

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.543 of 2003

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HARE RAM SINGH, son of Late Sukhnandan Singh, resident of village –
Barne, P.S. Chautham, District Khagaria

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Ms. Surya Nilambari, Amicus Curiae
For the Respondent/s : Ms. Anita Kumari Singh, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 21-11-2024

1. The appeal is filed challenging the judgment and conviction dated 09.12.2003, on the file of Additional District and Sessions Judge/FTC-IInd, Khagaria in Sessions Case No. 279 of 2000 by which the appellant/Hare Ram Singh, was found guilty of the offences punishable under Section 307 of the Indian Penal Code and also under Section 27 of the Arms Act and was sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 3,000/- for the offences punishable under Section 307 of the Indian Penal Code and also sentenced to rigorous imprisonment for a period of two years for the offences punishable under Section 27 of the Arms Act.



2. The brief case of the prosecution is that the informant, Umesh Prasad Singh, purchased a house from his villager namely Jagdeo Singh, two years prior to the alleged incident. On 22.08.1995, when the appellant Hare Ram Singh attempted to forcibly occupy the house, the informant/P.W.-1 told him that he purchased the said house and that the appellant has no right to reside in it. On that, the appellant said “*Jinda Rahogi tab to ghar me rahogi*” which translate to “if you remain alive then only you will live in that house”. And on saying so, the appellant fired two shots on P.W. 1 with an intention to kill him. The gun shots injured the right thigh and scrotum of P.W. 1. The said incident was witnessed by P.W.3/Angira Devi (wife of P.W. 1), Sushila Devi/P.W. 2 (elder brother’s wife of P.W. 1) and one Ramkripal Singh (brother of P.W. 1, not examined). The Fardbeyan further disclose that on hearing the noise, several persons came to the place of occurrence and witnessed the incident. Basing on the Fardbeyan of P.W. 1 dated 22.08.1995, a case was registered against the appellant vide Crime No. 124 of 1995 (Chautham Police Station), G.R. No. 777 of 1995 at about 06:30 PM,



alleging that the incident took place at 04:00 PM on 22.08.1995.

3. The criminal law was set into motion and the Investigating Officer conducted an investigation and subsequently filed a charge-sheet against the appellant for offences punishable under Section 307 of Indian Penal Code and under Section 27 of the Arms Act.

4. During the course of trial, the trial court framed charges against the accused/appellant for the offences punishable under Section 307 of the Indian Penal Code and under Section 27 of the Arms Act.

5. On behalf of the prosecution P.Ws. 1 to 3 were examined and Exhibits 1 and 2 were marked. Exhibit-1 is the signature of Umesh Prasad Singh on the fardbeyan and Exhibit 2 is injury report of the injured Umesh Prasad Singh. The trial court after considering the evidence of P.Ws. 1 to 3 convicted the appellant for the aforesaid offences.

6. Despite several adjournments, no representation for the counsel for appellant, and this Court vide order dated



11.09.2024 appointed Ms. Surya Nilambari as Amicus Curiae to assist this Court.

7. Heard the Learned Amicus Curiae for the appellant and the Learned Additional Public Prosecutor for the State and perused the record.

8. In order to appreciate the facts and circumstances, it is necessary to analyse the evidence of the prosecution witnesses.

9. P.W. 1, is the informant, and his evidence disclose that on 22.08.1995 at about 04:30PM, while the informant was at his house, the appellant/Hare Ram Singh came to his house with an intention to forcibly occupy it and when P.W. 1 objected him to occupy the same, the appellant threatened him stating that he could only live in the house if he remained alive and saying so, the appellant fired two gun shots which hit P.W. 1 on his right thigh and scrotum. His evidence further disclose that P.W. 2, P.W. 3, and his brother Ramkripal Singh were present at the time of incident. Ramkripal Singh passed away prior to trial. He further testified that he was picked up and taken to police station, and later to the doctor. During cross-



examination P.W. 1 described about the boundaries of his house and specifically stated that the appellant was approximately at a distance of 50 to 20 yards from him and after being shot he fell down but did not lose consciousness. Approximately, 5-10 minutes after the incident, he was taken to the hospital, and police recorded his statement at the doctor's place which is at Chautham. His evidence further disclose that he was hospitalized in Khagaria hospital for ten days.

10. He further testified that on the date of incident he was at his house and the appellant along with other persons came to his house to occupy it. The individuals accompanying the appellant took away a the Chauki (cot), bucket, basket, bedding etc. and when P.W. 1 objected , they left the belongings outside the house and departed.

11. During cross-examination P.W. 1 deposed that the place of incident was land which he purchased and stated that he reached the place of occurrence one minute before the incident and, on seeing the accused's activities, he intervened. He testified that people reached the place of occurrence two to three minutes after the firing. His wife, Bhabhi (sister in law)



and brother lifted him two or three minutes after he was injured. His evidence further disclose that he was transported on a boat across the river and upon reaching the road he was shifted to the hospital in a jeep. He also stated that he do not remember the name of the doctor but his statement was recorded at the doctor's place. It is further testified by P.W. 1 that his cloths were soaked with blood, but he did not remember whether any hole occurred to his Dhoti or not. He cannot recall whether blood had spreaded on the ground at the place of occurrence or whether there was any blood on the cot, on which he was shifted. P.W. 1 stated that he did not remember whether the blood stained cloths were handed over to the police or not whether the cot was shown to the police. On the same day, he was shifted from Chautham to Khagaria hospital. He denied the suggestion that a false case was registered after preparation of fabricated injury report or the doctor who issued the report was his friend.

