

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.511 of 2005

Arising Out of PS.Case No. -0 Year- null Thana -null District- NAWADA

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1. Ishwari Singh son of late Bangali Singh
2. Naresh Singh son of Ishwari Singh
3. Arjun Singh son of Ishwari Singh
4. Rajendra Singh son of Ishwari Singh
5. Bholi Singh son of Ishwari Singh

All resident of village Akauna Dih, P.S. Muffasil, District Nawada

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Bhavesh Kumar, Adv.

For the Respondent : Mr. Binod Bihari Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 02-02-2018

1. Appellant nos. 2 and 5 have been convicted under Section 307 of the Indian Penal Code (hereinafter to be referred as ‘the IPC’) and appellant nos.1, 3 and 4 have been convicted under Sections 307/149 of the Indian Penal Code and Section 27 of the Arms Act. All the appellants have been sentenced to undergo RI for five years under the aforesaid Sections and appellant nos. 3 has been convicted under Sections 3/4 of the Explosive Substance Act and sentence to undergo R.I. for 5 years and appellant nos. 2, 4, and 5 have been convicted under Sections 27 of the Arms Act and sentence to undergo RI for three years.

2. At the very outset it is relevant to mention here that an



I.A. has been filed by the appellants, which is kept as flag 'A' including the Death Certificate of Appellant No.1, who died during the pendency of the appeal on 8.8.2016 and the death certificate has been annexed as Annexure 3. In such view of the matter, the appeal against appellants no.1 stands abated.

3. The prosecution story as appears from the fardbeyan of Basant Kumar (P.W.9) recorded by the Officer Incharge S.I. Sri Amar Nath Thakur at Sadar Hospital , Nawada on 27.11.2000 in short is that at 07.30 A.M. while the informant was ploughing his field, the appellants Naresh Singh, Bholi Singh came armed with Rifle, Arjun Singh armed with Bomb, Rajo Singh armed with country-made Pistol and Ishwari Singh armed with *Lathi* and those appellants/accused persons started abusing them that as to why they are ploughing the field and thereafter on the order of Ishwari Singh, the accused persons also started assaulting him and appellant Naresh Singh fired on his father, which hit on his cheek; due to which he fell down on the road and thereafter appellant Bholi Singh fired on his father causing injury at his above eye brow and when he went to save his father, Arbind Singh threw a bomb, which hit his father and Ishwari Singh assaulted by *lathi* , due to which he sustained fracture injury in his hand. On the basis of aforesaid fardbeyan, Nawada Muffasil P.S.Case No.115 of 2000 was registered and after investigation, the Police submitted charge-sheet against the accused



persons, accordingly, the cognizance was taken and the case was committed to the court of Session and it ultimately it came to the file of Sri Vijay Shankar Pathak, Additional District and Sessions Judge (Fast Track Court-III), Nawada.

4. During the trial, altogether 13 witnesses have been examined on behalf of the prosecution , they are : P.W.1 Darshan Yadav, P.W.2 Kedar Yadav, P.W.3 Sanjay Yadav, P.W.4 Arun Yadav, P.W.5 Ashok Yadav, P.W. 6, Dilip Yadav, P.W.7 Nagina Prasad, P.W.8 Darogi Yadav (injured and father of the informant), P.W.9 Basant Kumar (informant) , P.W.10 Dr. Ram Chandra Prasad, P.W.11 Jay Prakash Tiwari, P.W.12 Ram Jatan Yadav, P.W. 13 Md. Islam.

5. Apart from the aforesaid evidence, following ocular and documentary evidence have been brought on record by the prosecution, and they are – Ext. 1 Fardbeyan, 2 to 2/2 injury report of Basant Kumar (P.W.9), Darogi Yadav (P.W.8) and Dilip Yadav (P.W.6), Ext. 3 formal FIR, Ext. 4 seizure list and signature of P.W.12 on the seizure list, Ext.5 and 6 are sanction order, Ext.7 order in Case No.2909 of 2001 passed in a proceeding under Section 144 Cr.P.C. in the case of Darogi Yadav Vrs. Bholi Singh, Ext. 8 and 8/1 are the reports of the Forensic Science Laboratory and Ext.9 is the order of the Revenue Officer dated 16.4.2005.

6. It further appears that on behalf of the defence also



altogether seven witnesses have been examined and they are D.W.1 Amrendra Kumar, D.W.2 Rameshwar Paswan, D.W.3 Ramdhani Manjhi, D.w.4 Phutun Manjhi, D.W. 5 Krishnadeo Singh, D.W.6 Amrendra Kumar, D.W.7 Ambika Prasad.

