

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.627 of 2002**

Kamal Kishore Singh @ Baua, son of late Bishundeo Singh, resident of village- Barauni Block No. 3, Post Office- Barauni Deodhi, Police Station- Teghra, District- Begusarai

... .. Appellant/S

Versus

State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 643 of 2002

Niranjan Rai @ Zilwa, Son of Ram Bilash Rai, Resident of Village Siraniya Bishanpur, P.S. Matihani, District Begusarai

... .. Appellant/S

Versus

State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 627 of 2002)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate

For the Respondent/s : Mr. A.M.P. Mehta, APP

(In CRIMINAL APPEAL (SJ) No. 643 of 2002)

For the Appellant/s : Mr. Anuraj Singh (Amicus Curiae)

For the Respondent/s : Ms. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 07-11-2023

At the outset, it is important to mention that both above named appeals are disposed herewith through this common judgment, as same arises out of S.T. No. 154 of 1986 (arising out of G.R. Case No. 1939 of 1983/Teghra P.S. Case No. 75 of 1983), disposed by Learned 5th Additional Sessions



Judge, Begusarai.

2. Heard learned counsel Mr. Ajay Kumar Thakur, appearing on behalf of the appellant and learned Additional Public Prosecutor Mr. A.M.P. Mehta appearing on behalf of the State in Cr. APP (SJ) No. 627 of 2002 and learned counsel Mr. Anuraj Singh (*Amicus Curiae*), appearing on behalf of the appellant and learned Additional Public Prosecutor Ms. Anita Kumari Singh appearing on behalf of the State in Cr. APP (SJ) No. 643 of 2002.

3. Both above mentioned appeals have been preferred under Section 374(2) read with 389(1) of Criminal Procedure Code in short (Cr.P.C.) by above named accused/appellants, challenging the judgment of conviction dated 15.11.2002 and order for sentence dated 18.11.2002 passed in connection with S.T. No. 154 of 1986 (arising out of G.R. Case No. 1939 of 1983/Teghra P.S. Case No. 75 of 1983), whereby and whereunder learned 5th Additional Sessions Judge, Begusarai convicted the appellants under Sections 307/34 of the Indian Penal Code (In short 'I.P.C.') and 27 of the Arms Act and also under Section 394 of the I.P.C. and sentenced them to undergo R.I. for seven years for the offence under Section 307 of I.P.C., five years for the offence under Section 27(1) of the



Arms Act and five years for the offence under Section 394 of I.P.C. All sentences shall to run concurrently.

4. The crux of prosecution case as it springs from the fard-e-beyan of one Bhuwaneshwar Nath Dutt (PW-8) that his younger brother, Dineshwar Nath Dutta (not examined), who works in the Public Works Department at Chapra, came to his village home and while returning on 24.09.1983 at about 9.00 PM, to Chapra, his son, Prabhat Nath Dutta @ Bablu (PW-6) had gone to Barauni Junction to see off his father and thereafter, he went to see Orchestra at Fulwaria, It is further alleged that at about 1.30 AM, when the informant left his bed to urinate, he heard the sound of a firing. After sometime, Bhola Singh (PW-5), son of Bineshwari Singh @ Barka Singh came and informed him that Prabhat @ Babloo (PW-6) was lying near his hut with bleeding from his head. On this information, he alongwith Nalini Krishna Dutta (PW-2), Bankey Bihari Singh (PW-1), Amod Kumar Singh son of Krishnadeo Singh and Abhay Kumar Dutta (PW-3) came at the Dera (courtyard) of Bhola Singh situated in the north of the village, where they found Babloo (PW-6) lying on the ground and his temple (*kanpatti*) was bleeding. It is further alleged that Babloo told him that Kamal Kishore Singh and Niranjana Kumar Rai @ Zilwa(both



appellants/convicts) brought him in the orchard of Bhola Singh and shot at him causing injuries at his temple. Babloo was brought at residence on a cot and thereafter, he was brought to Padri Hospital at Mokama. The informant further stated that reason as why his nephew was shot, can be disclosed by the injured Babloo (PW-6) himself. He further stated that accused Niranjana Kumar Rai's aunt (fua) is the wife of his one neighbour, namely, Ram Naresh Dutta, who is a man of anti-social character.