12. The evidence of P.W. 2 (Shushila Devi), disclose that the appellant was keeping his belongings in the house of P.W. 1 with the help of two or four persons and that she



informed the same to P.W. 1. On that P.W. 1 went to the place of occurrence to remove the belongings leading to an argument and on that the appellant took out a firearm three-nut gun from his waist and fired P.W. 1 thrice. One bullet hit the thigh of P.W. 1, another struck to scrotum and the third hit his. She testified that Ramshevak Singh and Shankar Singh and several other villagers witnessed the incident.

13. In the cross-examination she stated that P.W. 1 lived separately in mess, but they shared the same courtyard. She specifically admitted that the land belonged to the appellant. She further stated that she went to the house on the date of the incident at 12:00 PM, where she saw the appellant and other persons placing their belongings, she stayed there for a minute and then returned to her house and informed the other family members.

14. It is specifically stated by P.W. 2 that P.W. 1 had gone out and returned to the house only at 04:30 in the evening and that she has gone to the place of occurrence along with P.W. 1 and P.W. 3. She further testified that the appellant asked P.W. 1 to run, threatening to shoot him in the courtyard itself. It



is also testified by her that while the firearm was discharged P.W. 2 and 3 ran towards the land located four to five steps away. After sustaining the firearm injury P.W. 1 fell down to the ground which was witnessed by Ram Sevak and Shankar Singh and significant amount of blood had spilled at the scene.

15. It is relevant to mention that she described the exact location where the bullet fell and stated that she had shown the place of occurrence to the Sub Inspector of Police, who collected the blood stained soil. She further, admitted that she had not seen any bullet at the place of occurrence and that she also told the Sub Inspector that the appellant had placed his belongings in the veranda. She further testified that P.W. 1 was a retired police officer and that after the incident, P.W. 1 was taken gone to government hospital, and she and others accompanied him.

16. P.W. 3 (wife of P.W. 1), testified that P.W. 1 had purchased the house from Jagdeo Singh two years before the incident. On the date of incident, the appellant placed a stool and bedding in the veranda of the house and attempted to break the lock of the house, for which P.W. 1 objected and on that the



appellant stated “if you remain alive, then only you will ask for the house” and saying so, the appellant fired two shot at P.W. 1 using a three-nut gun. One bullet hit the right thigh, the other bullet hit the scrotum of P.W. 1, for which P.W. 1 fell down and became unconscious for ten minutes. On hearing the noise Shankar Singh, Ram Sevak and Pramod Singh came to the place of occurrence and witnessed the incident. She along with P.W. 2, took P.W. 1 to the police station. The appellant is a distant relative to her and further admitted that they were in the courtyard of the appellant for 10-15 minutes before the incident, witnessing the belongings being kept in the house. She further testified that on the date of incident P.W. 1 came from outside at about 02:30 PM, and they went to the appellant’s courtyard about an hour or half an hour after the arrival of P.W. 1. The argument between the appellant and P.W. 1 lasted for five to ten minutes, and no one else was present at the time of argument. She specifically admitted that the appellant and his uncle Sadanand Singh, used to live in that courtyard, which is open on all the sides. It is important to note that P.W. 3 mentioned about the boundaries of the courtyard.



She testified that at the time of incident, people from Ratan Singh's house including Ratan Singh's family, Satrudhan Singh and Pramod Singh had gathered at the place of occurrence. As per her deposition, it can be construed that the place of occurrence was on the south side of the courtyard, and the distance between the appellant and the P.W. 1 was only 10 steps. P.W. 1 fell after receiving the second bullet hit and on hearing the gunshot people from the village gathered, and she went to the police station at around 05:30 PM and from there, they proceeded to Khagaria hospital. It is specifically testified by P.W. 3 that P.W. 1 lost consciousness and only regained it at Khagaria Hospital. P.W. 1 was wearing a Dhoti which had a hole caused by the bullet hit and contained blood stains.

17. Except the evidence of P.Ws. 1 to 3 there is no oral or documentary evidence on record except for Exhibit 1 and 2. There are several discrepancies in the evidence of P.W. 2 and 3. The evidence of P.W. 1 clearly disclose that the appellant, Hare Ram Singh, came to his house with an intent to occupy it. Neither the Fardbeyan nor his evidence disclose the belongings of Hare Ram being kept in the said house. As per the evidence



of P.W. 1, the place of occurrence was the west of the house of P.W. 1, where the appellant was trying to occupy it. The evidence of P.Ws. 1 to 3 clearly disclose that P.W. 1 was taken to the police station immediately after the incident. However, the Fardbeyan clearly disclose Chautham Police recorded the statement of P.W. 1 through A.S.I./A. Kumar on 22.08.1995 at about 06:30 PM at the residence of one Dr. R. Mohan of Chautham village.

