

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.16 of 2007**

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

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|-----------------------------------------------------------------------------------------------------------------|--------|--|------|------|------------|
| 1. Praveen Singh                                                                                                |        |  |      |      |            |
| 2. Arbind Singh, both sons of Dashrath Singh, residents of village Sondhi, P.S. Lakhisarai, District Lakhisarai |        |  |      |      |            |
|                                                                                                                 |        |  | .... | .... | Appellants |
|                                                                                                                 | Versus |  |      |      |            |
| The State of Bihar                                                                                              |        |  |      |      |            |
|                                                                                                                 |        |  | .... | .... | Respondent |
|                                                                                                                 | with   |  |      |      |            |

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**Criminal Appeal (SJ) No. 69 of 2007**

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

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| 1. Manoj Singh, son of Shree Singh                                                                                                     |        |  |      |      |            |
| 2. Anuj Singh @ Ramanuj Singh @ Seth Singh, son of Shree Singh, both residents of village Sondhi, P.S. Lakhisarai, District Lakhisarai |        |  |      |      |            |
|                                                                                                                                        |        |  | .... | .... | Appellants |
|                                                                                                                                        | Versus |  |      |      |            |
| The State of Bihar                                                                                                                     |        |  |      |      |            |
|                                                                                                                                        |        |  | .... | .... | Respondent |

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**Appearance :**

(In both the appeals)

For the Appellant/s :Mr. Bharat Lal with Mr. Rabindra Kumar, Advocates

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

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**

**ORAL JUDGMENT**

**Date: 16-01-2018**

Since both the appeals arise out of the common judgment they have been heard together and are being disposed of by this common judgment.

2. Both the appeals have been preferred against the judgment and order dated 22.12.2006 and 23.12.2006 respectively passed by Sri Sultan Muzaffar, the then Additional Sessions Judge, FTC-I, Lakhisarai in Sessions Case No.157 of 2001 whereby and whereunder the appellants Praveen Singh and Arbind Singh as well as appellants



Manoj Singh and Anuj Singh have been convicted for the offence under Sections 307/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for five years and fine of Rs.5000/- each with default clause, whereas appellants have also been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and fine of Rs.2000/- each with default clause and the sentences were directed to run concurrently.

3. Prosecution case, in short, initiated on the basis of fardbeyan of P.W.6, Kumar Nandan Singh (informant) recorded by police on 10.10.1999 at 8.30 P.M. at the Clinic of Dr. Himkar, is that while he was repairing the mud wall at 5.30 P.M. appellant Manoj Singh came and told him as to why he was repairing the wall and informant told him that the land belongs to him and appellant Manoj Singh went to his house and came back again along with appellant Anuj Singh armed with guns and appellants Praveen Singh and Arvind Singh also came there armed with bhala. Appellants Manoj Singh and Anuj Singh fired at the informant causing injuries to his left leg and right arm and fell down. Thereafter appellants Praveen Singh and Arvind Singh assaulted the informant by bhala. Further case of the prosecution is that on hulla, Niranjana Singh, Janardan, Ramesh Singh, Dablu Singh, Gauri Shankar and other villagers came there and thereafter accused persons fled away and injured informant was taken to hospital.



4. The aforesaid fardbeyan led to the registration of Lakhisarai P.S.case No. 312 of 1999 under Sections 323, 307 IPC and consequent upon completion of investigation, charge sheet has been submitted against the appellants under Sections 324, 307/34 IPC and 27 of the Arms Act and charges have been framed against appellants Praveen Singh and Arvind Singh under Sections 307/34 IPC and against appellants Manoj Singh and Anuj Singh under Sections 307 IPC and 27 of the Arms Act, to which they have pleaded not guilty and claimed to be tried and thereafter cognizance has been taken against the accused persons and the case has been committed to the court of sessions, which ultimately came to the file of Sri Sultan Muzaffar, Additional Sessions Judge, FTC-I, Lakhisarai for trial and disposal.

5. Defence of the appellants is of complete denial of the occurrence and further defence is that land belongs to them and false case has been lodged against them. Further defence on behalf of appellant Manoj Singh is that he was not present at the place of occurrence at the relevant time as he was on duty and posted at Islampur Block in the District of Nalanda as Junior Engineer.

6. During trial, altogether nine witnesses have been examined on behalf of prosecution, they are P.W.1 Bidya Sagar Singh, P.W.2 Anil Singh, who have been declared hostile, P.W.3 Janardan Singh, P.W.4 Nabeen Singh, P.W.5 Gauri Shankar Singh,



P.W.6 Kumar Nandan Singh (informant and injured), P.W.7 Jagdish Singh, P.W.8 Dr. Himkar and P.W.9 Ram Anup Mahto is the I.O. of this case. Apart from that, some documents have been brought on record on behalf of prosecution, including injury report of informant Kumar Nandan Singh given by Dr. Himkar as Ext.2.

7. On behalf of defence, two witnesses have been examined. D.W.1 is Shivendu Ranjan, who has been examined on the point of alibi and he has stated in his evidence in court that accused Manoj Singh was posted at Islampur Block as Junior Engineer and he was not present at the place of occurrence on the relevant date. D.W.2 is Manish Kumar, who is accepted the original letter sent by B.D.O., Islampur to S.I. Lakhisarai (Ext.A), which was issued on the basis of checking of attendance register.