5. On the basis of aforesaid *fard-e-beyan*, Teghra Police lodged a formal first information report (FIR) and registered a case being Teghra P.S. Case No. 75 of 1983 for the offence under Sections 324, 307/34 of the I.P.C. and 27 of the Arms Act. After completion of investigation, the investigating officer submitted charge-sheet against accused persons including appellants under Sections 394, 397 of I.P.C. and 27 of Arms Act, where learned Jurisdictional Magistrate took cognizance for afore-mentioned offences and after compliance of Section 207 of Cr.P.C., committed case to session court for trial and disposal as per mandate available under Section 209 of Cr.P.C.

6. Learned trial Court after perusal of record and materials/evidences collected during course of investigation



framed charges against accused persons under Section 394, 307/34 and 379 of I.P.C. and 27 of the Arms Act, which were duly explained to accused persons including accused/appellants, what they pleaded “not guilty” and claimed trial.

7. On commencing trial, to establish its case before the learned trial court the prosecution altogether examined total of 10 witnesses, namely, Banke Bihari singh (PW-1), Nalini Krishna Dutta (PW-2), Abhay Kumar Dutta (PW-3), Suresh Pd. Singh (PW-4), Bhola Singh (PW-5), Prabhat Kumar Dutta (injured) (PW-6), Jyoti Kumar Dutta (PW-7), Bhuwaneshwar Nath Dutta (PW-8/informant), Dr. U.P. Singh (PW-9) and Nilesh Kumar Singh (PW-10).

8. After closure of the prosecution case, the statement of accused/appellants were recorded under Section 313 of Cr.P.C. by putting all incriminating circumstances as surfaced during trial, where they had shown their complete innocence by denying all incriminating circumstances/evidences explained to them.

9. In defense no oral evidence was produced, whereas the defense has produced certain documentary evidences.

10. After conclusion of trial, learned trial court by



taking note of evidences available on record, legal positions and argument advanced by the parties, convicted the accused/appellant for the offences under Section 307/34, 394 of the Indian Penal Code and Section 27 of Arms Act, where upon conviction, accused/appellants were sentenced to undergo R.I. for seven years for the offence under Section 307 of I.P.C., five years for the offence under Section 27(1) of the Arms Act and five years for the offence under Section 394 of I.P.C. Being aggrieved, with aforesaid order of conviction and sentence accused/appellants preferred the present appeals.

11. Hence, the present appeals.

ARGUMENT OF LEARNED COUNSEL FOR THE APPELLANTS

12. Learned counsel and learned amicus, while appearing on behalf of appellants submitted that the nature of evidence as surfaced during the trial is not of such nature, on the basis of which it can be said safely that prosecution established its case beyond all reasonable doubts. In support of this opening statement, learned counsel submitted that prosecution failed to establish the date and manner of occurrence in corroborative manners as from depositions of PW-8, who is the informant of this case and PW-6 who is the injured namely, Prabhat Nath Dutt @ Bablu. It is submitted that as per *fard-e-beyan*/FIR of PW-8 occurrence is of 24.09.1983, where formal FIR was drawn



on 26.09.1983, whereas, PW-6 injured deposed before the Court that occurrence is of 25.09.1983. It is submitted that PW-8 while deposing before the Court stated specifically on court questions that occurrence is of 26.09.1983. Therefore, it appears that prosecutions failed to establish the date of occurrence. It is further submitted that the another important witness of this case is the doctor who examined as PW-9, clearly deposed before the court that clinically he did not find injury, *prima facie*, caused by fire-arms and there was no any blackening and charring over there. It is further submitted that he deposed about nature of injuries before the trial court, without having any original injury report and as such injury report of injured/PW-6 was not proved during the trial. It is further submitted that investigating officer of this case was not examined during the trial and therefore, the place of occurrence also not established/proved during the trial. It is also pointed out that basic legal ingredients of robbery is also not appearing convincing from the available evidences as surfaced during the trial. It is submitted that there is no recovery of any firearms and any looted materials, therefore, in absence of recovery of any firearms or any scientific evidences, which may, *prima facie*, suggest that injury as alleged caused by firearms, conviction under Section 27 of the Arms Act is



appearing bad in the eyes of law. Learned counsel further submitted that the rest of the prosecution witnesses are not the eye-witnesses of the occurrence and their depositions regarding occurrence is out of hearsay input as covered from the narration of injured/PW-6. While pointing out the fatality of charge it is submitted that at the time of lodging FIR, it is stated by informant/PW-8 that it was accused/appellant Kishore Singh, who fired upon injured/PW-6 as narrated by him but while deposing before the Court injured himself stated that it is co-convict, namely, Niranjana Rai @ Zilwa, who fired upon him to cause fire-arm injury. In view of the submissions as made above, learned counsel submitted that prosecutions measurably failed to establish the charges as framed against accused/appellant during the trial and also failed to establish the case of prosecution beyond reasonable doubts.

