagaon, where the Police Officer recorded his statement.

3. On the basis of aforesaid statement, Uchakagaon P.S. Case No. 124 of 1985 was registered. Post investigation charge sheet has been submitted, cognizance of the offence has been taken and after commitment the case ultimately traveled to the file of Sri Chiranjee Singh, the then Presiding Officer, FTC-I, Gopalganj for trial and disposal.

4. Charges were framed against the accused persons,



including the appellants under Sections 307 and 147 IPC and further charge has also been framed under Section 27 of the Arms Act against the appellants.

5. In order to substantiate its case, prosecution has examined altogether seven witnesses, they are PW 1 Jawaharlal Prasad, PW 2 Shyamdeo Bhagat, PW 3 Chokat Bhagat, PW 4 Ganesh Singh @ Bhagat, PW 5 Lalbaboo Bhagat, PW 6 Suryanand Bhagat @ Singh and PW 7 Brahma Prasad, who is a formal witness. It appears that PWs 1 to 4 are FIR named witnesses. It further appears that neither Doctor nor I.O. nor informant nor Ganga Bhagat has been examined in this case and for that no plausible explanation has been given by the prosecution.

6. Apart from the above oral evidence, some documents have been brought on record on behalf of prosecution, they are Ext.1- signature of Ganesh Singh on fardbeyan, Ext.1/1- signature of Suryanand Singh on fardbeyan, Exts. 2 to 2/1- injury reports and Ext.3- formal FIR.

7. On behalf of defence four witnesses have been examined, they are DW 1 Arun Kumar Mishr, DW 2 Amar Chandra Shrivastava, DW 3 Alakhdeo Singh and DW 4 Balram Singh, who are formal witnesses and they have proved some documents. Besides the above oral evidence, the defence has brought on record certain documents,



they are Ext.A- sale deed dated 16.12.1983, Ext.B- certified copy of Khatian, Ext.C- certified copy of formal FIR of Uchakagaon P.S.Case No. 125 of 1985, along with fardbeyan of Munshi Prasad, Ext.D- copy of agreement between Nandlal Prasad and Kailash Prasad, Ext.E- Index, Exts. F & F/1- deeds of gift and Ext.G- injury report of Munshi Bhagat.

8. On conclusion of trial, learned trial court has not found the charges under Sections 307 and 147 IPC leveled against the appellants and other accused persons true but convicted the appellants under Section 324 IPC and acquitted the other accused persons from the charges under Sections 307 and 147 IPC. Similarly, learned trial court finding the charge under Section 27 of the Arms Act not true has acquitted the appellants from the said charge under Section 27 of the Arms Act.

9. Being aggrieved by the aforesaid judgment, the present appeal has been preferred by the appellants.

10. Learned counsel for the appellants has assailed the judgment mainly on the ground that in this case neither injured witnesses nor Doctor nor I.O. have been examined in the background of the fact that documents were brought on record by defence that there was case and counter case with respect to the same occurrence and moreover there was land dispute between the parties as appellant



claimed that the land is of his purchased land and in absence of their examination the conviction of the appellants under Section 324 IPC does not inspire confidence. Further submission of learned counsel for the appellants is that no plausible explanation has been given by the prosecution for non-examination of I.O., Doctor and injured witnesses. However, though learned trial court has tried to show that informant Deodhari Bhagat has died during pendency of the appeal but no such evidence has come except that son of informant Lalbaboo Bhagat (PW 5) has deposed in this case stating his father's name as Late Deodhari Bhagat. Learned counsel has further submitted that as I.O. has not been examined in this case the place of occurrence has not been established which has caused prejudice to the defence as defence could not get a chance to cross examine the I.O. on the point of place of occurrence and similarly as the Doctor has not been examined he could not be confronted with respect to nature of injuries and also about nature of weapons they have used and in absence of the same the conviction of the appellants under Section 324 IPC does not inspire confidence.

11. Learned counsel for the State, on the other hand, has supported the impugned judgment and submitted that in this case though injured witnesses have not been examined but PWs. 1 to 4 are the FIR named witnesses and PWs. 1 to 4 claimed that they are the



eye-witnesses to the occurrence and their evidence on the point of assault is quite sustainable as the evidence on the point of assault even in absence of examination of Doctor, I.O. and injured witnesses is consistent and the same does not require any interference by this Court.

12. In the background of rival submission of both the parties, on examination of evidence, as discussed above, it appears that informant Deodhari Bhagat, who is injured and other injured Ganga Bhagat have not been examined and no plausible explanation has been given by the prosecution for their non-examination. However, learned trial court has tried to infer from the evidence of Lalbaboo Bhagat that he disclosed his father's name as Late Deodhari Bhagat and as such it can be inferred that he died but prosecution has not brought any document on record about his death and for non-examination of Ganga Bhagat no explanation at all has been given by the prosecution. Similarly, in this case Doctor and I.O. have not been examined and in spite of their non-examination, learned trial court has convicted the appellants under Section 324 IPC which does not inspire confidence. Section 324 IPC provides as follows :

Voluntarily causing hurt by dangerous weapons or means.- Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which,



used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

As Doctor has not been examined he could not be cross examined whether injuries caused were of firearm or not and further the injured persons have also not been examined in this case. No doubt, the evidence of PWs 1 to 4 is consistent on the point of firing made by the appellant Ramkunwar Bhagat, causing injuries on hand, leg and stomach of the informant Deodhari Bhagat and firing was made by appellant Paras Bhagat at Ganga Bhagat, causing injury on his right hand but in absence of examination of injured witnesses it certainly caused prejudice to the defence. Had they been examined the defence could have got a chance to cross examine them. Further documents brought on record by defence show that there was case and counter case and appellant also claimed possession over the land on the basis of sale deed and in such a situation non-examination of I.O., to my opinion, is also caused prejudice to the defence.

13. In such view of the matter, in spite of non-examination of



I.O., Doctor and injured witnesses the conviction of the appellants under Section 324 IPC only on the basis of evidence of other witnesses does not inspire confidence and benefit of doubt must go to the accused persons. The appellants are entitled to the benefit of doubt in this case.

14. Accordingly, this appeal is allowed. The impugned judgment and order are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.8.2018
Transmission Date	29.8.2018