8. Learned trial court considering the entire evidence available on record rejected the plea of alibi of appellant Manoj Singh on the ground that the certificate issued by the B.D.O. in favour of appellant Manoj Singh does not appear to be believable as he was issued the certificate on the basis of some inspection made by him in the village and he has not issued the certificate on the basis of attendance register, which cannot be relied upon. The evidence of P.W.1 is on the plea that there are consistent evidence available on record to show that Manoj Singh and Anuj Singh had fired upon the injured informant Kumar Nandan Singh (P.W.6) and Doctor found



injuries on his person and considering the aforesaid fact convicted the appellants under Sections 307/34 IPC and also convicted appellants Praveen Singh and Arvind Singh under Section 27 of the Arms Act also.

9. Learned counsel for the appellants has assailed the impugned judgment stating that learned trial court has erroneously disbelieved the plea of alibi of appellant Manoj Kumar as he was not present at the place of occurrence and one of the witnesses Jagdish Singh (P.W.7) has not named Manoj Singh and he has categorically stated that Anuj Singh fired and Praveen Singh and Arvind Singh had assaulted by bhala and he has not been declared hostile by the prosecution and his evidence clearly demolished the evidence of P.Ws.3 to 6 but the learned trial court has not considered the aforesaid aspect of the matter, rather disbelieved his evidence. It has also been submitted on behalf of appellants that so far appellants Praveen Singh and Arvind Singh are concerned, though it is alleged that they have assaulted the informant by bhala but evidence shows that there is no either penetrating or incised wound on the person of informant and evidence shows that there was land dispute between the parties and, as such, conviction of the said two appellants is not sustainable in the eye of law. Further contention of learned counsel is that in this case fardbeyan was recorded on 10.10.1999 and FIR was registered at 10.30 P.M. on the same day but in spite of that the FIR was sent to the



court of the Chief Judicial Magistrate on 12.10.1999 and, as such, there is delay in sending the FIR to the court of CJM, which makes the whole prosecution case doubtful and no explanation has been given for delayed submission of FIR. In support of his contention he has relied upon a Division Bench judgment of this Court in the case of Sukhu Beldar @ Sukan Beldar & Ors. Vs. State of Bihar, reported in 2005(3) PLJR 495. On the basis of aforesaid submission learned counsel for the appellants has submitted that the judgment suffers from infirmity and the conviction is not sustainable in the eye of law.

10. On the other hand, learned counsel for the State has contended that the judgment is free from infirmities as there are consistent evidence available on record to show that it is Manoj Singh and Anuj Singh who had fired at the informant (P.W.6) and the Doctor has found injuries on his person. Further submission is that though P.W. 7 has not named appellant Manoj Singh as assailant, however in the case where injured himself has been examined and the evidence on injured always considered to be on high pedestal important evidence than that of others unless it suffers from gross inconsistencies and in the present case, there is no inconsistency in the evidence of injured informant (P.W.6) and the Doctor has also supported the evidence of injured and in that view of the matter the conviction of appellants under Sections 307/34 IPC and 27 of the Arms Act is free from infirmities and just and proper.



11. P.W.6 is the informant in this case, who has stated in his evidence that while he was repairing his wall appellant Manoj Singh came and told him as to why he is repairing the wall upon which he told that he has constructed the wall on his own land and there was some altercation took place between the parties and thereafter Manoj Singh, Anuj Singh came armed with gun and Praveen Singh and Arvind Singh came armed with bhala and they assaulted him. Accused Manoj Singh and Anuj Singh fired at him which caused injuries on his left leg and right hand and he fell down and thereafter he was taken to hospital. He has also been cross examined at length but in spite of his cross examination there is nothing on record to discredit his evidence in chief with respect to manner of assault and that has been corroborated by FIR. The aforesaid evidence of P.W.6 has also been corroborated by evidence of P.Ws.3, 4 and 5, who appear to be neighbours and they are named in the FIR as witnesses. Further his evidence is corroborated by evidence of Doctor (P.W.8), who has found the following injuries on the person of informant :

“1.(A) Wound of entry- Lacerated wound of about 1/6” diameter with inverted margin over dorsum of right forearm about 2” proximal to corresponding wrist. There was charring of skin.

(B) Wound of exit- Lacerated wound of about 1/4” diameter averted margin over the dorsum of right forearm at the same level of wound A.

II. (A) Lacerated wound of about 1/6” diameter over lateral aspect of left Leg about 6” distal to left knee. It was the wound of entry since the margin of the wound was inverted.

B. Wound of exit- Lacerated wound of about 1/4” diameter over the lateral aspect of left leg and at the



same level of wound IIA. Margin of wound was inverted.

