

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.140 of 2009

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PAPPU SINGH son of Shiv Prasad Singh, Resident of Village-Damodarpur
(Jigini) PS-Bhabua, Distt- Kaimur (Bhabua). Appellant/s

Versus

STATE OF BIHAR Respondent/s

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with

Criminal Appeal (SJ) No. 284 of 2009

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MUNNA @ MUNNA SINGH @ AWADHENDRA SINGH @
AWADHENDRA son of Ram Prasad Singh, Resident of Village-Damodarpur
(Jigini) PS-Bhabua, Distt- Kaimur (Bhabua). Appellant/s

Versus

STATE OF BIHAR Respondent/s

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Appearance :

(In Criminal Appeal (SJ) No. 140 of 2009)

For the Appellant/s : Mr. Baban Roy, Amicus Curiae

For the Respondent/s : Mr. S.A. Ahmad, APP

(In Criminal Appeal (SJ) No. 284 of 2009)

For the Appellant/s : Mr. Param Hans Singh, Amicus Curiae

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

18-12-2018

On repeated calls, none appears on behalf of appellants, on account thereof, Sri Baban Roy, as well as Sri Param Hans Singh, learned Advocates, who are present in the Court, have been requested to assist as an Amicus Curiae.

2. Both the appeals arise out from common judgment of conviction as well as order of sentence dated 10.02.2009, passed by Additional Sessions Judge-FTC-II, Kaimur, Bhabua in Sessions Trial No. 208/2000/38/2006 whereby and whereunder, appellants, Pappu Singh as well as Munna @ Munna Singh @ Awadhendra Singh @ Awadhendra have been found guilty for an offence punishable under Section 326/34



IPC and sentenced to undergo RI for 8 years as well as to pay fine of Rs. 5000/- in default thereof, to undergo RI for six months additionally, on account thereof, have been heard together and are being decided by a common judgment.

3. Sheo Murat Singh (PW-4) while was admitted at Bhabua Hospital on 02.07.1999 at about 11:00 AM disclosing therein that on the same day at about 8:00 AM gave his Fardbeyan while he was returning from Banaras and was in the way to his house, reached near his house, has seen co-villager, Pappu Singh engaged in plucking Jamun (black berry) from the tree standing over his Survey Plot No.368 whereupon, he forbade. Pappu Singh began to abuse which was resisted by him and on account thereof, Pappu Singh called his brothers. On his call, Munna Singh came armed with sixer (a kind of revolver), Kunda Singh @ Arvind Singh armed with double barrel gun followed with Jamuna Singh came. On incitement of Jamuna Singh, Munna Singh fired but as he missed the aim, luckily he got saved. Then Pappu Singh lifted bamboo and with an intention to kill gave a blow over his head as a result of which, he sustained injury and fell down. Kunda Singh @ Arvind Singh and Munna Singh came near him and out of them, Munna Singh fired causing injury over his thigh. On his alarm as well as



hearing sound of firing, so many persons including female and male rushed, seeing whom, the accused persons fled away. It has further been stated that accused persons were adamant since before to commit his murder.

4. Bhabua PS Case No. 169/1999 was registered followed with an investigation as well as submission of charge-sheet, facilitating the trial, meeting with ultimate result, the subject matter of these appeals.

5. Defence case, as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is of complete denial. It has further been pleaded that informant happens to be a dreaded person and in the aforesaid background, might have sustained injuries at different place in different manner by different persons but on account of prevailing animosity, got the appellants involved with false and frivolous allegations. Furthermore, witnesses as well as documents have also been examined/exhibited in support thereto.

6. The prosecution, in order to substantiate its case, has examined altogether seven PWs who are PW-1, Sheo Pujan Singh PW-2, Chanda Devi, PW-3, Angad Singh, PW-4, Sheo Murat Singh, PW-5, Dr. Kaushal Kishore Pd. Srivastava, PW-6,



Surendra Lal Deo and PW-7, Harseva Nand Singh as well as has also exhibited Ext-1, Fard-e-beyan , Ext-2, X-ray report, Ext-3, Discharge Slip, Ext-4 Series, injury report/supplementary injury report, Ext-5, Seizure list, Ext-6, Formal FIR. X-ray plate has been made material exhibit no.1. In likewise manner, DW-1, Birendra Singh has been examined on behalf of appellant. C.C of FIR of Bhabua PS Case No. 228/1998 has been made an exhibit-A.