18. Admittedly, the prosecution failed to examine either Dr. R. Mohan or A. Kumar, A.S.I. of Chautham Police Station to confirm that the statement of P.W. 1 was recorded Dr. R. Mohan's residence. It is surprising to note, as to why the statement of P.W. 1 was not recorded by the Station House Officer of Chautham Police Station, especially when P.Ws. 1 to 3 were present at the Police Station, immediately after the incident.

19. Further, the evidence of P.W. 1 and the Fardbeyan do not disclose that P.W. 1 fell unconscious immediately after the incident. However, the evidence of P.W. 2 and 3 disclose that P.W. 1 fell unconscious after being shot. The evidence of



P.W. 2 disclose that P.W. 1 fell unconscious after the second bullet hit, and whereas the evidence of P.W. 3 disclose that P.W. 1 fell unconscious and only regained his consciousness at the government hospital in Khagaria.

20. As per the evidence of the prosecution witnesses, at the first instance, P.W. 1 was taken to the residence of Dr. R. Mohan, and from there, he was shifted to Khagaria Hospital. As to why the Investigating Officer or the doctors were not examined before the Court is not explained by the prosecution. The Doctor of Khagaria hospital was also not examined to know whether P.W. 1 was treated or not. Further independent witnesses were also not examined in this case. P.W. 1 himself stated that he was not aware of whether holes had occurred in his Dhoti or whether it was stained with blood. However, on the other hand, P.W. 2 and 3 deposed that the Dhoti had holes and blood stains and it was shown to the Daroga Ji. Further, the evidence of P.W. 3 clearly disclose that P.W. 1 was directly shifted to Khagaria hospital from the police station while he was unconscious state. The evidence of P.W. 2 and 3 clearly disclose that P.W. 1 had gone out of the house and returned at



04:30 PM on the date of the incident. However, the evidence of P.W. 3 contradicts this by stating that P.W. 1 had not gone out of the house on that day. There are many contradictions and inconsistencies from the evidences of P.Ws. 1, 2 and 3.

21. As far as the firearm/weapon is concerned, P.W. 1 himself has not stated anything about the type or model of the weapon used by the appellant either in Fardbeyan or in his evidence. However, the evidence of P.W. 2 and 3 disclose that a three-nut weapon was used by the appellant. In the present case, there is no evidence on record as to the recovery of bullets, either from the body of the P.W. 1 or pellets from the place of occurrence. The place of occurrence was also not established by prosecution in this case. On one hand, the place of occurrence is on the west side of the house as per the evidence of P.W. 1 and on the other hand P.W. 2 and 3 claim that the place of occurrence is the courtyard, where description of courtyard was also given by P.W. 2 and 3. Further, it is the evidence of P.W. 3 that Daroga Ji was shown the place of occurrence and that he had collected blood stained soil and that P.W. 1 is a retired police officer.



22. It is relevant to mention that the Court marked Exhibit-2, basing on the petition filed by the Additional Public Prosecutor under Section 294 of Code of Criminal Procedure. Section 294 of Code of Criminal Procedure reads as follows:-

294. No formal proof of certain documents. - (1) *Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.*

(2) *The list of documents shall be in such form as be prescribed by the State Government.*

(3) *Where the genuineness of any document is not disputed, such document may be read in evidence in inquiry, trial or other proceeding under this Code without proof of the*



*signature of the person to whom it purports to
be signed:*

*Provided that the Court may, in its
discretion, require such signature to be proved.*

23. On perusal of record, it is evident that the petition was filed on a scrap of paper with the handwriting of the Additional Public Prosecutor to bring the injury report on report. Exhibit 2 is the injury report, which reads as follows:-

*“To,
Officer I/C
P.S. Chautham
Examined Umeshwar Prasad Singh,
s/o Late Anandi Singh, a resident of Borne,
Chautham, Khagaria and found following
injuries:-*

*(1) L.W. - 1” x ½” with its margin inverted,
over the front of (Rt) thigh adjacent to scrotum
bleeding profusely.*

*(2) L.W. - 1” x ½” and 1½” x ½” over the
scrotum below ½” root of Penis, both 1½”
apart, upper one with inverted margin, lower*



one with averted margin with protruding muscle and fat. Bleeding profusely.

M.I. - Old sear over front of (Rt) forearm.

T.I. - Within 6 hours.

Nature of Injury – Seems to be caused by firearm, but for nature and extent of injury, referred to Surgeon, Sadar Hospital, Khagaria for expert opinion and needful.”

24. Further the record reveals that on 09.01.2002, the trial court issued summons to the doctor. On 02.04.2002, the Additional Public Prosecutor again requested that summons be issued to the doctor. On 04.04.2002, summons were issued to both, the doctor and the Investigating Officer. On 06.04.2002 the service report of the summons was received by the trial Court, which disclose that the Doctor had been transferred to Jharkhand. On 22.04.2002, fresh summons were issued to the doctor again. And inspite of receiving the summons the doctor did not appear before the Court. Thereafter on 18.05.2002 aailable warrant was issued against the doctor. There is nothing on record to prove whether or not theailable warrant was



executed or whether the bailable warrant issued on 18.05.2002 was cancelled or not.