13. In support of submissions, learned counsel relied upon the report of Hon'ble Supreme Court in the matter of *State of Uttar Pradesh Vs. Naresh and Others* reported in (2011) 4 SCC 324.

ARGUMENT OF LEARNED APP FOR THE STATE

14. Learned APP while arguing on behalf of State submitted that injured/PW-6, specifically deposed that accused-appellants accompanied him from the place of Orchestra and as



they arrived together near to an isolated place after looting him, they fired upon him causing fire-arm injuries. It is submitted that in view of examinations of injured, non-examination of Investigating Officer and non-proving of injury report is not appearing fatal for prosecution as to establish charges, as raised against accused-appellant during the trial and as such it can be safely said that the order of convictions and sentence as recorded by learned trial Court is correct.

15. It would be appropriate to discuss the evidences available on record both oral and documentary, as to re-appreciate the evidences, while hearing the appeals and same is as under:

16. PW-1 is Banke Bihari Singh, who deposed in his examination-in-chief that injured Prabhat Kumar Dutta, while returning home after boarding his father in train at Barauni Station stopped in way to enjoy an orchestra party, from where some persons induced him to accompany for a nearby orchard. He received bullet injuries near to his eye, the persons, who induced him were Baua @ Kamal Kishore Singh and Zilwa @ Niranjan Singh. It was deposed that he did not see these persons, taking away injured. He deposed that the occurrence took place before eight years where in midnight he heard sound



of firing and thereafter, he came out and proceeded towards the house of Prabhat Kumar/ PW-6 and went there, where he came to know that Prabhat received bullet injuries. He deposed, as to know about the occurrence from Prabhat/PW-6 (injured) and Bhola/PW-5. He saw that blood was oozing from left eye. It was deposed that Prabhat Kumar also known as Babul. He was referred to Mokama Hospital, he also went up to police station alongwith Bhuteshwar Nath, who is uncle of Babul (injured), where statement of Bhuteshwar Nath (PW-8) was recorded. He also signed the statement of Bhuteshwar Nath and identified his signature before the trial court, which on his identification exhibited as Exhibit- 1 and 1/1, respectively.

16.1 On cross-examination, he stated that occurrence is of 26.09.1983. He denied to depose falsely out of friendly relations. He stated that he is neighbour of Babul (injured).

17. PW-2 is Nalini Krishna Dutta, who deposed in his examination-in-chief that occurrence is of 25.09.1983. He heard sound of firing while he was sleeping in house, which was coming from north direction, when he came out from his house, he found Bhola Singh (PW-5), who informed him that Prabhat Kumar Dutta (injured) is lying in front of his house under



mango tree and he received bullet injury. On said information, he alongwith 2-4 persons went there and found that Prabhat was crying. On queries, it was said by Prabhat (injured) that Kamal Kishore Singh @ Baua and Ram Niranjana Rai @ Zilwa assaulted him. It was deposed by him that injured said to him that Niranjana Rai (appellant/convict) fired upon him, which hit near to his left eye. He identified both appellants/convicts during the trial before the learned trial court. It was further deposed by him in his examination-in-chief that Prabhat (injured) told him that he went with his father to Barauni Railway Station for a train and after getting him board in train, he stopped in way to see orchestra, from where these appellants/convicts brought him in the orchard of one Bhagwati Saran and after pointing pistol to him taken away his valuables and clothess. It was deposed that he sent Prabhat (injured) to Teghra Hospital by rickshaw but as doctor was not available there he was taken to Mokama Hospital, where first aid was given to him and thereafter, he was referred to NMCH (Nalanda Medical College and Hospital), Patna. He was examined by both appellants/ accused separately.