7. Heard learned counsel for the appellant as well as learned APP.

8. Gone through the record. It is manifest from the lower court record that whosoever been examined in this case are the own family members, that means to say, PW-1 is brother of the informant, PW-2 is daughter of the informant, PW-3 is son and PW-4 is the informant himself. PW-5 is the doctor, PW-6 is the part I.O. and PW-7 is the formal witness. It is further evident that main I.O. has not been examined. The impact on account of non examination of the main I.O. would be seen later on. It is also evident from the record that PWs-1 and 2 have not claimed to be eyewitness of the occurrence rather they came to know about the occurrence as disclosed. Only PWs- 3 and 4 out of whom PW-4 is the victim himself are an eyewitness to the



occurrence. Before coming to their evidences, first of all, status of the informant is to be seen. At the end of defence, by examining DW-1, injury sustained by PW-4 (informant) has been admitted. Even then, the evidence of doctor (PW 5) is to be seen who had examined the victim on 02.07.1999 and found the following:-

1. An irregularly circular wound of 1.4 CM in diameter with inverted and tattooed margin, muscle and bone deep with cracking sound and a movement very painful, oozing fresh and slightly clotted blood, suspected fracture of bone underneath. X-ray advised and opinion reserved. Injury was caused by fire arm which may be pistol. Final opinion after receipt of X-ray.

2. Lacerated wound over right parietal, occipital region 2 ½" x ½" x scalp deep, obliquely placed, red colour fresh and clotted blood oozing out. Simple in nature caused by hard blunt substance which may be by lathi.

3. A bruise on left shoulder on the lateral aspect 2 ½" x 1 ½" redish in colour, simple in nature caused by hard and blunt substance. All the injuries might have caused within 4 to 6 hours. As per supplementary report (4/1), the injury no.1 has been found grievous in nature.



9. During cross-examination, nothing substantial has been found save and except under para-5 whereunder he has stated that he had not mentioned on which part of body injury no.1 was found. However, on account of examination of DW-1, the same goes out of controversy. Furthermore, presence of tattooing is another circumstance which suggests firing by assailant from close proximity.

10. PW-4 is the victim himself who has stated that on the alleged date and time of occurrence, while he was coming to his house from Banaras and reached at his orchard, he found Pappu Singh over his Jamun Tree (black berry) and was engaged in plucking Jamuns which was forbidden by him. Pappu Singh began to abuse. On his protest, he called his brothers whereupon, Munna Singh, Kunda Singh and Jamuna Singh came and at the instance of Jamuna, Munna shot at. Fortunately, the aim missed. He rushed therefrom in order to save his life but was encircled by the accused persons after covering 100 yards, and then, Pappu Singh gave bamboo blow over his head as a result of which, he fell down. Kunda Singh began to assault him with lathi. Then had stated that Munna Singh fired causing injury over his thigh. On hearing sound of firing as well as his alarm, villagers collected, seeing whom, the



accused persons fled away. His son as well as villagers lifted him to hospital on a jeep where police came and recorded his Fardbeyan over which he had put his signature (exhibited). He has also exhibited X-ray plate, X-ray report etc. Then he was referred to BHU wherefrom he was referred to Military Hospital (being retired military personnel) where he remained for about two months. Exhibited the discharge slip. Identified the accused.

11. During cross-examination at para-6, he has stated that he had gone to the place of his Sala residing at Banaras two days prior to the occurrence. In para-7 and 8, he has admitted presence of case having been instituted at the end of Mokhtar Paswan wherein accused persons were witness but the same ended on account of compromise having arrived at amongst them. Another case at the instance of Ram Gahan Koiri also ended on the basis of compromise. He has also stated that while he was coming from Jammu, he was caught hold at Mughalsarai on the pretext of carrying wine but was subsequently, released. In para-12, he has stated that his orchard is visible from the road. If any body will climb over the tree of his orchard, then will be seen. Youngsters were eating jamun falling over the ground. His mother was also present there. Small children were also there. Wife of Harangi Kushwaha was