25. Further, the record reveals that on 26.08.2003, the Learned Additional Public Prosecutor filed the petition under Section 294 of Code of Criminal Procedure to mark the injury report with consent. There are two docket orders as on the date of 10.11.2003, which reads as follows:-

“10.11.03 Jailed accused hare Ram Singh has been produced before the court from the Prison. Witnesses are absent. There is no appearance from the A.P.P. Post the case on 13.11.03 for recording of evidence. The jailed accused is again sent back to the Prison.

*Dictated
sd/-
A.S.J.-II*

Later on 10.11.03 Jailed accused Hare Ram Singh has been produced before the court from the Prison. A.P.P. is present. The Learned Defence Counsel and the Learned A.P.P. appear before the Court. Md. Khif, Learned A.P.P., has prayed to mark the Injury Report as an exhibit and an application dated 26.08.2003 under Section 294 CrPC has been filed for the



same. The application has not been moved. Prayer has been made, in light of the said application, that Injury Report of the injured namely Uma Shankar Pd. Singh be marked as an exhibit under Section 294 CrPC without taking evidence of Doctor Witness. The Learned Counsel for the defence does not object. Therefore, the Injury Report is hereby marked as Exhibit 2. The Learned Counsel for the defence submits that till date only three witnesses have been examined and after 15.12.01 no witness has been produced by the prosecution and as such the prosecution is not interested in recording any further evidence. Therefore, it is prayed that prosecution evidence be closed. A.P.P. does not object to the submissions made by the Learned Counsel for the defence. Perused the records. The submission made by the Learned Counsel for the defence appears to be correct. The accused is in custody. In such circumstances, in the interest of justice, with consent of A.P.P., the prosecution evidence is hereby closed.

Post the case on 13.11.03 for recording statement. The jailed accused is again sent back to the Prison.



*Dictated
Sd/-
A.S.J.-II"*

26. On perusal of the order, it is evident that though the petition has been filed on 26.08.2003, the application was not pressed by the Learned Additional Public Prosecutor to mark the document. In spite of it, the Court has marked the document under Section 294 of Code of Criminal Procedure.

27. At this juncture, the Learned *Amicus Curiae* Ms. Neelambari has relied on the judgments of the Hon'ble Apex Court.

In ***Pankaj Singh Vs. State of HR reported in 2024 SCC OnLine SC 474***, wherein the lordships have held:

"20. The submission made by the learned counsel appearing for the Prosecutrix based on Section 294 of the Cr. P.C. remains to be dealt with. Section 294 of the Cr. P.C. reads thus:

*"294. NO FORMAL PROOF OF
CERTAIN DOCUMENTS.—(1) Where
any document is filed before any Court by
the prosecution or the accused, the*



particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.”



21. Firstly, the learned counsel appearing for the Prosecutrix admitted that the prosecution did not produce the WhatsApp messages before the recording of evidence commenced. According to his version, the same was produced when the Prosecutrix was under cross-examination. The essential ingredient of sub-Section (1) of Section 294 of the Cr. P.C. is that when any document is produced by the prosecution or the accused, the parties shall be called upon to admit or deny the genuineness of each such document. In this case, it is nobody's case that the appellant-accused was called upon to admit or deny the genuineness of the WhatsApp chats. Moreover, sub-Section (3) of Section 294 of the Cr. P.C. indicates that even if a particular document is not disputed, the Court has the discretion to read or not to read the same in evidence without formal proof of the signature of the person to whom it purports to be signed. The Court always has the power to require the



signature to be proved. Therefore, the contention of the learned counsel appearing for the Prosecutrix based on Section 294 of the Cr. P.C. has absolutely no merit. In any case, a certificate under Section 65B of the Evidence Act has not been produced.”

In ***Shamsher Singh Verma v. State of Haryana*** reported in (2016) 15 SCC 485, the Lordships have held at para 14, as follows:-

“14. In view of the definition of “document” in the Evidence Act, and the law laid down by this Court, as discussed above, we hold that the compact disc is also a document. It is not necessary for the court to obtain admission or denial on a document under sub-section (1) of Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 CrPC.



Similarly, on a document filed by the defence, endorsement of admission or denial by the Public Prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence.”

In *Sonu v. State of Haryana* reported in (2017) 8 SCC 570, the Lordships have held at para 35 as under:-

*“35. Section 294 CrPC, 1973 provides a procedure for filing documents in a court by the prosecution or the accused. The documents have to be included in a list and the other side shall be given an opportunity to admit or deny the genuineness of each document. In case the genuineness is not disputed, such document shall be read in evidence without formal proof in accordance with the Evidence Act. The judgment in *Sk. Farid* case [*Sk. Farid Hussinsab v. State of Maharashtra*, 1981 SCC OnLine Bom 26 : 1983*



Cri LJ 487] is not applicable to the facts of this case and so, is not relevant.”

In *State of Bihar Vs. Durgavati and others reported in 2021 SCC OnLine Pat 2009*, the Lordships at Para 88 to 97 have held as under:-

“88. Section 293 CrPC corresponds to Section 510 of the old Code of Criminal Procedure, 1898 and Section 510 of the old code was bifurcated into two sections-292 and 293. Section 292 deals with the evidence of officers of Mint, Controller of Stamps whereas Section 293 deals with evidence of certain scientific experts.