7. As per the documentary evidences, following documents have been filed on behalf of the defence and they are Ext. 'A' signature of appellant Ishwari Singh on Mufassil P.S.Case No.116 of 2000, Ext. 'B' copy of fardbeyan of Mufassil P.S.Case No.116 of 2000, Ext. 'C' copy of judgment of S.D.J.M. dated 23.3.1996 in which father of the informant was convicted along with others, Ext. 'C/1' copy of judgment of Sri A.K. Pathak, Judicial Magistrate, Nawada dated 28.6.1995 in which also appellant/father of the informant and others were convicted , Ext. 'D' copy of formal FIR of Muffasil P.S.Case No.116 of 2000, Ext. 'D/1' signature of the informant on the certified copy of Muffasil P.S.Caase No.81 of 2002, Ext. 'D/2' certified copy of Muffasil P.S.Case no.104 of 2002, Ext. 'D/3' certified copy of Muffasil P.S.Case no.23 of 2002, Ext. 'D/4' certified copy of Muffasil P.S.Case No.54 of 2002, Ext. 'D/5' certified copy of complaint case no.449 of 2002, Ext. D/6 certified copy of Title Suit No.108 of 2001, Ext. 'E' certified copy of Khatiyani of Khata No.204, Ext.F certified copy of chirkut dated 1.11.2000, Ext. 'G' order dated 31.7.2002 and 7.8.2002 passed in proceeding under Section 144 Cr.P.C., Ext. 'H' copy of order passed



in a proceeding under Section 145 of Cr.P.C., Ext. 'I' injury report of Ishwari Singh, Ext. 'I/1' injury report of Naresh Singh, Ext. 'I/2' injury report of Arjun Singh, Ext. 'I/3' injury report of Rajendra Singh and Ext. 'J' copy of *Hukmnana*.

8. Defence of the appellants/accused persons is that no such occurrence has taken place rather the informant and his family members tried to dispossess the appellants from the land in dispute and assaulted them, due to which they have received injuries and in order to save their skin, the present false and concocted case has been lodged against them.

9. Learned trial court considering the entire evidence available on record has convicted the appellant No.2 and 5 under Section 307 of the IPC and other appellants have been convicted under Section 307/149 of the IPC and also convicted the appellant nos. 2, 4 and 5 under Section 27 of the Arms Act and appellant no.3 under Section 3/4 of Explosive Substance Act.

10. The present appeal has been preferred against the aforesaid judgment and order.

11. Contention of the learned counsel for the appellants is that the evidences available on the record clearly show that the land in dispute was in possession of the appellant Ishwari Singh and his family members and the informant and his family members tried to dispossess them and they also assaulted them,



causing injury to them, for that a counter case has also been filed and the injury report is also available on the record as Ext. I to I/3 and the I.O. has also found Biogas plant, hut and plantation of trees of appellant no.1 over the land in dispute and evidence of I.O. shows that the witnesses have also stated before him that the appellants were in possession over the land since long and the defence witnesses have also stated so. Apart from that the evidence of the witnesses also shows that just beside the land in dispute, there is house of the appellant Ishwari Singh and the house of the informant is away from the land in dispute. As such all the aforesaid facts clearly show that the informant and others are aggressor and they have assaulted the appellants as well as no explanation has been given by the prosecution about the injuries caused to the person of the appellants' side and the evidence of the I.O. also discloses that the appellants' side has also received injuries and he has recorded counter case lodged by the appellants also just after recording the statement of the informant in the present case and he has seen the appellants also in the hospital but no explanation has been given about this, as such it clearly shows that the prosecutions are suppressing the material facts and no such occurrence has taken place, hence, the prosecution has failed to prove the manner of occurrence beyond all reasonable doubts.

12. Further submission of the learned counsel for the



State is that though it is alleged that pellets and remaining of the bomb have been seized and sent for examination to the Forensic Science Laboratory but the evidence of the I.O. itself shows that first the articles which were sent to the F.S.L. had been returned as it was not properly sealed and there is nothing available on the record to show that as to where those articles were kept and whether they had been kept properly or not and further no evidence has also been brought before the court. In the aforesaid situation, it can not be said with certainty that those articles which have been sealed and articles which have been examined by the FSL are the same which have been seized by the I.O. and all these infirmities does not rule out the possibility of tempering with the seized articles. It has been contended that in view of the aforesaid inconsistencies and discrepancies, the impugned judgment suffers from infirmities and it is not sustainable in the eye of law and contra the learned counsel for the State has defended the judgment on the ground that witnesses are consistent on the point of assault by the appellants and also causing injuries to the informant and the Doctor has also found aforesaid injuries on the person of the informant, apart from the fracture on his left hand caused by the appellant Ishwari Singh, as such the evidences are consistent and further submission of the learned counsel for the State is that even if it is presumed that the appellants have assaulted in their self defence, as the injuries on the person of



the appellants are caused by hard and blunt substance whereas the injuries on the person of the informant is of gun shot and bomb injuries hence, the impugned judgment is free from infirmities and also just and proper and it does not require any interference.

