

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.346 of 2015**

Arising Out of PS.Case No. -144 Year- 2002 Thana -SANGRAMPUR District- MUNGER

- =====
1. Kare Lal Mandal, son of Late Muni Lal Mandal
 2. Savita Mandal @ Sachida Mandal, son of Sri Matuki Mandal
 3. Dharmbir Mandal, son of Shasho Mandal
 4. Pankaj Mandal, son of Late Amin Mandal
 5. Matuki Mandal @ Matukdeo Mandal, son of Late Mahraj Mandal, all resident of village- Khaira Sangrampur, District- Munger

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjeev Ranjan-Advocate
 For the State : Mr. Z. Hoda-A.P.P.
 For the Informant : Mr. Nand Gopal Mishra-Advocate

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 06-03-2018**

Appellants, Kare Lal Mandal, Savita Mandal @ Sachida Mandal, Dharmbir Mandal, Pankaj Mandal and Matuki Mandal @ Matukdeo Mandal have been found guilty for an offence punishable under Section 307/ 149 of the I.P.C. and each one has been sentenced to undergo S.I. for seven years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for one month, additionally, under Section 324/ 149 of the I.P.C. and sentenced to undergo S.I. for three years, under Section 148 of the I.P.C. and sentenced to undergo S.I. for three years, under Section 27 of the Arms Act and sentenced to undergo S.I. for three years, Matuki



Mandal, additionally been found guilty for an offence punishable under Section 109 of the I.P.C. and sentenced to undergo S.I. for four years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, sentenced to undergo S.I. for one month, additionally, by the Additional Sessions Judge-5th, Munger in Sessions Case No.371 of 2003 vide judgment of conviction dated 15.06.2015 and order of sentence dated 18.06.2015.

2. PW-1, Patel Sharma, filed written report on 11.12.2002 at about 3.00 p.m. alleging inter alia that his land lies at village-Khaira Mauza. About six days before, he had harvested the paddy crop, which was being lifted today. At about 12.00 noon, Kare Lal Mandal, Sachida Mandal, Dharmbir Mandal, Pankaj Mandal, Matuki Mandal along with some unknown persons came from Khaira village. On an order of Matuki Mandal, they all began to fire indiscriminately with an intention to kill. Then had stated that Dharmbir, Sachida Mandal, Pankaj Mandal and Kare Lal Mandal fired from gun as a result of which, he sustained injury over his hand, back and buttock. They were firing indiscriminately. Anyhow, he ran there from, came to police station where is submitting written report.

3. On the basis of the aforesaid written report, Sangrampur P.S. Case No.143 of 2002 was registered followed with an investigation as well as submission of chargesheet facilitating the



trial meeting with the ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. There happens to be specific plea at their end that the land under dispute belongs to them, whereupon, on the alleged date and time of occurrence, prosecution party armed variously came, raided in order to dispossess and during course thereof, they used physical force fired as a result of which, informant sustained injury and for that, on the fard-bayan of Sushil Mandal, Sangrampur P. S. Case No.144 of 2002 has been registered. In order to substantiate the same, apart from ocular evidence, documentary evidence have also been placed.

5. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1, Patel Sharma, PW-2, Ram Khelawan Sharma, PW-3, Dinesh Sharma, PW-4, Bishundeo Sharma, PW-5, Dr. Shailesh Prasad Singh, PW-6, Nandeshwar Bajpayee and PW-7, Satya Narayan Yadav as well as had also exhibited viz. Exhibit-1, written report, Exhibits-2, 3, injury/ supplementary injury reports, Exhibit-4, rent receipt, Exhibit-5, petition dated 25.05.2002 filed before Sangrampur P.S., Exhibit-6, certified copy of decree of Title Suit No.52 of 1981, Exhibit-7, certified copy of sale deed dated 20.07.1912, Exhibit-8, certified copy



of sale deed dated 01.11.1956, marked M, X/1 for identification. Defence had also examined two DWs viz. DW-1, Dinesh Mandal and DW-2, Mahesh Yadav. Side by side, had also exhibited chargesheet of Sangrampur P. S. Case No.144 of 2002 as Exhibit-A, another chargesheet relating to Sangrampur P. S. Case No.11 of 1999 as Exhibit-A/1, F.I.R. of Case No.2M of 2006 Exhibit-B, order dated 02.09.1996 passed in Cr. Revision No.60 of 2003, Exhibit-B/1, order dated 11.08.2006 passed in Cr. Revision No.495 of 2002, Exhibit-B/2, signature affixed over petition filed in Title Suit No.85 of 2002, Exhibit-C, signature and writing of Sangrampur P. S. Case No.144 of 2002, Exhibit-D, Formal F.I.R. Exhibit-D/1, notice issued under Section 144 Cr.P.C. Exhibit-E.