89. The legislative intention behind the framing of Section 510 vis-a-vis section 292 and 293 CrPC can be well-judged from the observation recorded by The Law Commission's 41st Report. It was observed therein:

“41.1 The framers of the Code were aware that the evidence of certain experts in



the service of Government would be frequently required in Criminal Courts, and if these experts were to be treated as ordinary witnesses whose sworn statement in court alone could be legal evidence, they would be spending most of their time giving evidence. Also the number of such experts was so small that they could not be always conveniently spared for attending the court. Special rules of evidence were therefore framed for them. They are placed in Chapter XLI of the Code.”

90. *Thus, the report of any of expert specified under said Section, on any matter duly submitted to him for examination or analysis was recommended by the Law Commission to be considered as good evidence.*

91. *It was further observed that section 510(2) makes it obligatory for the court to summon*



the Chemical Examiner or other officer mentioned in sub-section (1) if either party so desires. The provision was considered unsatisfactory and the Law Commission recommended an amendment to the section to the extent that summoning any such expert should be left to the discretion of the Court. The recommendations of the Law Commission were eventually accepted and the provision was amended accordingly. The provision as laid down under section 293 CrPC, was further amended through Criminal Law (Amendment) Act, (45 of 1978) and Criminal Law (Amendment) Act 2005 (2 of 2006) and reports of some more Government Scientific Experts were included under sub-section (4) of section 293 CrPC.

92. *Section 293 CrPC makes a report of the certain Government Scientific Experts mentioned under subsection (4) of this Section*



admissible in evidence without calling him as a witness.

93. Although it is not required to examine the expert as a witness to prove his report under Section 293 CrPC, the report cannot be read in evidence unless it is tendered in evidence.

94. In Wali Muhammad v. Emperor reported in AIR 1924 All 193, the Allahabad High Court held: "Under Section 510 of the Code of Criminal Procedure any document purporting to be a report under the hand of a Chemical Examiner upon any matter duly submitted to him for examination and report may be used as evidence in any enquiry, trial or other proceeding. This, however, does not imply that without tendering it in evidence it can be made use of for the first time in appeal. It is a piece of evidence that does not require any formal proof, but at the same time it must be tendered as evidence and



used as such, so that the accused may have a chance of questioning the identity of the packets”.

95. Similar view was expressed by the Delhi High Court in Chhotu Kumar (supra), wherein it has been held that: “Although the said report may be admissible under Section 293 of the Cr.P.C. without the author testifying to the contents thereof, however, the said report was required to be tendered and could not be taken note of without the same being tendered and exhibited”.

96. In Chhotu Kumar (supra), the Court referred a Division Bench judgment of Delhi High Court in Dharampal v. State reported in (2011) 525 DRL 417 wherein it was held: “It is true that in view of Section 293 of the Criminal Procedure Code, the report in question need not have been proved by summoning the author thereof, but that does not mean, that during trial nobody had to tender the same in evidence and have the same



exhibited by deposing that either he himself went to the FSL Laboratory and collected the report in question or deposing that during investigation he obtained the report in question and that the same pertains to the investigation conducted in the case which was being tried. It must be deposed that the report in question pertains to the case at hand”.

97. In the light of the statutory provisions as laid down under Section 293 of the CrPC, we are in complete agreement with the views expressed by the Allahabad High Court in Wali Muhammad (supra), and the Delhi High Court in Chhotu Kumar (supra) and Dharampal (supra). We are also of the view that the FSL report and its contents would be admissible in evidence even without examining the author and calling for its formal proof. However, the report falling under the ambit of Section 293 of the CrPC need to be tendered in evidence by some witness so that the



same is exhibited and connected with the case in hand. If it is not tendered in evidence by any witness, the same cannot be used in evidence.”

28. It is the specific contention of the Learned *Amicus Curiae* that the statutory provisions laid down under Code of Criminal Procedure must be followed and the contents of a document would be admissible in evidence, only if it is marked through one of the witnesses to prove the contents of the documents.

29. Admittedly, the record reveals that the petition filed by the Learned Additional Public Prosecutor was not pressed and when an application is not pressed, the necessity for the Court to mark the document with consent has not been explained by the trial court. Furthermore, the defence of the appellant before the trial Court was that a false injury report was prepared. Admittedly, as per the evidence of P.Ws. 1 and 3, the place of occurrence was also not been established. Initially, the place of occurrence was stated to be the house, then the land of the appellant and later the veranda of the house. The



evidence of the witnesses clearly disclose that the independent witnesses arrived at the place of occurrence after hearing the gunshots.

30. The Learned *Amicus Curiae* Ms. Nilambari also relied on the judgment of Apex Court in the case of ***Bahadur Naik Vs. State of Bihar*** reported in **2000(9) SCC 153**, wherein the Lordships of Apex Court held that non-examination of Investigating Officer is of no consequence, if no prejudice is caused. However, it is contended by the Learned *Amicus Curiae* that the non-examination of Investigating Officer caused prejudice to the appellant and, therefore, it is fatal to the case of the prosecution. Paragraph 2 of the judgment reads as follows:-

“2. The appellant has not been able to shake the credibility of the eyewitnesses. No material contradiction in the case of the prosecution has been shown to us. Under these facts and circumstances, the non-examination of the investigating officer as a witness is of no consequence. It has not been shown what prejudice



has been caused to the appellant by such non-examination.”