17.1 On cross-examination by learned advocate appearing on behalf of appellant/accused Niranjana Rai, he stated



that an enquiry was made to him about the occurrence, by police inspector when he came back from Patna after three or four days. His statement was recorded at his house and by that time 5-7 persons were present there but he could not remember their names. It was stated by him that he made statement before police that he was informed by Prabhat (injured) that he received injury on his left eye by firing of Niranjana Rai. He stated that he did not make any statement before police that Prabhat told him as 'Baua' fired upon him. He denied all suggestions advanced by learned counsel and affirmed that he made a statement before police that occurrence took place while injured was coming from railway station and stopped in way to see orchestra from where, appellant/accused brought him in the orchard of Bhagwati Saran, where both appellants/accused pointed pistol towards him. He also affirmed by denying suggestions that he made statement before police that from place of occurrence, injured was brought to Teghra Hospital and as doctor was not available there he was taken to Mokama, from where after first aid, he was referred to NMCH, Patna. Name of tempoo owner, who carried injured was disclosed by him as Bhoju Singh, resident of Barauni Panchayat. He stated that both appellants/accused are relatives of injured. It was stated by him



that he met with Bhola Singh (PW-5) somewhere, between 12-01 AM on the night of occurrence and at that point of time one Abhay Kumar Dutta was sleeping with him at his '*Dalan*'. Bhola Singh (PW-5) at that point of time was going towards house of Prabhat (injured) by raising alarm. It was stated that house of Prabhat is at a distance of 3-4 *lagga*. It was stated that he denied to depose falsely as he is an agnate of injured, namely, Prabhat and also as inimical terms with appellants/accused.

18. PW-3 is Abhay Kumar Dutta, who deposed in his examination-in-chief that occurrence took place on Sunday somewhere before 7½ AM in midnight. He heard crying sound of female members of the house of Prabhat Kumar Dutta(injured) and when he visited there, he found Bhuteshwar Nath Dutta (PW-8)/informant and Bhola Singh (PW-5). They said that Prabhat Kumar Dutta is lying outside the Dera (courtyard) of Bhola Singh. He also went there and found Prabhat Kumar Dutta was crying there and blood was oozing from his left eye. He deposed that it was stated by Prabhat that Baua and Zilwa fired upon him in orchard, thereafter, Prabhat was sent to Teghra Hospital but he had not accompanied him.

18.1 On cross-examination, it was deposed by him that Bhola Singh (PW-5) came to the house of Bhuteshwar Nath



Dutta (PW-8) in night, who is uncle of injured. It was stated that he returned to his home in night itself after some time. It was stated that Prabhat was lying east to Dera (courtyard) of Bhola Singh somewhere at the distance of 15-20 yards and was crying. Five to Seven persons already present there but he failed to identify those persons. On drawing attention to his earlier statement it was stated by him that it was dark night, he remained there for 5-7 minutes, no attempt was made to give first aid to injured at place of occurrence and the blood was oozing only from the side of left eye and his entire body was not stained in blood. He denied suggestions that he did not make statement before police that Prabhat was found in pool of blood and stated only that the blood was oozing from his left eye. He did not even state before police that he never made statement to police that Prabhat was not brought to Teghra Hospital. He also stated that his family is in inimical terms with appellants/accused regarding passage relating issues for which proceeding under Section 107 of Code of Criminal Procedure (Cr.P.C.) is also pending. He denied suggestion that as he is in inimical terms since last 20-25 years with appellants/accused, therefore, he deposed falsely.

19. PW-4 is Suresh Prasad Singh, who deposed in



his cross-examination that the house of Baua (appellant/accused) and Prabhat (injured) is at a distance of about 200 metres. He deposed that after three days of occurrence, while he was returning to his home from field and so came near to the house of appellant/accused, he was shown a torch and a pair of sandal by police, which was seized after preparing seizure list. He signed over there, which was identified by him before the court, which on his identification exhibited as Exhibit No. 2.

19.1 On cross-examination, he stated that he never saw seized torch and sandals prior to its seizure. He denied false implications and suggestions that no such seizure list was prepared. He stated that Kamal Kishore Singh (appellant/accused) worked as a stamp vendor and stated that the informant's side are in inimical terms with Dutta family regarding dispute over a passage, since last 20 years.

20. PW-5 is Bhola Singh, who stated in his examination-in-chief that he did not know anything about the occurrence and declared hostile by prosecutions.

20.1 On cross-examination by State, he denied all suggestions regarding occurrence and nothing surfaced which can be used for corroborations or contradictions with available oral and documentary evidence.



21.2 On further cross-examination by appellants/accused persons, it was stated by him that he is not in visiting terms with family of Prabhat (injured). He visited first day on said way in the night of occurrence, while going to the house of Prabhat (injured), which was a dark night and after giving information he returned his home. It was also stated by him that appellant/accused Zilwa does not belong to his village.