13. In the back ground of the rival contention on examination of the evidence it appears that P.W.9 (Basant Kumar) is the informant in this case and he has stated in his evidence that while he was working in his field and his father was ploughing the land, the accused persons came and abused his father and also the accused persons came variously with arm and started abusing his father and on the order of Ishwari Singh, Naresh Singh fired from Rifle causing injury on his left cheek and Bholi Singh fired with countrymade pistol causing injury above the eye brow and thereafter his father fell down on the road and Arjun Singh threw a bomb, which hit his father on leg and thereafter Ishwari Singh assaulted his father by *lathi* causing fracture injury in his fore arm and when he and his brother went to save him, they were also assaulted by the accused persons. It appears that this witness has also supported the manner of occurrence as alleged in the FIR.

14. P.W. 8 is the injured and in his evidence he has also stated that while he was ploughing his field with his sons, all the accused persons came variously arm and started abusing him and they tried to remove the *Hal* and when he did not obey his direction



he was assaulted by the accused person and on the direction of Ishwari Singh, Naresh Singh fired with Rifle which hit on his cheek, on which he became unconscious and after two days he became conscious. He also received another gun short injury by appellant Bhola Singh and Arjun Singh and there is also a fracture injury caused by Ishwari Singh.

15. P.Ws. 1 to 7 claim to be eye witnesses of the occurrence and they have also supported the prosecution case as per the manner of occurrence is concerned.

16. P.W.10 is the Doctor who has examined the injured Darogi Yadav (P.W.8) and found following injuries :

- I. *One bullet injury on the left face having size 2"X2"X 2 ½" facial bone fractured and metallic bullet lodged in temporal bone, which was extracted through the entrance wound by Dr. Kamal Prasad Singh, the bullet was sealed to be handed over to the police with injury report.*
- II. *A punctured wound on the left eye brow ¼" X ¼" X 1".*
- III. *A lacerated wound on the left ear ¼" X ¼" with bleeding.*
- IV. *Abrasion on the left elbow ½" X ½" with fracture of the condyle of humerus.*
- V. *Bruising and staining of the left leg with the explosive dust 9" X 4".*

X-ray of head and face showing a bullet under the temporal bone of the face.

2. Age of the injuries- within 12 hours.

Mark of identification- Future scar of injury no.1.

3. Nature of the wounds-

Injury no.1 –Grievous caused by fire arm.

Injury no.2 and 3 are simple

Injury no.4- grievous

Injury no.5 simple caused by blast

Injury no.2, 3 and 4 were caused by hard and blunt substance such as lathi."



He has also examined Basant Kumar (P.W.9) on the same day and found following injuries :

Injury no.1 lacerated wound on left ear. Size ¼" X ¼" X ¼"

Injury No.2 lacerated wound on the left side of the head in front of ear Size ¼" X 1/6" X 1/6".

Injury no.3- Bruise on left fore arm size 1" X 1".

Injury no.4- Swelling over left side of head on hairy region 1" X 1".

Al the above injuries were caused by hard and blunt substance. May be by lathi.

His evidence further discloses that he has also examined Dilip Yadav and found following injuries :

(i) Bruise with swelling on the left wrist 1" X 1".

(ii) Abrasion on the left side of the chest.

Both injuries were caused by hard blunt substance may be by lathi. The injuries were simple in nature caused within 24 hours.

17. These aforesaid injury reports were proved by the Doctor as Ext. 2 to 2/2. The Doctor has been cross examined at length and he has stated in his evidence in para 9 that he can not say as to whether the injury of P.W.8 has been caused by the fire arm or Rifle . In para 10 he has also stated that injury no.1 was not of such a nature which may caused as he found of not of such a nature. Similarly injury nos. 3, 4, and 5 were dangers to life. His evidence in para 11 further shows that punctured wound as mentioned in injury no.2 can not be caused by fire arm. Punctured wound can be caused by spear or any pointed weapon. Injury No.2 can not be caused by brick



batting but can be caused by pointed stones. Injury no.3 and 4 can be caused by fall and also by brick batting. If two persons fought together, such injury may be caused. His evidence also shows that he had not find any charring or blackening of skin in injury no.(v). Charring and blacking of skin is possible only when such injury is caused from close distance. Charring and blackening is possible on the power of explosive substance. His evidence further shows in para no.13 that in injury no.1 of Darogi Yadav he had not found any blackening scorching, tattooing around injury no.1. He has also stated in para 15 that injury no.1 to 4 of Basant Kumar can be caused by fall, mutual fist and by brick and stones. Injury no.1 and 2 of Dilip Yadav can be caused by fall, mutual fight or by brick and stones.