In ***Takhaji Hiraji Vs. Thakore Kubersing Chamansing and others reported in (2001)6 SCC 145,*** wherein the Lordships have held at Paragraph 19 as under:-

“19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the



witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present



case we find that there are at least 5 witnesses whose presence at the place of the incident and whose having seen the incident cannot be doubted at all. It is not even suggested by the defence that they were not present at the place of the incident and did not participate therein. The injuries sustained by these witnesses are not just minor and certainly not self-inflicted. None of the witnesses had a previous enmity with any of the accused persons and there is apparently no reason why they would tell a lie. The genesis of the incident is brought out by these witnesses. In fact, the presence of the prosecution party and the accused persons in the chowk of the village is not disputed. How the vanity of the Thakores was hurt leading to a heated verbal exchange is also not in dispute. Then followed the assault. If the place of the incident was the chowk then it was a sudden and not premeditated fight between the two parties. If the accused persons had reached their houses and



the members of the prosecution party had followed them and opened the assault near the house of the accused persons then it could probably be held to be a case of self-defence of the accused persons in which case non-explanation of the injuries sustained by the accused persons would have assumed significance. The learned Sessions Judge has on appreciation of oral and circumstantial evidence inferred that the place of the incident was the chowk and not a place near the houses of the accused persons. Nothing more could have been revealed by other village people or the party of tightrope dance performers. The evidence available on record shows and that appears to be very natural, that as soon as the melee ensued all the village people and tightrope dance performers took to their heels. They could not have seen the entire incident. The learned Sessions Judge has minutely scrutinised the statements of all the eyewitnesses and found them consistent and



reliable. The High Court made no effort at scrutinising and analysing the ocular testimony so as to doubt, if at all, the correctness of the several findings arrived at by the Sessions Court. With the assistance of the learned counsel for the parties we have gone through the evidence adduced and on our independent appreciation we find the eyewitnesses consistent and reliable in their narration of the incident. In our opinion non-examination of other witnesses does not cast any infirmity in the prosecution case.”

The citation relied upon by the *Amicus Curiae* squarely applies to the facts and circumstances of the present case.

31. It is specific contention of the Learned *Amicus Curiae* that the doctor would be material witness in this case, and the non-examination of the doctor at Chautham as well as Khagaria does not prove the genuineness of the incident. Therefore, the accused-appellant shall be entitled to the benefit of doubt.



32. It is an admitted fact that the charge-sheet filed by the Investigating Officer does not contain any list of documents, and the injury report, which was marked by the Court as Exhibit-2, was not served on the appellant at the time of supplying the papers to him under Section 207 of the Code of Criminal Procedure. The appellant had no opportunity to admit or deny the genuineness of the document. Further, it is the specific case of the appellant that Exhibit-2 is a false report brought on the record without being put through a witness, and as a result the appellant has lost his opportunity to dispute the contents of the document. The genuineness of the document itself is disputed by the appellant before the trial Court. Furthermore, on perusal of Exhibit-2, i.e. the injury report, it is evident that it is written on a scrap of paper addressed to the Chautham police station. There is no stamp or seal on the injury report to prove that Dr. R. Mohan issued the said injury report.

33. It is also contended by the *Amicus Curiae* that injury report is an incriminating material against the accused, and even the said incriminating material was not put to the accused, during the course of Section 313 Cr.P.C. examination,



which is fatal to the case of prosecution. The Learned Amicus Curiae relied on the judgment of the Apex Court in ***Naresh Kumar Vs. State of Delhi***, reported in ***2024 SCC Online SC 1641***, wherein their Lordships have held as under:-

“14. In the light of the aforesaid question posed for consideration, it is only appropriate to refer to the relevant provisions under Section 313 (1), (4) and (5).

“313. Power to examine the accused. — (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;



(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case : Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) ...

(3) ...

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be



put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

15. A bare perusal of the provisions under Section 313, Cr. P.C., extracted above, would undoubtedly reveal the irrecusable obligation coupled with duty on Court concerned to put the incriminating circumstances appearing in the prosecution evidence against accused concerned facing the trial providing him an opportunity to explain. Sub-Section (5) of Section 313, Cr. P.C., which was inserted under Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009) with effect from 31.12.2009, would lend support to this view. It reads thus:—

“Section 313. Power to examine the accused.

(5) The Court may take help of Prosecutor and Defence Counsel in



preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

16. In this context, the maxim “actus curiae neminem gravabit” - “the act of court shall prejudice no one”, has also to be looked into. In the decision in Oil and Natural Gas Company Limited v. Modern Construction and Company⁶, this Court held that the court has to correct the mistake it has done, rather than to ask the affected party to seek his remedy elsewhere. In the context of the decisions referred above, there can be no doubt that in a charge for commission of a serious offence where extreme penalty alone is imposable in case the accused is found guilty, procedural safeguards ensuring protection of right(s) of accused must be followed and at any rate, in such cases when non-compliance of the mandatory procedure capable of vitiating trial qua the convict



concerned is raised and revealed from records, irrespective of the fact it was not raised appropriately, it must be considered lest the byproduct of consideration of the case would result in miscarriage of justice. Being the Court existing for dispensation of justice, this Court is bound to consider and correct the mistake committed by the Court by looking into the question whether non-examination or inadequate examination of accused concerned caused material prejudice or miscarriage of justice. We may hasten to add here, that we shall not be understood to have held that always such a mistake has to be corrected by this Court by examining the question whether material prejudice or miscarriage of justice had been caused. In this context, the summarization of law on the subject of consequence of omission to make questioning on incriminating circumstances appearing in the prosecution evidence and the ways of curing the same, if it is called for, by this



Court in the decision in Raj Kumar @ Suman v. State (NCT of Delhi)[7](#), assumes relevance. Paragraph 16 of the said decision reads thus:—

“17. The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;”

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a



serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.”