21. PW-6 is Prabhat Kumar Dutta, who is injured himself, deposed in his examination-in-chief that he is also known as an alias name i.e. 'Babul'. It was deposed that on 25.09.1983, while he was returning from Barauni junction somewhere between 9:00-9:30 PM after boarding his father into train, he stopped in way to watch orchestra programme. While he was watching orchestra sitting over there, appellants/accused Kamal Kishore Singh @ Baua and Niranjana Rai @ Zilwa, came there and also started to watch orchestra. After some time, they asked him to accompany for a betel shop for taking betel. They all went together and after taking betel they asked to return home as it was already 11:00-11:30 PM. He accompanied with them and as they came in orchard of one Bhagwati Saran, which was a dark place, both of them touched pistol to him. He got feared and, thereafter, both appellants/accused taken away his all



clothes, sandals, watch and torch alongwith cash of Rs. 87. Accused/appellant, Kamal Kishore Singh put his pistol on his chest, whereas appellant/accused Niranjan Rai put his pistol on his temple. It was deposed that the moment appellant/accused Niranjan Rai fired, he took himself back and as a result of that bullet crossed touching his temple. He further deposed that bullet crossed after causing injuries near to his left eye. It was further deposed that after firing both appellants/accused ran away from there, whereafter, he raised alarm and as he came near to Dera (courtyard) of Bhola Singh (PW-5), he fell down. He called Bhola Singh after raising alarm and told him to inform about the occurrence to his family and when said information was given by Bhola Singh to his family members his uncle Bhuteshwar Nath Dutta (PW-8) and other persons of locality, namely, Nalini Krishna Dutta (PW-2), Banke Bihari Singh (PW-1), Abhay Kumar Dutta (PW-3) came there. He narrated about the occurrence to them. It was deposed that these persons brought him to Teghra Hospital and as no doctor was available there he was brought to Mokama Hospital, where he was given first aid and thereafter, referred to NMCH, Patna, where he made his statement before police of Alamganj Police Station, which was read over to him and getting same correct, he signed



over there. It was deposed that in NMCH, Patna during course of treatment his left eye was removed. He identified both appellants/accused in court. When he was discharged from NMCH, Patna his statement was recorded by Daroga Jee of Teghra Police Station. It was further deposed by him that one month prior to this occurrence, one occurrence of theft was taken place in his house, where he raised suspicion about appellants/accused. He expressed his said suspicion to villagers and out of said reason present occurrence was caused by appellants/ accused. It was deposed that at the time of occurrence he had a torch having two batteries.

21.1 On cross-examination, it was stated by him that he went Barauni Station alongwith his maternal cousin brother namely, Ram Prakash Singh, whom he missed in crowd of orchestra. He was with cycle. He did not meet with him thereafter, on the night of occurrence. He stayed at Barauni Station for about an hour. He did not meet with any co-villagers at Barauni Railway Station or in orchestra. He did not lodge case regarding theft, which was suspected by him as committed by appellants/accused. He failed to name the owner of betel shop but he did not deny to accompany with appellants/accused. It was stated that he did not raise any alarm, when he was asked



by appellants/accused to accompany up to the orchard of Bhagwati Saran. It was stated that he came to know that appellants/accused were carrying pistol, only when it was pointed and touched to him. He did not make any attempt to run away. It was stated that the Dera of Bhola Singh (PW-5) is at a distance of 200 yards from the orchard of Bhagwati Saran. It was stated that by reaching up to Dera (courtyard) of Bhola Singh/PW-5, his blood was dropping in the way, as it was heavy bleeding and he was crying also.

21.2 On further cross-examination, it was stated that he never made statement before police that he was watching orchestra alongwith his maternal cousin brother. It was stated that at Patna Hospital, he was accompanied with Nalini Krishna Dutta (PW-2) and Sunil Kumar Singh alongwith his family members. It was stated that the torch, which was taken by appellants/accused during the course of occurrence was identified by him when he returned from Patna and also his statement was recorded by Investigating Officer at Teghra Police Station. He denied that no such identification was made by Teghra Police Station. It was stated by him that he was brought at his residence from the Dera (courtyard) of Bhola Singh. It was stated by him that he also disclosed before police as to