18. The Doctor has found injuries over the person of the injured Darogi Yadav of the fire arm as well as explosive substance but it appears from the evidence of P.W.8 that the appellants had fired on him causing injury on his cheek and another injury above eye brow but it appears from the evidence of the Doctor that he has found only one gun shot injury on the person of Darogi Yadav. So far other injuries over the eye brow is concerned. The Doctor has stated that this can not be gun shot injury and it may be by pierce or any sharp pointed weapon. Further it appears from his evidence that he has found bomb injury on the leg of Darogi Yadav. It appears from the evidence that they came and after altercation they



fired and in such a situation it can not be said that they fired from long distance.

19. It further appears from perusal of the evidence, as stated above, that all the witnesses have admitted about the counter case lodged by the appellants with regard to occurrence on the same day and time on informant, his father and brothers.

20. I.O. (P.W.11) is the Investigating Officer and his evidence discloses that the house of the appellant Ishwari Singh is west to the place of occurrence. His evidence in para 8 discloses that he has visited the place of occurrence at 8.35 P.M. and came to know that there was *mar-pit* and firing between the family members of Darogi Yadav and his family and Ishwari Singh and his family with respect to the land in dispute and para 9 of his evidence discloses that he has recorded fardbeyan of Basant Kumar bearing Case no.115 of 2000 and recorded fardbeyan of Ishwari Singh and registered Case No.116 of 2000. His evidence in para 10 also shows that he visited hospital and saw Darogi Yadav, Rajo and Ishwari admitted there. His evidence further discloses that Naresh Singh and Ishwari Singh were discharged but the injured Arjun Singh and Bhola Singh were under treatment and they were admitted. His evidence also discloses in para 11 that Basant Kumar and Dilip Yadav left from the hospital on their own sweet-will and his evidence also shows that Naresh Singh and Ishwari Singh were arrested from the hospital itself. The above



fact clearly discloses that there was a counter case between the parties with respect to occurrence on the same day and time. His evidence in para 15 further discloses that adjacent to north of the land in dispute, there is hut , biogas, trees of guava and *seesam* of the Ishwari Singh. His evidence further discloses that he has not found sowing of wheat on the land in dispute and the informant had not produced any paper to him with respect to land in dispute. Evidence of I.O. further shows that P.W.1 has not stated before him regarding the manner of occurrence, as stated in his evidence, as the I.O. has also stated that Darogi Yadav has stated before him that Basant Kumar and Dilip Yadav were present and Ishwari Singh has assaulted to him and to his brother and Darogi Yadav has not stated before him that he received injury on left cheek and fracture injury due to assault of Ishwari Singh, as such it appears that there is omission and contradiction in the evidence of witness P.W.1 and P.W.8 from their earlier statement before the police. It also appears from perusal of the evidence of the witnesses that there is consistent evidence about the fact that they were ploughing the field and sowing wheat in the field but from the evidence of the I.O. that does not appear to be believable. It also appears from the evidence of the witnesses that the place of occurrence appears to be road adjacent to the land in dispute as he was found injured at road. The above facts create a doubt about manner of occurrence as alleged by prosecution.



21. From the evidence of cross examination of P.W.8 it appears that he became unconscious after receiving gun shot injury on his cheek while he was ploughing field but in his cross examination in para 19 he has stated that he received gun shot injuries while he was on the road, as such there is omission and contradiction in his statement and his evidence is self-contradictory. Further so far P.W.3 is concerned, he has admitted in his evidence that he was also accused in the counter case lodged by the appellant Ishwari Singh and it further appears that Sanjay Yadav is the relative of Bhagiya Devi from whom the appellant claims to have purchased the part of the land. Besides that the evidence of P.W.9 who is informant of the case also shows that on the day of occurrence, he received injuries as the appellant stopped him from ploughing the land which they had purchased in the year 2000 and it is relevant to mention her that the occurrence is also of the year, 2000. His evidence also shows that his father lives in village and other accused Sanjay Yadav (P.W. 3) is the resident of other village. Witnesses have been given a suggestion that the biogas, and plantation of trees of appellant Ishwari Singh were situated on the land in dispute though they have denied the suggestion. His evidence further shows that he had purchased 11 dismal of land of the plot and the occurrence took place in 38 decimal of land.