(III) Age of injuries within six hours. All injuries are caused by fire arms and simple in nature.”

and he has proved the injury report as Ext.2 in this case. He has also been cross examined at length but even in spite of cross examination there does not appear to be inconsistencies in his evidence rather he has stated that Injuries A and B are communicated to each other. However, he has admitted in paragraph-5 of his cross examination that he does not find any injury caused by hard and blunt substance. He has also admitted that hand and leg are not vital part of the body. He has also stated that injuries found on the person were caused on close range and injury No.2 can be caused by beyond 3 feet. Learned counsel for the appellants has drawn my attention towards paragraph-5 of evidence of P.W.3 and paragraph-15 of evidence of P.W.6 which disclosed that firing was made from a distance of 10-20 yards and 6-7 hands but the fact remains is that P.W.6 has received gun shot injuries and there is nothing available on record to show that he has been received injuries by some other weapon or in some other manner.

12. No doubt, the plea of alibi was taken by appellant Manoj Singh that he was not present at the place of occurrence rather he was working at Islampur but learned court has rightly disbelieved as the certificate was not issued on the basis of attendance register rather on the basis of some inspection in village. Learned counsel for the appellants has also drawn my attention towards evidence of Jagdish



Singh (P.W.7) and he has not been declared hostile and his evidence disclosed that Anuj Singh had only fired at him causing injuries on the person of informant (P.W.6) and submitted that this demolishes the prosecution story of firing by appellant Manoj Singh. However, in the present case, P.W.6 is informant and he has received two firearm injuries and he had categorically stated that Manoj Singh and Anuj Singh fired, causing injuries on leg and hand, his evidence corroborated by evidence of other P.Ws. and evidence of Doctor, in such view of the matter, the evidence of P.W.7 cannot be given weightage and though he has not been declared hostile, but he happens to have been weighted by some other consideration.

13. Learned counsel for the appellants has also submitted that though the appellants have been convicted under Section 27 of the Arms Act also but there nothing available on record to show that there is any recovery of gun and there is no seizure list and there is nothing on record to show that gun was used by Manoj Singh and Anuj Singh. However, for conviction under Section 27 of the Arms Act, there is no necessity of recovery of gun once there is consistent evidence available on record to show that Manoj Singh and Anuj Singh had fired at P.W.6, the informant.

14. Lastly it has been submitted on behalf of prosecution that the occurrence happened due to petty dispute of repairing of wall and there is no intention of the appellants to cause death of P.W.6, the



informant and injuries are also not on vital part of the body and there is no repetition of blows and as there is no intention to cause injury on the person of informant the case does not come within the purview of Section 307 IPC considering the entire fact.

15. The entire evidence, disclosed above, discloses that the dispute occurs with respect to repairing of wall and evidence also shows that there was dispute between the parties and it further appears from the evidence that they have fired at the leg and arm and there is no repetition of firing by them so far appellants Manoj Singh and Anuj Singh are concerned and so far appellants Praveen Singh and Arvind Singh are concerned, there is absolutely nothing against them to show that they have caused injury on the informant. So far conviction under Section 307 IPC is concerned, same can be gathered from the weapons used, severity of blows, including repetition of blows and the part of body blow was inflicted as well as motive. In the present case there is no repetition of blows and injuries are not on the vital part of the body and though weapons used are dangerous, moreover occurrence took place in order to prevent the informant to desist from repairing of wall. Hence, the evidence in totality does not disclose that the intention of the appellants was to cause such an injury with such an intention that if the death is caused, they would be guilty of murder. Considering the entire aspects of the matter, so far conviction of appellants under Sections 307/34 IPC is concerned, the



same does not appear to be sustainable in the eye of law.

16. However, evidence discloses that Manoj Singh and Anuj Singh had fired, causing injuries to informant (P.W.6) though not on vital part of body and grievous. Hence, evidence available on record discloses that appellant Manoj Singh and appellant Anuj Singh are liable for the conviction under Section 324 IPC, which is minor section of Section 307 IPC and the evidence also disclosed that the conviction under Section 27 of the Arms Act is also free from infirmities.

17. So far appellant Arvind Singh and Praveen Singh are concerned, there is no injury caused by bhala to the informant and there is also no material that they carried common intention with other appellants to assault the informant, hence, conviction and sentence passed against them are not sustainable in the eye of law.

18. Considering the entire aspects of the matter, the conviction of Manoj Singh and Anuj Singh under Section 307/34 IPC is modified to the extent under Section 324 IPC and their conviction under Section 27 of the Arms Act is upheld. So far point of sentence is concerned, in view of facts and circumstances, both the appellants are sentenced to undergo R.I. for two years under Section 324 IPC and a fine of Rs.5000/- and in default of payment of fine they are directed to suffer three months simple imprisonment and sentence of three years under Section 27 of the Arms Act shall remain intact. It is



also made clear that both appellants Manoj Singh and Anuj Singh are also entitled for setoff as per provisions of Section 428 of Code of Criminal Procedure, for the period which they remain in custody.

19. Accordingly, Cr.Appeal No. 16 of 2007 is allowed and impugned judgment and sentence so far appellants Arvind Singh and Praveen Singh are concerned, are set aside.

Cr.Appeal No. 69 of 2007 with the above modification in conviction and sentence is disposed of.

**(Vinod Kumar Sinha, J)**

spa/-

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