17. In view of the circumstances obtained in this case, factually and legally, it is also relevant to refer to paragraph 20 of the decision in Raj Kumar's case (supra) and it reads thus:—

“21. Even assuming that the defect or irregularity was curable, the question is whether today, the appellant-accused can be called upon to explain the said circumstance. More than 27 years have passed since the date of the incident. Considering the passage of time, we are of the view that it will be unjust now at this stage to remit the case to the Trial Court for recording further statement of the appellant under Section 313 of CrPC. In the facts of the case, the appellant cannot be called upon to answer something which has transpired 27 years back. There is one more aspect of the matter which persuaded us not



to pass an order of remand. The said factor is that the appellant has already undergone incarceration for a period of 10 years and 4 months.”

18. In this case, the incident in question occurred on 14.06.1995 and thus, obviously, more than 29 years have passed by. The appellant has already undergone incarceration for a period of more than 12 years. In the circumstances, we are inclined to proceed with the consideration of the contentions bearing in mind the aforesaid authorities laying down the position of law on various aspects of Section 313, Cr. P.C.

21. We have already held that whether non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial qua the accused concerned and to hold the trial qua him is vitiated it is to be established further that it resulted in



material prejudice to the accused. True that the onus to establish the prejudice or miscarriage on account of non-questioning or inadequate questioning on any incriminating circumstance(s), during the examination under Section 313, Cr. P.C., is on the convict concerned. We say so, because if an accused is ultimately acquitted, he could not have a case that he was prejudiced or miscarriage of justice had occurred owing to such non-questioning or inadequate questioning”.

In the case of ***Prem Chandra Vs. State of Madhya Pradesh reported in (2023)5 SCC 522***, the Lordships of Apex Court have held at Paragraph 15 as under:-

“15. What follows from these authorities may briefly be summarised thus:

15.1. Section 313CrPC [clause (b) of sub-section (1)] is a valuable safeguard in the trial process for the accused to establish his innocence.



15.2. Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.

15.3. When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.

15.4. The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognised defences.

15.5. An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.

15.6. The explanations that an accused may furnish cannot be considered in isolation but



have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).

15.7. Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.

15.8. Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.

15.9. If the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyse and consider his statements.



15.10. Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.”

In the case of ***Rambilash Mahto & Ors. Vs. State of Bihar, reported in 2023 SCC OnLine Pat 2780***, wherein the Lordships have held that:-

“13. As is evident from the reading of the above indicated charges that there is conspicuous absence of any weapons with which the accused persons had intentionally and knowingly caused the death of Mahant Mahto and assaulted others. Thus, charges under sections 302/34, 302/149, 323, 325/34 and 147 of the Penal Code fail to clarify whether the appellants were accused of using the same weapon, different weapons, or no weapon at all in committing the offense. Concerning the other charges, namely those under section 324 I.P.C. and section 148 I.P.C., they mention the use of Gadasa and Bhala as weapons.



However, on turning our attention to the questions posed to the appellants during their examination under Section 313 of the Cr. P.C. by the learned trial Court, we have found that the statements of the appellants were simultaneously recorded, and the same set of questions were posed to all the appellants. The whole of the questions put to the accused Ramashis Yadav is extracted herein below:

EXAMINATION OF ACCUSED RAMASHIS YADAV

प्रश्न- गवाहों का बयान है की दिनांक 29-08-80 को आप अन्य मुदालयों के साथ नाजायज़ मजमा बनाकर दंगा फसाद किया तथा महन्थ महतो की हत्या कर डाली और हरे राम महतो , डोमी महतो, फेकन यादव इत्यादि को मारा पीटा | आपको इस संबंध में कुछ कहना है ?

उत्तर- नहीं

प्रश्न- सफाई में आपको कुछ कहना है?

उत्तर- लिखकर देंगे |

In the case of ***Ashok Koeri & Ors. Vs. The State of Bihar [Criminal Appeal (SJ) No. 61 of 2004]*** the Lordships have held at para 31, 32, 33 as under:-



“31. Further, the trial Court out to have taken caution in marking of the documents. A document can only be marked by a person who has personal knowledge about the incident. The Injury Report was alleged to have been marked through P.W.-6, who had no personal knowledge about it.

32. It is evident that in order to have the documents marked by the Court as Exhibits, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that:

(a) The “contents” of the document are proved (i.e. the document exists).

(b) The signature or handwriting on the document, if any, are proved (i.e. the document is genuine).

(c) In some cases, the witness who seeks to tender the document in evidence has personal knowledge of the document (i.e. that the witness is in



a position to prove the accuracy or truth of the contents of the document);

(d) The document is not inherently or ab initio inadmissible on some other legal ground (e.g. irrelevance, privilege, non-registration) and

(e) The document has been appropriately stamped, if so required by law.