22. The defence has also adduced altogether nine



witnesses in support of their defence case and they have categorically stated that the land in dispute was in possession of the appellant and from the beginning they have been cultivating over the same and the aforesaid fact has been noticed by the learned trial court. Apart from that in this case there is a counter version also which is Ext. A and B', from which it appear that near his house there is *garmajarua* land over which appellants' hut, Biogas plant and some plantation of *Sheeshams* trees were there and there was some *parati* land and he had planted paddy on the day of occurrence and the informant Darogi Yadav (P.W.9), Arun Yadav, (P.W.4), Dilip Yadav (P.W.6), Ashok Yadav (P.W.5) Darshan Yadav (P.W.1) and Sanjay Yadav (P.W.3) and others came with arms and started ploughing his field and when they protested them from ploughing the land, they started firing and they have also assaulted him by *lathi* causing severe injury to his sons and in support of his contention , injury report has also been brought on record as Ext.I to I/4 that shows that the appellant Ishwari Singh received five injuries on his person, appellant Naresh Singh received altogether eight injuries on his person, appellant Arjun Singh has received altogether three injures on his person and appellate Rajo Singh has received altogether four injuries on his person. The evidence discussed above clearly suggests that the defence story is more probable and the I.O. has also not found any sowing of wheat over the land in dispute as claimed by the prosecution side and the



I.O. has also found bio gas plant, '*Hodge*' and hut over the land in dispute. Learned trial court has find it a case of free fight and convicted the appellants under Section 307 with aid of Section 149 of the IPC but evidence discussed above probablise that the appellants were in possession over the land and the informant and others after purchasing the land from Bhagiyaa Devi, came to plough the land and even according to the informant that land in dispute was not purchased land rather it was 38 decimal over which they came to plough and that is different land , in such a situation it appears that the informant side is aggressor in this case. Further it appears that the informant side in spite of cross examination has tried to suppress the fact that the appellants have received any injury though the I.O. has also found them in injured condition when he went to record statement of the injured and at that time the appellants were also admitted in the hospital and these categorically shows that the prosecution is not coming with clean hands and trying to suppress the material facts.

23. As per the prosecution evidence P.W.9 Darogi Yadav has received two gun shot injuries, one gun shot injury is attributed to one Naresh Singh and though the prosecution claims that he has received another injury over the eye brow however, the same is falsified by the evidence of Doctor (P.W.10) and the injury over eyebrow is of sharp cutting weapon or of the some sharp pointed



weapon that is not a case of the prosecution and the Doctor has also not found blackening and tattooing mark on injury on the leg though the evidence available on the record suggests that P.W.8 was assaulted from close range.

24. It further appears from the evidence available on the record that the FSL has brought on the record to show that the remainings of the bomb which have been seized were of the bomb and the pellets recovered from the place of occurrence is also used pellets but the evidence of the I.O. itself shows that he had sent the same for examination by the FSL but the same was sent back as that was not properly sealed and in such a situation, authenticity of the articles which has been seized and examined by the FSL does not appear to be free from doubt and there is no special mark on the articles.

25. So far defence is concerned, it is well settled that it is not necessary that the defence has to prove its case with the same rigour as the prosecution is required to prove its case and it is sufficient, if the evidence succeeded in throwing reasonable doubt on the prosecution case, which is sufficient to enable the court to reject the prosecution version.

26. In the present case, as discussed above, the defence version regarding the genesis of the occurrence and manner of occurrence appears to be more probable.



27. No doubt there is evidence available on the record that shows that the appellant Naresh Singh fired on the cheek of cheek of Darogi Yadav (P.W.8), a pistol and a pellet were also recovered and P.W.9 has sustained bomb injuries also but the medical evidence also is contradictory to ocular evidence and that shows the prosecution version is also not free from the reasonable doubt on that ground also.

28. As discussed above, the genesis of the occurrence and the manner of occurrence has also not been proved beyond all shade of doubt and whole fact of the case shows that this is a case where it is not possible to disengage the truth from falsehood, to sift the grain from the chaff. The truth and falsehood are so inextricably missed together that it is difficult to separate them. Indeed, if one tries to do so, it will amount to reconstructing a new case for the prosecution which can not be done in a criminal case.

29. In view of inherent improbabilities, serious omissions and infirmities and another circumstances pointed out it appears that the prosecution has failed to prove the case against the appellants beyond all reasonable doubt and the same has not been considered by the learned trial court and most important point is non-explanation of injuries on the person of the accused by the prosecution has also not been considered by the learned trial court. In the result, the impugned judgment suffers from infirmities.



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

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