also there. He was not assaulted in the orchard. First firing was made in the orchard. In the orchard, there was no other than Pappu Singh, present since before. Other accused came on call raised by Pappu Singh. While they were outside the orchard, fired but fortunately, he escaped. Pappu was not armed while he was in the orchard. In para-13, he has stated that firing was made from plot no. 368. Then has said that at northern-southern side of the boundary, there lies one another plot. In para-14, he has stated that in the field of Sikki Singh, he was shot at which happens to be at the distance of 100 meter from the place where he was firstly, aimed at. He has further stated that when he fell down then thereafter, he was shot at. Firing was made from close range but he is unable to disclose the exact distance. First of all, he shouted and then thereafter, he became unconscious. He was assaulted by Lathi firstly, and then he was shot at. Even thereafter, he was assaulted. In paragraphs-15, 16, 17, there happens to be cross-examination with regard to lifting to Sadar Hospital, Bhabua and then BHU and to Lucknow. Then has denied the suggestion that while he was in service, he always created ruckus in the village whenever he used to visit. In para-19, he has stated that blood had fallen at the P.O.. Then has denied the suggestion that his sons were not present in the



village. Then has denied the suggestion that no occurrence took place in a manner suggested by him and at the place of occurrence as disclosed by him. He also denied the suggestion that this case has been falsely instituted. It is further denied that at the time of occurrence, Jamuna Singh had sustained fracture whereupon, he was not at all in a position to move.

12. PW-3 is one of the sons of the informant who during examination-in-chief has stated that on the alleged date and time of occurrence, he had gone along with co-villagers near Sati Mai Asthan to play. At that very time, his father was returning from Banaras. He heard voice of his father scolding coming out from the orchard whereupon, he rushed there. While he was in the midst of way, he had seen his father chiding Pappu Singh who was engaged in plucking black berry. Thereafter, Pappu Singh called his brothers whereupon, Munna Singh armed with pistol, Kunda and Jamuna armed with Lathi came. Just after coming, Munna fired. On account of missing of aim, his father escaped. Then his father began to flee followed by the accused persons and during course thereof, Pappu Singh assaulted him with bamboo over his head as a result of which, his father fell down. Kunda assaulted his father with Lathi and during midst thereof, Munna shot at causing injury over his



thigh. His father began to shout. The persons who were present in the surroundings came whereupon, the accused persons fled away. Then thereafter, they lifted his father and took him to Sadar Hospital, Bhabua where he was treated. Police came and recorded his Fardbeyan. From Sadar Hospital, Bhabua, he was referred to BHU and then Military Hospital, Lucknow. Identified the accused. During cross-examination at para-5, he has stated that while Pappu Singh was engaged in plucking Jamun, he had got no weapon in his possession. He has further stated that only Maar-peet took place in the orchard. He had seen his father fleeing. Further, he heard the sound of altercation of his father along with Pappu Singh. In para-6, he has stated that the occurrence took place in the field of Muktesh Singh. He has shown boudary of the place of occurrence as North-Gali, South-Muktesh Singh and then Gali, East-Peepal Tree and then his house, West-house of one another person. He has further stated that at the time when Fardbeyan of his father was being recorded, he was not present. Gautam Singh and his elder mother had accompanied his father. Then at para-6, there happens to be contradiction whereunder attention has been drawn towards his previous statement that at the time of occurrence, he was at his house. He had further stated at para-7,



that the villagers of Jigini Village as well as of his village, Damodarpur arrived. In para-8, he has stated that accused persons have also abused him. He is not remembering whether the blood had fallen over the ground or not. Blood had fallen over full-pant which his father was wearing at the time of occurrence. In para-9, he has stated that he has got no dispute with the accused persons but they were jealous of his father. He has further admitted presence of case instituted by members of Dusadh and a counter case at their end. He shown ignorance whether the accused persons were witness in this case against his father.