disclose the names of appellants/accused to Bhola Singh (PW-5). He also narrated occurrence to his uncle Gupteshwar Nath Dutta, Nalini Krishna Dutta and Banke Bihari Singh. It was stated that he did not tell them that firing was made by Kamal kishore Singh (accused-appellant), thereafter, he on his own deposed before the court that firing was also made by Kamal Kishore Singh (accused-appellant) but it was the firing of Niranjana Rai (accused-appellant), which hit him. He denied suggestions that he did not make any statement before police that firing was made by Niranjan Rai. He denied suggestion that it is not true that none of the appellants/accused open fired upon him and also denied suggestions that no injury was caused by bullet. He denied suggestion that the allegation of firing is false, fabricated and incorrect. He also stated that he changed his clothes after coming to his home but did not clean blood. He was dressed up with another clothes before taking to Teghra Hospital. He was brought to Teghra Hospital by rickshaw and remained there for 2-4 minutes but doctor was not available there and thereafter, he was brought to Mokama Hospital. It was stated that he went Teghra Hospital somewhere between 12-01 AM in night, he went there by tempo which belongs to one Ram Chandra Singh. He failed to disclose the registration no. of



said tempo. He was given first aid at Mokama Hospital and thereafter, referred to Patna. He went Patna by train and reached there in early morning. He also stated that he cannot say whether bullet was removed from his injury or not. It was stated that when he fell down near to Dera of Bhola Singh (PW-5), he was conscious. His body was not working due to excessive bleeding but his brain was working. He denied suggestions that he never made statement before police that he was brought to Teghra Hospital. He denied suggestions that no such occurrence took place with him and implication is false out of previous enmities.

22. PW-7 is Jyoti Kumar dutta, who stated in his examination-in-chief that he is not aware about the occurrence. He denied to accompany injured during his statement and on the next very day of occurrence, while he was crossing near to the house of injured Prabhat Kumar Dutta, police obtained his signature. This witness was declared hostile.

22.1 On cross-examination by learned APP he stated that no seizure was prepared before him regarding blood stained soil and empty cartridge of 303 bore, before him. He had not even identified his signature over seizure list.

22.2 On cross-examination, he also denied to identify seizure list which has already exhibited before the



learned trial court as Exhibit No. 2(1). He also denied to see any torch and sandals related with occurrence, which were not produced before him during trial.

23. PW-8 is Bhuteshwar Nath Dutta, who is the informant of this case and uncle of injured, namely, Prabhat Kumar Dutta. He deposed in his examination-in-chief that the father of injured Prabhat Kumar Dutta worked with PWD Chhapra. Occurrence is of 29.09.1983 and it was night. He deposed that Prabhat/PW-6, went on that day for Barauni Station as to board his father in train for Chhapra and told him that he will return after attending orchestra party. When he woke up at about 1:30 AM in night to attend call of nature, he heard the sound of firing which came from northern side of his house, he went to his bed but by that time Bhola Singh (PW-5) came and informed that Babul @ Prabhat (PW-6) received bullet injuries and he is laying in front of his house. It was further informed to him that Babul (PW-6) told him that appellant/convict Kamal Kishore @ Baua and appellant/convict Niranjana Singh @ Zilwa caused him bullet injuries. On said information he went to the courtyard (Darwaja) of Bhola Singh and found Prabhat (PW-6) in pool of blood and was crying. He also asked Prabhat (PW-6) regarding occurrence, where he replied that Baua and Zilwa



(both appellants/convicts) caused bullet injuries to his left eye. It was deposed that he brought him to home and thereafter, taken away firstly to Teghra Hospital and as there was no doctor available, he was brought further to Padri Hospital, Mokama. It was stated that he made his statement at Teghra Police Station regarding occurrence on 29.09.1983 at 3:00 AM. It was stated that he did not go for Mokama, but sent Prabhat (injured/PW-6) to Mokama and thereafter, himself went to Teghra Police Station. He identified his signature over his written information, which on his identification exhibited before the trial court as Exhibit-1. It is deposed further that after recording his statement, police came to his village and also visited spot, where Prabhat/PW-6 was lying. It was further stated that police seized bullet parts and blood stained soil from the place of occurrence. It was deposed that when he saw Prabhat/PW-6 in injured conditions, he was only in his underwear. He identified both appellants/convicts before learned trial court. He again deposed on queries of Court that occurrence is of 26.09.1983 and what he stated earlier regarding date of occurrence as 29.09.1983 was wrong.