6. It has been submitted on behalf of learned counsel for the appellants that from perusal of the judgment impugned, it is apparent that the learned lower Court had failed to appreciate the evidence in its right perspective and on account thereof, is fit to be set aside. In order to substantiate the same, it has been submitted that from evidence on record, it is apparent that appellants are also claiming the disputed land. In the aforesaid background, it was incumbent upon the learned lower Court to have properly identified in whose possession the place of occurrence happens to be, more particularly in the background of counter case and so, variation in the



testimony of the respective PWs over proper identification of the P.O., should be considered fatal to the prosecution, which the learned lower Court overlooked. In likewise manner, it has also been submitted that the nature of injuries over the person of PW-1 belies the narration of the prosecution and that being so, if it is taken into entirety, it completely changes the manner of occurrence as well as proper identification of the assailant much less inspires confidence regarding self-inflicted injuries, which the PW-1 had sustained while forcibly tried to dispossess the appellants. That being so, the judgment of conviction and sentence recorded by the learned lower Court is fit to be set aside.

7. On the other hand, learned Additional Public Prosecutor assisted by the learned counsel for the informant have submitted that slight variance in the testimony of the witnesses are but natural, whereupon appellants could not be allowed to take benefit. It has been submitted that when the evidence of relevant witnesses including objective finding of the I.O. is taken together, it is apparent that prosecution has succeeded in substantiating his case beyond all reasonable doubt identifying the appellants to be aggressor as well as author of the injury sustained by PW-1. So, the finding recorded by the learned lower Court happens to be just, legal and proper and is fit to be confirmed.



8. It is the basic principle of criminal jurisprudence that prosecution has to substantiate its case beyond all reasonable doubt and that happens to be under the garb of Section 101 of the Evidence Act. Because of the fact that witnesses are being examined after long delay. So, some sort of variance is found as natural consequence and unless and until, that goes to root of the prosecution case, the aforesaid variance could not be found adverse to prosecution. Moreover, it is also settled at rest that the evidence of the injured witness in ordinary course of nature would not subject to rejection as it suggests his presence at the P.O. unless and until, there happens to be cogent ground to discredit him. 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.”

9. Admittedly, PW-1 is the injured witness and that being so, his testimony is to be considered on priority basis than the other witnesses having adduced on behalf of prosecution. Before that, the evidence of PW-5 Dr. Shailesh Prasad Singh is to be taken note of. He had examined PW-1, Patel Sharma, on police requisition and found the following:-

1) Wound on right elbow with blacken shading ½” x ½”.

X-ray suggested.

2) Wound on left forearm with blacken shining ½” x ½”.

X-ray suggested.

3) Multiple wounds on back of the body with blackening and shining ten in number size ½” x ½”. X-ray suggested.

4) Wound on right buttock region with blackening and shining ½” x ½”.

5) Wound on left buttock region ½” x ½”.

All the injuries were found simple in nature and cause reserved, which was subsequently explained by him as caused by firearm. Although, no cross-examination has been made on behalf of defence on the factum of nature of injuries, but from the finding as disclosed hereinabove, it is evident that injuries were containing blackening whereupon its repercussion will be discussed at the later part of the judgment.

10. PW-1, injured had during his examination-in-chief



stated that on the alleged date at about 12.00 noon while he was at his field lying at village-Khaira engaged in getting the harvested paddy crop bundled as well as lifted to 'Khaliyan', all of a sudden, 10-12 persons armed with gun and musket came. He claimed identification of Matuki Mandal, Sachida Mandal, Kare Lal Mandal, Dharmbir Mandal and Pankaj Mandal out of them. On an order of Matuki Mandal to kill Patel Sharma, Sachida Mandal, Kare Lal Mandal, Dharmbir Mandal, Pankaj Mandal fired indiscriminately as a result of which, he sustained injuries over his both hand, back and buttock. After hearing sound of firing, he began to run and anyhow, came over canal and then, to Sangrampur Police Station where he had tendered written report (Exhibited). Then thereafter, he was sent to hospital where he was treated. Police came and recorded his further statement. Then had stated that the land from which paddy crop was harvested belongs to them, which was purchased by his grandfather and since after purchase, land is coming in their possession. It was purchased through Kewala in the Year 1912. They had planted paddy seedlings. The motive for occurrence has been shown as accused persons want to grab their land. With the aforesaid intention, accused persons have indulged thrice in an illegal activity. On 25.05.2002, while he had gone to cut bamboo, accused persons had abused him as well as demanded Rs.10,000/- in lieu of rangdari for that, he had made



