

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.312 of 2003

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Arjun Mahton, Son of Borhan Mahton, resident of Village : Manikpur, P.S.
Suryagarha, Dist: Lakhisarai.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Suresh Prasad Singh, Advocate
	:	Mr. Umesh Prasad, Advocate
For the Respondent/s	:	Mr. A.M.P. Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 22-01-2024

1. The present appeal has been preferred by the appellant/convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the judgment of conviction and order of sentence dated 15.05.2003 passed by learned 7th Additional Sessions Judge, Munger in Sessions Trial No. 25 of 1997 arising out of Suryagarha P.S. Case No. 168 of 1995, whereby the concerned Trial Court has convicted the appellant/convict under Section 307 of the Indian Penal Code (hereinafter be referred to as 'IPC') and Section 27 of the Arms Act, where appellant/convict has sentenced to



undergo rigorous imprisonment for seven years and fine of Rs. 10,000/- and in default of payment of fine further to undergo rigorous imprisonment for two years for the offence punishable under Section 307 of the IPC and also rigorous imprisonment for three years for the offence punishable under Section 27 of the Arms Act. Both sentences shall to run concurrently.

2. The factual matrix of the present case is as under:-

Prosecution case is based on the basis of *fardbeyan* of one Ramjee Prasad Mahton (P.W. 13) that on 12.07.1995 at 5:30 PM while he was returning from his Mango Orchard, his son namely Pradeep Kumar (P.W. 4) and cousin brother namely Arjun Mahton (P.W. 3) were also ahead of him having mango loaded on a bullock cart and so, when he reached near the mango tree of one Nirdhan Chaudhary, he saw, east to the said mango orchard, Arjun Mahton (appellant), Rajan Mahton and Sakaldeo Paswan and two unknown persons of village Manikpur, district Lakhisarai, who were suddenly surrounded him. Arjun Mahton fired a bullet which hit on the right side of his chest. Second bullet was fired by Rajan Mahton, which also hit him on the right side of his lower abdomen. Thereafter, he raised alarm, upon which his brother Arjun Mahton and others



came and saw the occurrence. On their arrival, accused persons fled away.

3. On the basis of aforesaid information Suryagarha P.S. Case No. 168 of 1995 was registered and after completion of investigation, charge-sheet was submitted by the police under Sections 307/149 & 148 of the Indian Penal Code and also under Section 27 of the Arms Act, whereafter, learned Jurisdictional Magistrate took cognizance of the offences on the basis of materials available on record and after making compliance of Section 207 of Cr.P.C., committed this case to the Court of Session, in view of provision as available under Section 209 of Cr.P.C. for its trial and disposal.

4. Learned Trial Court on the basis of material collected during investigation on 24.06.1997 framed charges under Section 307 of the IPC & Section 27 of the Arms Act against appellant/accused, which were explained to accused persons including appellant/convict, separately which he plead “not guilty” and claimed trial.

5. To substantiate its case, the prosecution has examined altogether fourteen witnesses. They are:-

P.W. No(s).	Name
P.W. 1	Dr. Vimal Mukesh
P.W. 2	Dr. Birendra Kumar



	Mishra
P.W. 3	Arjun Prasad Mehta
P.W. 4	Pradeep Kumar Mahto
P.W. 5	Chando Mandal
P.W. 6	Khartar Mahto
P.W. 7	Gurukul Mandal (hostile)
P.W. 8	Ramdeo Mahto
P.W. 9	Ramavatar Ram (second IO of this case)
P.W. 10	Setho Mahto (hostile)
P.W. 11	Rajendra Mahto
P.W. 12	Upendra Mahto
P.W. 13	Ramji Prasad Mahto (informant)
P.W. 14	Shiv Narayan Lal (first IO of this case)

6. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit 1	Injury Report
Exhibit 2	Discharge Ticket
Exhibit 3	Bed Head Tickets
Exhibit 3/3	
Exhibit 4	S.O.D.
Exhibit 4/2	Book No. 25 page 113-115.
Exhibit 5	Chitha pasted on Register of Ramjee Mahton
Exhibit 6	Entry No. 3519 dated