13. PW-1 is the brother of the informant who at the relevant time had gone to bring grass, and after coming therefrom, his niece, Chanda, daughter of informant (PW 2), had disclosed regarding the occurrence. PW-2 is Chanda Devi who during course of her examination-in-chief has stated that she had seen Munna Singh, Pappu Singh and Kunda Singh out of whom Munna was armed with fire arm, Pappu and Kunda were armed with Lathi going. Subsequently thereof, she heard sound of firing of two rounds. She also heard sound of *Bachao-Bachao* and then thereafter, she had gone to PO where found her father in an injured condition having fire arm injury over his



thigh. On query, disclosed regarding the occurrence (detailed). At that very time, his brother, Gautam, Angad along with villagers were present since before. Then she detailed the event whatever been stated by the victim. During cross-examination at para-3, there happens to be contradiction. In para-5, she has stated that she had inquired from her father as to how he has sustained injury whereupon, he disclosed the event. When he reached at the PO, then her elder mother, grand-mother, one Phuphera Bhai (cousin brother) and others came. Then had denied the suggestion that no such kind of occurrence has taken place.

14. DW-1 has stated that he had seen at the morning hour Sheo Murat Singh lying in an injured condition. He made query whereupon he disclosed that he had not identified the assailant. Then thereafter, he brought the informant at Bus Stand and then to Bhabua. It is further disclosed by him that informant is well versed in the locality as Sipahiji and further, he used to provide services after realizing hefty amount. Furthermore, Ext-A, certified copy of Bhabua PS Case No. 228/98 instituted at the end of Mokhtar Paswan has also been exhibited.

15. From perusal of the evidence of the PWs, DW-1, it is crystal clear that injury over the person of PW-4 is not a



disputed question also substantiated by PW-5, the doctor. Furthermore, it is also evident that status of PWs-1, 2 are not to be eyewitness to the occurrence, did not attract any sort of remark. So far status of PW-3 is concern, he could not be, more particularly, in the background of nature of evidence having been deposed in consonance with the evidence of the informant, PW-4 himself. That being so, the only evidence that remains is of PW-4. Apart from his examination-in-chief, he has been cross-examined at length under para-12, 13, 14 over the occurrence and after analyzing the same, it is apparent that he stood the test persistently.

16. In order to prove an offence punishable under Section 326 IPC, the prosecution has to the following ingredients:-

i) Grievous hurt as prescribed under Section 320 must be caused

ii) The offender intended or know himself to be like to cause grievous hurt

iii) The hurt must be caused voluntarily,

iv) The hurt must be caused by dangerous weapon,

From the evidence, it is manifest that injured had sustained grievous injury that too, while he was lying on being



struck by bamboo, by means of fire arm, violently.

17. So far propriety of evidence of injured is concerned, in *In Chandrasekar and another vs. State of Tamil Nadu reported in 2017(4) P.L.J.R. 220 (SC)*, it has been held:-

“10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 observing as follows:
“28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.”

18. Now coming to another aspect whether evidence of single witness would be suffice to attract



conviction does not happen to be a puzzle, more particularly, taking into account, Section 134 of the Evidence Act.

19. In *State of U.P. v. Krishna Master* as reported in *(2010) 12 SCC 324*, it has been held as follows:-

“47. It is well known principal of law that reliance can be placed on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. The courts are concerned with the merit and the statement of a particular witness and not at all concerned with the number of witnesses examined by the prosecution. The time-honoured rule of appreciating evidence is that it has to be weighed and not counted. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, where,



the court finds that the testimony of solitary witness is neither wholly reliable nor wholly unreliable, it may, in given set of facts, seek corroboration but to disbelieve reliable testimony of a solitary witness on the ground that others have not been examined is to do complete injustice to the prosecution”.

20. That being so, judgment of conviction and sentence recorded by the learned lower court, is hereby, upheld. Though the learned lower court had acquitted, Kunda Singh @ Arvind Singh but the manner whereunder, he has been acquitted as assigned under para-15 of the judgment impugned, ought not to be, more particularly, in the background of the presence of application of Section 34 of the IPC. However, would not cast any kind of infirmity over the prosecution version.

21. Accordingly, both these appeals are dismissed. Appellants are on bail, their bail bonds are, hereby, cancelled directing them to surrender before the leaned lower court within a fortnight to serve out the remaining part of sentence, failing which, the learned lower court will proceed against them in accordance with law.



22. The first and last pages of the instant judgment
be handed over to the learned Amicus Curiae.

(Aditya Kumar Trivedi, J)

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Transmission Date	