23.1 On cross-examination, it was stated by him that on the night of occurrence there were five female members



in his family. No boy was available on that day in his house except Prabhat Kumar. It was stated that he could not say, when injured/PW-6 said to him as to return home after attending orchestra, any female members of family, were present by that time or not. It was stated by him that his brother left for station at 8 PM as train depart from Barauni Station by 9 PM. On drawing attention, it was denied by him that he never made statement before the police at the time of lodging FIR that his brother proceeded for Barauni Railway Station through rickshaw at about 9 PM. It was further stated by him that when he proceeded for station no neighbours were present over there. It was also stated that he could not say whether, cousin maternal brother of Prabhat/PW-6 was also accompanied him through cycle up to Barauni Station. It was stated that Ram Prakash Singh is the cousin maternal brother of Prabhat/PW-6. It was also stated by him that when Bhola Singh (PW-5) came to inform him about the occurrence, no neighbour came to his house. He stated to be informed by Bhola Singh/PW-5 that Prabhat(injured) told him as he was assaulted by Baua and Zilwa. No witness was present when this fact was disclosed to him by Bhola. It was stated that he brought his nephew (PW-6) to home on cot given by Bhola (PW-5) and on way it was



disclosed by him that who were assailants. It was specifically stated by him that both appellants/convicts fired upon him. He denied suggestions that he made statement before the police that he was told by Prabhat (PW-6) that Kamal Kishore @ Baua (appellant/convict) fired upon him. The same statement was made by Prabhat before female family members and as he started to loose his sense after certain intervals, we brought him immediately to hospital but as no one was in Teghra Hospital, he was brought to Padri Hospital, Mokama. It is submitted that he brought Choukidar and Daroga to the place of occurrence on 26.09.1983 at about 5:30 AM. It was further stated that when police was doing inspection of place of occurrence, several nearby persons were present there. He denied to depose falsely out of previous enmities. It is also stated by him that place of occurrence is surrounded by several house and is a densely populated area.

24. PW-9 is Dr. U.P. Singh, who was posted at Nalanda Medical College and Hospital, Patna as Assistant Professor of Surgery and on 26.09.1993, he had examined upon injured/PW-6/Prabhat Kumar Dutta and found the following injury on his person:

*“(i) A cut wound with roughed margin 2”x1”
below the right angle of left eye at outer angle*



bone deep.

(ii) A small wound 1" in front of right ear at molar prominence."

M/I- scar of wound no. (i).

Nature of injuries: Opinion was reserved because want of X-ray. At that time evidence of fire-arm was not present. Such injuries may be caused by fire-arm. Original injury report was in my pen and under my signature.

xxx On behalf accused Niranjana Ray.

If the fire arm was fired from a close range on the skin, then there shall always be blackening around the injury. If the injury is caused at a place of hair, then there must be broken hair inside the injury. The original or the carbon copy of the injury report is not present before me at this time.

xxxx On behalf of rest accused-

I had found two cut injuries, there injuries can be by the stroke or even by two strokes but injuries are possible with sharp cutting weapon, by bamboo splinter also if, force is applied, such cut injury can be caused. The man when I had examined is not in court before me nor at that time clinically. I did not find fired arm injury, There was no blackening or charring. If the fire is opened from a close range, there shall be blackening and charring. If the fire shot is caused from close range at the skull, it may fracture the skull.

25. PW-10 is Nilesh Kumar Singh, it was deposed



by him that he knew Prabhat Kumar Dutta/PW-6, he attended injured/PW-6 up to Nalanda Medical College and Hospital, Patna and stated that on that place, statement of injured by a police officer of Alamganj Police Station was recorded. It appears that further cross-examination of this witness was objected by learned defence counsel and without any further examination, he was discharged on same very day i.e. 16.09.1994, itself.

CONCLUSION

26. From the discussions of aforesaid witnesses, it transpired that the basis of information regarding occurrence as available to informant/PW-8, who is uncle of injured/PW-6, is Bhola Singh, who examined before the learned trial court as PW-5. Interestingly, said Bhola Singh/PW-5 stated in his examination-in-chief that he did not know anything about the occurrence and therefore, declared hostile by the prosecution. Injured namely, Prabhat Kumar Dutta himself examined as PW-6. It appears from his deposition that one of the appellants, namely Kamal Kishore Singh put his pistol on his chest whereas, appellant/accused Niranjan Rai put his pistol pointing temple. He stated that fired was made by only Niranjan Rai and as he pulled his head back, bullet injured his eye. It appears