	12.07.1995 of Ramjee Mahton on O.P.D. register.
Exhibit 7	Signature of P.W. 7 on the attachment U/s 83 of Cr.P.C. of accused Arjun Mahton
Exhibit 7/1	Signature of P.W. 7 on the attachment U/s 83 of Cr.P.C. of accused Ramjee Mahton
Exhibit 7/2	Signature of P.W. 13 on the <i>fardbeyan</i>
Exhibit 7/3	Signature of Suresh Pd. Mehta on the <i>fardbeyan</i>
Exhibit 7/4	Signature of Ramchandra Pd. Mehta on the <i>fardbeyan</i>
Exhibit 8	<i>Fardbeyan</i>
Exhibit 9	Original Notice U/s 144 of the Cr.P.C. in Case No. 10M/92.
Exhibit 10	Original Notice U/s 144 of the Cr.P.C. in Case No. 336M/93.
Exhibit 11	Original Notice U/s 145 of the Cr.P.C. in Case No. 336M/93.
Exhibit 12	Original Notice of Criminal Revision No. 77/92.
Exhibit 13	Certified Copy of final order dated 12.08.1997 in Case No. 336/93
Exhibit 14	Certified Copy of Complaint Title Suit No.15/01

7. The statement of the appellant/accused was



recorded under Section 313 of the Code after stating him incriminating evidences/circumstances as surfaced during the trial, which he denied and shows his complete innocence.

8. No witness was examined in support of defence, whereas defence has filed documents as Exhibits A & A/1, which are order dated 18.02.1998 in Criminal Revision No. 318 of 1997 and order dated 12.07.2000 in Criminal Revision No. 318 of 1997.

9. After conclusion of the trial, the learned Trial Court convicted the appellant/accused for the offence punishable under Section 307 of the Indian Penal Code & Section 27 of the Arms Act, accordingly, ordered to undergo sentence for the period of seven years and three years, respectively alongwith fine. Being aggrieved with, the appellant/convict has preferred this appeal.

10. Hence, the present appeal.

11. Learned counsel appearing on behalf of appellant/accused submitted that appellant has been falsely implicated with the present case out of local political rivalry, as it is apparent from the deposition of informant/P.W. 13, who was an ex-MLA. It is submitted that there is specific case of informant/injured that he received bullet injuries on his both left



and right side above the waist but the injuries are available on the right side only. It is further submitted that the testimony of P.W. 13/informant/injured is appearing contradictory, *qua*, medical finding. Learned counsel further submitted that P.W. 13/informant/injured made several such statements to aggravate the fact first time during the trial as to secure conviction, where no such statements were made earlier during the course of investigation before the police officials. It is submitted that this fact is apparently clear from the deposition of I.O., who examined as P.W. 14. It is submitted that proper attention was drawn regarding those facts, to investigating officer/P.W. 14, which were denied by him contradicting the statement, which is sufficient to impeach the credibility of injured witness/P.W. 13. It is further submitted by learned counsel that the presence of other eye-witnesses, who are son and nephew of informant/injured/P.W. 13 appears doubtful at the place of occurrence as they did not notice the presence of accused/appellant at the place of occurrence though they were few steps ahead to P.W. 13/informant/injured and in this background their testimonies cannot be believed, also being an interested witnesses. In support of his submission, learned counsel relied upon the legal reports of Hon'ble Supreme Court



in the matters of **Khema @ Khem Chandra and Others Vs. State of Uttar Pradesh** as reported in **(2023) 10 SCC 451 & Dalip Singh Vs. State of Punjab** as reported in **AIR 1953 SC 364**.