33. In order to prove contents of a document, the witness through whom the document is sought to be tendered must produce the document in Court. The Evidence Act provides, in essence, that the “contents” of documents must ordinarily be proved by “primary” evidence. As the second step in getting a document marked, the witnesses who introduces the document must identify the signature or handwriting on the document, if there is any. The mere production of a document is not sufficient for the document to be marked as an exhibit. Thirdly, in order to lay a foundation for



marking a document, if the document contains any statement(s) of fact, and the party propounding the document relies on the truth or accuracy of those statements, then the witness. who tenders the document must demonstrate personal knowledge and the familiarity of the document. Fourthly, in some cases, irrespective of a party's ability to satisfy the criteria set out above, a law might prohibit some documents from being considered admissible in evidence. Such documents cannot be marked in evidence. Once a document is marked, it becomes the part of the record but has to be considered by the Court about its admissibility and relevancy of such document. Marking of document alone will not give any right to read the contents of the documents or about the admissibility of the documents."

34. It is penitent to note that the Apex Court in the above cases, has held that one must exercise the nature of



discrepancies. When the discrepancies are material enough to shake the very credibility of the witnesses, leading to a conclusion in the mind of the Court that the evidence cannot be separate it or relied upon, it is for the Court to accept and reject such evidence.

35. As discussed supra, there are many discrepancies in the evidence of P.Ws. 1 to 3. This Court is unable to understand as to how P.W. 2 and 3 could describe the model of weapon used when no weapon was recovered from the appellant by the Investigating Officer. Neither the Fardbeyan, nor the evidence of P.W. 1 nor the charge-sheet disclose about the nature of weapon. This Court is also unable to comprehend how the charge was framed, describing the nature of the weapon used by the appellant, in the absence of any material before the Court that too at the time of framing charges. If the evidence of P.W. 2 and 3 is to be believed, then the Fardbeyan itself must be discarded because P.W. 1 was alleged to have been unconscious until he was shifted to Khagaria hospital, and therefore, could not have



given a statement to ASI of Chautham Police Station. Further, there is no material on record to show who informed the ASI about the injured being treated at the residence of Dr. R. Mohan. If at all, the injured P.W. 1 was shifted to police Station first, the Police ought to have referred him to the government hospital Chautham/Primary Health Centre. There is no material on record to establish whether Dr. R. Mohan is a government doctor or a private doctor. It is also unclear as to why the trial court remained silent on the non-appearance of the Doctor. Admittedly, the record reveals that a bailable warrant was issued against the Doctor by the trial court.

36. In criminal jurisprudence, it is the prosecution's duty to prove the guilt of the accused beyond a reasonable doubt, and the accused is presumed to be innocent until the guilt is proven. Furthermore, it is for the prosecution to connect the crime to that of the accused. In the present case, the prosecution has miserably failed to connect the crime with that of the appellant. The evidence of P.W. 1 clearly disclose that he had purchased the house from one Jagdeo



Singh two years prior to the incident and further the evidence of P.W. 2 and 3 disclose that they entered into the courtyard of the appellant, where the occurrence allegedly took place. The injury report also does not disclose any exit or entry wound of a bullet. On perusal of the injury report, it is evident that it is not printed format of the government hospital, and there is nothing on record to prove that it was issued by the Dr. R. Mohan on 22.08.1995. Furthermore, the fardbeyan disclose that P.W. 1 was examined by the A.S.I. of Chautham Police Station at the residence of Dr. R. Mohan. In the absence of evidence of Dr. R. Mohan or of the ASI, the prosecution failed to prove that P.W. 1 was treated by Dr. R. Mohan. If at all the injury has been caused by a firearm at a short distance, the injury should have mentioned that there are charring/blackening marks on the body of the victim, i.e. P.W. 1. However, there is no description of any charring marks and the injury report does not specify the time or place at which P.W. 1 was examined. However, the time of injury sustained by P.W. 1 was mentioned as within six hours. The



injury report also does not clarify that whether the bullet remained inside the body of the injured or not. Therefore, this Court cannot consider the injury report as to proof of the offence against the appellant under Section 27 of the Arms Act.

37. Furthermore, none of the witnesses have spoken about the motive for the incident. It is only stated by P.W. 1 that the appellant came to his house and attempted to occupy the house claiming it was purchased by P.W. 1. None of the witnesses have spoken about the intention of the appellant to kill the P.W. 1. As stated earlier, the independent witnesses were not examined, for the best reasons known to the prosecution.

38. Therefore, this Court is of the considered view that the prosecution has miserably failed to prove the guilt of the appellant for the offences punishable under Section 307 of the Indian Penal Code and under Section 27 of the Arms Act. Therefore, the judgment and conviction in Sessions Case No. 279 of 2000 on the file of Additional District and



Sessions Judge/FTC-2nd, Khagaria dated 09.12.2003, is hereby set aside.

39. The record reveals that the appellant was released on bail by this Court vide order dated 21.07.2004. Accordingly, the bail bond of the appellant stands cancelled.

40. In result the appeal is allowed.

(G. Anupama Chakravarthy, J)

amitkr/-

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