from his depositions that from the place of occurrence, he was brought to Teghra Hospital but it appears from the depositions of PW-8/informant that from the place of occurrence, PW-6/injured was brought first to his home and thereafter, he was taken to Teghra Hospital. It specifically appears from the deposition of PW-8/informant that he saw injured at place of occurrence near Dera of Bhola Singh/PW-5 in underwear only, therefore, the depositions as the clothes of injured were blood-stained is apparently appearing non-convincing on its face. It is further appeared from the depositions of PW-8 that he deposed regarding date of occurrence as 29.09.1983 but subsequently, he corrected it as 26.09.1983 at about 5:30 AM, whereas, injured himself deposed that occurrence is of 25.09.1983. It appears from the deposition of PW-8 that police seized bullet part and blood-stained soil from the place of occurrence but PW-7 who appeared to be seizure list witness deposed specifically before the court that he is not aware about the occurrence and while he was crossing near to the house of injured police obtained his signature and thus, disputed the entire recovery of bullet part and blood-stained soil from the place of occurrence. Seizure list also appears disputed from the depositions of PW-4, who stated before the court that after the three days of occurrence while he



was returning to his home from the field and as he came near to the house of appellants/accused, he was shown a torch and a pair of sandal by police and thereafter, his signature was obtained. Informant/PW-8 stated through FIR that occurrence is of 24.09.1983, therefore, from the depositions of all these witnesses it appears that the time and manners of occurrence is appearing disputed, *prima facie*, as to support the case of prosecutions.

27. On the point of assault, the statement of prosecution witnesses also appears disputed, where, at the first instance, PW-8, who is the informant of this case deposed that he was stated by injured/PW-6 that both appellants were fired upon him, therefore, it appears that the first information report, which is on the basis of information supplied by injured/PW-6 himself appears contradictory. Apparently, seizure list was not proved in view of aforesaid discussion of testimony of PW-4 and PW-7. There was no recovery of any fire-arm in this occurrence. It is also important to discuss the testimony of PW-9, who is Dr. U.P. Singh, who examined injured/PW-6, namely, Prabhat Kumar Dutta at Nalanda Medical College and Hospital, Patna. He found the wound as cut wound but it was not mentioned anywhere that it appears to be caused by fire-arms. It



is a case where injury report was also not proved during the trial. PW-9 however, categorically stated that he found only two cut injuries and there was no blackening or charring. He specifically deposed in his examination-in-chief that evidence of fire-arm was not present and as such the entire case of prosecution and the testimony of PW-6/injured, namely Prabhat Kumar Dutta becomes contradictory and is not appearing reliable. It is important to mention that investigating officer was not examined in this case during the trial.

28. In this context, it would be apposite to reproduce the legal report of **State of Uttar Pradesh Vs. Naresh** and others reported in **(2011) 4 SCC 324**, where it was observed in para-27 as under:-

“27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. [Vide:



Jarnail Singh V. State of Punjab, (2009) 9 SCC 719; Balraje @ Trimbak V. State of Maharashtra (2010) 6 SCC 673; and Abdul Sayed V. State of Madhya Pradesh.”

29. This Court is aware about the above legal ratio that injured witness, is the star witness, as in present case, same is the PW-6 namely, Prabhat Kumar Dutta, but this Court convinced to disbelieve his versions in view of the depositions of PW-9/doctor, who examined him and did not find any fire-arm injuries.

30. Hence, the appeals stand allowed.

31. The impugned judgment of conviction dated 15.11.2002 and the consequent order for sentence dated 18.11.2002 passed by the learned 5th Additional Sessions Judge, Begusarai in Session Trial No. 154 of 1986 (arising out of G.R. Case No. 1939 of 1983/Teghra P.S. Case No. 75 of 1983), are set aside. Both above named accused/appellants are acquitted of the charges levelled against them. They are directed to be set at liberty forthwith unless their detentions are required in any other case.

32. Before parting with the appeal, I record my appreciation for the able assistance rendered by Mr. Anuraj Singh, learned *Amicus Curiae*.



33. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5,000/- (Rupees Five Thousand Only) to Mr. Anuraj Singh, learned *Amicus Curiae* in Criminal Appeal (SJ) No. 643 of 2002 as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

34. LCR, if any, be sent back to learned trial court along with the copy of this judgment. Fine, if any, paid by accused/appellants in furtherance of order of sentence, be refunded to them immediately.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2023
Transmission Date	13.12.2023