12. Learned APP while opposing the appeal submitted that P.W. 13/informant/injured specifically submitted that bullet was fired upon him by appellant/accused, causing gun shot injuries, which appears corroborated from the testimony of doctors, who were examined as P.W. 1 & P.W. 2 during the course of trial. It is submitted that minor contradictions are bound to be surfaced during the course of trial and on the basis of those minor contradictions the testimonies of injured witnesses cannot be discarded. In support of his submission, learned APP relied upon the legal report of Hon'ble Supreme Court in the matter of **Inder Singh Vs. State of Punjab** as reported in **(1952) 1 SCC 404**.

13. I have perused the lower court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

14. As to re-appreciate the evidences while disposing the present appeal, it is apposite to discuss the



evidences available on the record, which are as under:-

15. P.W. 13 Ramji Prasad Mahto
(informant)/injured, who in his examination-in-chief stated that on 12.07.1995 at about 5:30 PM, when he went to mango orchard at 9:00 AM to pluck the mangoes and while returning in evening he loaded all mangoes on a bullock cart and send his son namely Pradeep Kumar and cousin Arjun Prasad Mehta with the said bullock cart as they also accompanied him to help in plucking mangoes in the orchard. He was returning following the said cart but via footpath (*pagdandi*) beside the main road. He stated specifically that his son Pradeep Kumar Mahto and cousin Arjun Prasad Mehta were ahead of him and when they reached near mango tree of one Nirdhan Choudhary the appellant/accused alongwith five persons, who were hidden there, appeared suddenly and surrounded him, where he identified Arjun Mahto appellant/accused with Rajan Mahto and Sakaldeo Paswan. All five persons were equipped with countrymade pistols, where Arjun Mahto (appellant/accused) ordered to fire as to kill injured/informant and simultaneously giving said order appellant/accused fired upon him, which hit on his right waist. It was fired with intention to kill. Second bullet was fired by Rajan Mahto also with the intention to kill, which



hit on his right waist and chest also. He raised alarm to save him and on the said alarm his son Pradeep Kumar Mahto and cousin Arjun Prasad Mehta, Chando Mandal, Gurukul Mandal, Setho Mahto, Upendra Mahto & Khartar Mahto came at the place of firing and when accused/appellant found other people coming towards the place of occurrence, they fled away towards south east. His son, cousin and other persons, while coming towards him, witnessed the occurrence. Injured/informant/P.W. 13 became unconscious due to bullet injuries and fell to the ground. He gained his sense for sometime at Surajgarha Hospital and again became unconscious. It is stated by him that appellant/accused had suspicion to disclose their names by him in the police murder case, which took place in the year 1992. He gained his consciousness at Patna Medical College & Hospital (in short P.M.C.H), where he made his statement to police inspector and signed over there. He identified his signature on his written statement, which on his identification exhibited as **Exhibit 7/2**. He also identified the signature of Suresh Prasad Mehta and Ram Chandra Prasad Mehta on the said statement, which on his identification exhibited as **Exhibit 6/3 & 6/6**. He remained in P.M.C.H for 80 days. He stated that witness Shekhu and Upendra Mahto are his own cousin and nephew. He also



stated that there was a land dispute with Arjun Mahto, Sakaldeo Paswan and Ram Kisun Mahto. He identified accused persons including accused/appellant before the Court.

15.1. Upon cross-examination he stated that appellant/accused had only one eye as he lost his other eye in the firing case. He stated that he is in litigating terms with appellant/accused since 1992 as since then proceeding under Section 145 of Cr.P.C. is pending between them. He stated that appellant/accused never said him that he disclosed his name to police in the police murder case. It was stated that he did not become unconscious immediately, rather he became unconscious after sometime. He was shot from a distance of 5-6 feet, one by one. It was stated by him that both persons who fired upon him, were facing towards northeast, whereas he was facing towards west. He was not shot from the front. After receiving bullet shot he remained on spot itself and was not able to move from there. It was stated that after receiving bullet injury he became senseless. He stated that after receiving injuries he remain standing for five minutes and by that time bleeding also started. It was stated that excessive bleeding was caused by first firing, whereas from the second firing blood was coming in drops. He said that when he gained consciousness at