complaint before the police, whereupon, a proceeding under Section 107 Cr.P.C. was drawn wherein accused persons were directed to execute bond. Subsequently thereof, on 15.06.2002, accused persons had cut away standing maize crop for that, Sangrampur P. S. Case No.52 of 2002 was registered and third one happens to be dated 10.11.2002, for that, Sangrampur P. S. Case No.133 of 2002 has been registered. Identified the accused. During cross-examination at Para-5, he had admitted presence of counter-case against him as well as his brother bearing Sangrampur P. S. Case No.144 of 2002. He had further admitted that in a proceeding under Section 107 Cr.P.C., he was also directed to execute bond, which was challenged at his behest in a Criminal Revision. In Paras-6, 7, 8, 9, 10, 11, 12, 13, 14, 15, there happens to be cross-examination relating to cases pending amongst them and lastly, admitted that 10-12 cases have been filed from his side and in likewise manner, accused persons have also instituted the case. So far Paras-15, 16, 17, 18 are concerned, that happens to be with regard to location of different villages as well as Sangrampur Police Station from Khaira village. In Para-19, he had stated that after occurrence, he along with his brother Dinesh Sharma had proceeded to Sangrampur through Rampur over Auto Rickshaw (Tempo). Para-19 is the cross-examination relating to his presence at the police station. Para-20 is with regard to meeting with the police officials. In



Para-21, he had stated that he had not shown P.O. to the I.O. Investigating Officer had not recorded statement of Dinesh in his presence. Then had denied the suggestion that Dinesh had not accompanied him to the police station, hospital. In Para-22, he had stated that place of occurrence comprises an area of 58 decimals, which is spread over under seven plots. Again corrected that it comprises of seven survey plot number and is spread over under three plots covering survey plot no.82 to 88. In Para-23, he had stated that his brother Dinesh has got half share in all the aforesaid survey plot numbers. Then had denied the suggestion that he had no correct information regarding the aforesaid plot numbers. In Para-24, he had disclosed the boundary of the P.O. as North-his land as well as Khaira village, South-his land and then, canal, East-Kailash Sharma and deity Kali Maa Asthan, West-road. It happens to be khesra no.82. Again in Paras-25, 26, 27, 28, 29, 30, there happens to be cross-examination relating to different cases including the counter-case. In Para-31, he had stated that he is unable to disclose the names of the labourers, who were engaged in tying the bundle as well as lifting the bundle to Khaliyan. In Para-32, he had stated that he along with his brother had lands at village-Khaira, Mania ka Saria, Srimatpur and Saighat Mauza. Then had stated that he has survey plot nos.82-88, 192-199 and 206-212 lying at village-Khaira. In Para-35, he had stated that he



had shown documents relating to the land. He had further stated that as soon as he was to twist towards southern direction seeing the accused persons, at that very moment, accused persons began to fire. When he twisted towards southern direction, at that very time, accused persons were at a distance of 60 yards. At that very moment, the labourers were around him in the field at a distance of 15-20 yards. Dinesh, Ram Khelawan and Vishundeo were sitting near the canal. In Paras-36, 37, there happens to be contradiction relating to written report as well as further statement. In Para-38, there happens to be suggestion that no occurrence as alleged by him had taken place rather the land under dispute belongs to Vilan Mandal, whereupon Pakka construction is standing having been constructed under Indira Awas Yojna. The aforesaid Vilan Mandal had purchased on 03.03.1952 and since thereafter, is coming over the land. On the alleged date and time of occurrence, the prosecution party forming an unlawful assembly in order to dispossess pounced upon, made indiscriminate firing and for that, Sangrampur P. S. Case No.144 of 2002 has been registered. Furthermore, in the background of land dispute, false cases have been instituted. On recall, he had exhibited the relevant applications having been given before the police at an earlier occasion.

11. PW-2 had claimed himself to be an eye witness on



the basis of having his presence at the canal where he was talking with Dinesh Sharma (PW-3) and on account thereof, substantiated the prosecution case. He had also deposed that accused persons were intending to dispossess Patel Sharma from the land under dispute. During cross-examination, he had admitted that he happens to be a law graduate. From Para-4, it is evident that he had deposed on behalf of Patel Sharma in two other cases also. In Para-8, he had stated that canal is within 1/4th kilometer from the P.O. In Para-9, he had stated that the land where bundle was being tied, has got an area of 15-20 kattha being in one plot having boundary North-land of Patel Sharma and then, Kali Sthan, South-Pakka culvert over canal, East-land of Patel Sharma and his gotia, West-road and then, drain. In Para-13, there happens to be contradiction as is apparent from Para-11 of PW-6.