Surajgarha Hospital, for a short period, he found his brother Arjun Prasad Mehta, Dr. Mishra ji, his son Pradeep Kumar Mahto, one Shiv Shankar Prasad Verma, Shravan Kumar Agarwal etc. He did not find police inspector there. He did not disclose the name of appellant/accused as assailants to them. He again became senseless at Surajgarha Hospital after 1-2 minutes. He regained his consciousness on 13th day of the said calendar month at Patna at about 2:30 AM. He found his brother Arjun Prasad Mahto, cousin brother Sikandar Mahto, Nagina Mahto, younger son Kuldeep Kumar Mahto, Suresh Prasad Mehta, Ram Chandra Prasad Mehta etc., in hospital. They all were present in the village on the date of occurrence. He stated that police officer (*daroga*) came after five minutes of gaining to his self. He stated that he did not read his statement authored by *daroga ji*, rather it was read over to him. He found mistake there and specifically stated that he made statement regarding all five accused persons including appellant/accused, who were equipped with pistols. He did not disclose in *fardbeyan* that he regained his consciousness for a short period at Surajgarha Hospital. He stated that he made statement before police that when he came near mango tree of Nirdhan Choudhary he found accused Sakaldeo Paswan coming out from bamboo clumps of



one Ram Kisun Mahto situated in the western side and found Arjun Mahto (appellant/accused) coming from the northern side of the orchard. When he saw them he found them running at a distance of 15-20 feet. He stated that he did not disclose to police through his *fardbeyan* that accused persons were sitting in orchard of one Ram Kisun Mahto. He denied that he raised alarm only in plain manner as "दौड़ो दौड़ो पकड़ो". He stated to give statement that appellant/accused Arjun Mahto said that "चारो तरफ से भूँज डालो न ज़िंदा रहेगा न किसी का नाम बताएगा". He denied suggestion that aforesaid fact was not stated before the police.

16. P.W. 1 Dr. Vimal Mukesh who stated that on 13.07.95 he was posted as Resident Surgical Officer in the Deptt. of Surgery in Patna Medical College and was working in the surgical emergency as surgeon and was on duty between 10 P.M. to 7.A.M. shift. He was on duty on 12.7.95 at 10 P.M. in PMCH surgical emergency and he was on duty till 7 A.M. on 13.07.95.

On that date at 2 A.M. on 13.07.95 he examined Sri Ramjee Prasad Mahto aged about 60 years son of Late Inder Mahto resident of village Manikpur, Surajgarha Distt-Lakhisarai ERS/3202, case being referred from Surajgarha vide



registration Number 3519 dated 12.07.95 and found the following injury on the person.

I. Lacerated wound right side of chest anterior 1" long charring ++ tattooing ++ bleeding ++, means charring, tattoos and bleeding were present.

II. Abrasion in the left lower flank (abdomen) 1" long.

III. X-ray chest bearing number XPN (Xray Plate no.) 4345, shows consolidation right lower chest. Consolidation means tissues are crushed. X-ray abdomen vide plate no. 4345 shows gas under diaphragm. Bullet seen in left lower flank. Operative notes suggest that operation was done under general anesthesia. Abdomen was opened right paramedian incision.

Findings :

(i) perforation in anterior wall of stomach.

(ii) perforation in jejunum

(iii) Perforation in transverse

(iv) Tear in mesocolon

(v) laceration right

Procedure adopted in operation

(i) resection and anastomosis of small ducts

(ii) closure of perforation.

Mark of Identification - mole on the right. Age of injury



within twelve hour.

Nature of injury no. 1 was grievous and dangerous to life. Injury no. 2 was simple. Both caused by firearms i.e., countrymade pistol.

Above injury report was in his hand writing bearing his signature, on his identification was marked as Ext.1.

Injured Ramjee Prasad was admitted in the unit of Dr. A.A. Hai.

He identified discharge ticket of the Dr. A.A. Hai, which was in his handwriting and bears his signature which on identification marked as Ext 2.