12. PW-3 is Dinesh Sharma, own brother of PW-1. He had stated that on the alleged date and time of occurrence, he was sitting over canal and was looking after harvesting of paddy and during course thereof, had seen the occurrence, which he described in detail. He had further stated that the accused persons want to dispossess the informant from the land. From Paras-2, 3, 4, 5, 6, 7, 8, there happens to be admission at his end regarding series of cases having amongst the parties as well as presence of counter-case. In



Para-10, he had claimed that he is able to disclose the boundary of the P.O. and shown as East-field of Kailash Sharma, West-road, North-land of Kailash Sharma of village-Bhawangaon and South-field of Suman Sharma and then, canal. Total area of this plot happens to be 18-19 kattha. Again in Paras-12, 13, 14, there happens to be details of cases being fought amongst the parties. In Para-18, he had stated that canal lies 40-50 yards away from the P.O. land. He was sitting over canal having North face. Accused persons came from Southern side towards village-Khaira. In Para-21, he had stated that when he saw the accused persons, they were at a distance of 50 yards from Patel Sharma. Patel Sharma was standing having northern face. He had not instructed Patel to flee. He was far away from him. Then firing begin. Then, there happens to be cross-examination on other points. In Para-29, there happens to be contradiction and is found from Para-12 of the PW-6. Then had denied the suggestion that this case has been filed to save their skin from counter-case having instituted by the accused.

13. PW-4 had stated that while he was grazing his she-buffalo on canal, had seen Patel Sharma engaged in getting the bundles of harvested paddy carried to 'Khaliyan' and at that very time, accused so named as well as unknown came variously armed, who indulged in firing. He had shown Dharmbir Mandal and Matuki Mandal to be assailant of the informant. He had also disclosed that on



account of land dispute, informant was assaulted. In Para-10, he had admitted that accused persons are also claiming the land. In Para-11, he had further admitted that he along with informant Patel Sharma happens to be an accused in a murder case relating to Panchanand Singh.

14. PW-7 is the formal witness, who had exhibited the rent receipts.

15. PW-6 is the I.O., who had deposed that on the alleged date and time of occurrence, he was A.S.I. at Sangrampur P.S. After having been entrusted with the investigation of instant case by the Officer-in-Charge of the Sangrampur P.S., he proceeded there with, recorded further statement of the informant, inspected the place of occurrence, which happens to be a paddy field. He had further stated that paddy was planted by Patel Sharma. He had further stated that for harvesting of the paddy, both the parties have indulged in cross-firing. Paddy was harvested and for that, the occurrence took place, root of the paddy was visible. He had shown the boundary of the place of occurrence, North, there happens to be plot wherein paddy crop was standing. Road lies adjacent to it and then, Mai Asthan. South-culver over canal, East-open land, recorded statement of witnesses, procured injury report, X-ray report, supplementary injury report, supervision note from the Deputy Superintendent of



Police, then Superintendent of Police and then, submitted chargesheet after concluding the investigation. During cross-examination at Para-3, he had stated that he had not mentioned in the case diary the time of arrival at the P.O. In Para-6, he had further stated that neither informant nor accused produced relevant papers relating to the disputed land. He had not recorded statement of the persons whose land lies in the boundary of the P.O. land. Then had stated that he is not remembering whether he was also an Investigating Officer of the counter-case bearing Sangrampur P. S. Case No.144 of 2002. Again at Para-7, he had admitted that he was entrusted with the investigation of the counter-case even then, he had not arrested Patel Sharma. Then there happens to be contradiction relating to informant under Paras-8, 9, 10. PW-2 under Para-11. PW-3 under Para-12, PW-4 under Para-13. He had further stated that he had not seized the cloth nor was produced before him.

16. So far documentary evidence is concerned, it is evident from the evidence of PW-6 (I.O.) that neither informant nor accused had produced documents relating to the disputed land. However, the same have been filed during course of trial as such close scrutiny thereof, has been made to appreciate its relevancy. Exhibit-4 is the rent receipt of the Year 1994, having in name of Ghonghai Devi, wife of Late Bachcha Sharma, mother of the informant. When



the property was purchased by the grandfather of the informant, then how this rent receipt relating to survey plot no.82, having scribed on next page along with other survey plot numbers, though appears to be suspicious, but prosecution had not explained how got devolved upon Ghonghai Devi as at that very moment, female was not at all a coparcenary. Exhibit-6 is the certified copy of decree of Title Suit No.52 of 1981 dated 22.12.1990, wherein appellants were not party and so, how this decree will bind the appellants, is a matter of concern. Exhibit-7 is the certified copy of a deed dated 20.07.1912, wherefrom it is evident that the lands have been sold to Chunchun Mahto. From perusal of the survey plot number of the respective lands, it is evident that it lacks survey plot no.82. It was upon the prosecution to have substantiated whether plots mentioned therein is the C.S. Plot and the present plot no.82 happens to be R.S. Plot. Another document is of dated 01.11.1956, executed by Charandeo Singh and others in favour of Izori Mishra and others. When the Column-5 of the aforesaid document has been gone through, it is found that survey plot no.82 is there having total area 12 decimals having boundary North-Mohan Mandal, South-canal, East-Sheikh Enayat and West-road. Marked as X, X/1 for identification happens to be judgment and decree of Title Suit No.85 of 2002 dated 15.09.2011 as well as 24.09.2011 respectively that means to say, these documents



happen to be much after the alleged date of occurrence.

17. Defence had also examined DW-1 as well as DW-2, who are formal in nature. Furthermore, different order sheets relating to revision having been filed by the informant, plaint of Title Suit No.85 of 2002, F.I.R. of counter-case no.144 of 2002 have been made an exhibit of the record.

18. After having minute consideration of the evidence available on the record as well as critical analysis thereof, it is needless to say that there is an admission at the end of the prosecution with regard to prevailing animosity amongst them. Enmity is double edged sword, this happens to be a cause for false implication and in likewise manner, a cause for commission of the occurrence. Actually evidences have to be considered in order to search out the probability at either of two. When such exercise is being taken up, it is apparent that for the same occurrence, there happens to be case and counter-case. Now, coming to place of occurrence, it is apparent that there happens to be inconsistency amongst the witnesses, which is found duly exposed in consonance with the evidence of the I.O. PW-1 under Para-24 wherein he had disclosed the place of occurrence North-his land and then, village-Khaira, South-his land and then, canal, East-land of Kailash Sharma and Kali Mai, West-road while PW-2 at Para-9 had disclosed North-Patel Sharma and Kali Mai, South-Pakka



culvert over canal, East-land of Patel Sharma and his gotia, West-road and drain. PW-3 at Para-10 had shown P.O. as East-field of Kailash Sharma, West-road, North-land of Kailash Sharma of village-Masgaon, South-field of Suman Sharma and then, canal while PW-6 at Para-2 had disclosed North-plot then Mai Asthan, South-culvert over canal, East-open land. This inconsistency over proper identification of P.O. happens to be a major fault at the end of the prosecution and on account thereof, the presence of injuries over the person of PW-1 as found by PW-5, doctor did not find favourable to the prosecution as, place of occurrence is not at all found properly affixed. The informant had come up with a definite case, which is found duly exposed during course of deposition that while he was engaged in tying bundle of harvested crop standing over survey plot no.82 having proper identification by means of specific boundary, then in that circumstance, the aforesaid P.O. would have been properly identified in order to suggest as well as probablizing presence of informant and during course thereof, he became victim at the hand of the appellants. Apart from this, it is apparent from the evidence of the doctor that he had found blackening around the wound of entry and that suggest assault from close proximity, which is also found incredible in the background of evidence having at the end of the prosecution witnesses, who during course of examination-in-chief,



failed to disclose the distance in between informant as well as assailant at the time of firing. In likewise manner, presence of PW-2 and PW-3 have been shown as, being engaged in gossiping at canal, but neither PW-2 nor PW-3 even in their examination-in-chief supported that they were gossiping. That means to say, PW-2 and PW-3 had not substantiated presence of each other and thus, believed the PW-1 on that score and that also happens to be with regard to status of PW-4.

19. From the judgment impugned, it is crystal clear that the learned lower Court failed to properly scrutinize the evidence in consonance with regard to presence of blackening around the wound of entry as well as the inconsistency amongst the PWs including I.O. in proper identification of the P.O. As such, judgment impugned suffers from inherent deficiencies.

20. That being so, the judgment of conviction and sentence recorded by the learned lower Court is hereby set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liabilities.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	08.03.2018
Transmission Date	08.03.2018