Bed head ticket was written by him at the time of admission and was in his pen & signature & the part of the Bed Head Ticket had also been written by him in his pen and signature, marked as Ext. 3, 3/1, 3/2, 3/3.

Admission & injury of Ramjee Mahto, X-rays findings and list of treatment was in his pen and signature and it was marked as Ext. 4, on his identification.

16.1. Upon cross-examination he stated that injury report has been written by doctor on 13.10.95 on the basis of Hospital record. All the hospital records are not written under his pen. The O.T. note was not prepared and signed by him



rather same was dictated by him. He did not mention that to whom he dictated regarding O.T. notes. He did not identify the writing and signature.

He does not remains available 24 hours in the hospital.

The x-ray was not done in his pressure.

There is no written document to show that he had dictated O.T. Notes.

The surgeon who performed the operation is not mentioned in Bed Head Ticket but is written in O.T. register. The O.T. register is not brought in court.

The Bed head ticket was not completed till 18.07.95. Seal of Register does not bear the signature.

It is not necessary that during the operation an anesthesian is to be present. Anesthesian is a physician. In every operation there must be a physician.

Ext. 3 is Bed Head ticket. In Ext 3 there is no mentioning about charring, tattooing and bleeding.

In Ext. 4/2 the nature of injury has not been mentioned as to be caused by fire arms.

In the discharge certificate it is mentioned about only disease and not about injury.

Injury report Ext 1 does not mention the Ramjee Mahto as



an MLA.

In the discharge certificate the Ramjee Mahto has been mentioned as ex-MLA.

Ques- In Regard Ext. 4/2, it has been mentioned that Ramjee Mahto came at 4.30 P.M. on 12.07.95.

Ans- That reference of 4.30 P.M. is regarding 12.7.95, based upon history of the occurrence narrated by the attendant who brought the patient to the PMCH. So it has been mentioned that the occurrence took place at 4.30 P.M. on 12.07.95.

In the Bed Head ticket in the S.O.D. book it has been mentioned as police case.

The reference slip marked for identification 'Y' does not bear seal of hospital or letter pad of the Hospital, rather it is in plain paper.

The bed head ticket does not mention the injury.

In injury no. 1 he did not mentioned blackening, charring, tattooing and bleeding.

He did not find any foreign parts in the injury.

The distance of injury no. 1 & 2 are different, both injuries can be possible by one firing.

He denied his opinion as incorrect.

17. P.W. 2 Dr. Birendra Kumar Mishra stated



that on 12-07-95 he was posted at Surajgarha Hospital as Incharge Medical Officer. On that date at about 8.40 PM Ramjee Prasad Mahto (P.W. 13) came to Surajgarha Hospital in injured condition. He gave him first aid treatment in O.P.D and refereed him to PMCH, Patna.

He found the gun shot injury on the right side of the lower part of chest. He did not issue any injury report. He did not mentioned the age of injury, though it was very recent i.e., within hours.

He found injury grievous and dangerous to life, therefore he refereed Ramjee Mahto to PMCH. Reference letter on his identification was marked as Ext. 5.

He also identified OPD register, which was in his handwriting being attending doctor, which on his identification marked as Ext-6.

He identified Ramjee Mahto, who was present in court.

(Defence do not challenge the identification of Ramjee Mahto by Doctor.)

18.1. Upon cross-examination he stated that in Surajgarha doctor remains posted for 24 hours for routine hospital duty. In other enteries of 12.7.95 time has not been mentioned, except that in the case of Ramjee Mahto. The case of entry of Ramjee



Mahto was the last entry of 12-7-95. In that entry gunshot is mentioned but the injury on chest has not been mentioned.

In Ext 6 also, the injury on chest is not mentioned, though injury by fire arms is mentioned thereof.

In Ext 5 & 6 it not mentioned that injuries were grievous and dangerous to life.

In Ext 6 he mentioned that patient may referred to P.M.C.H.

It is stated that patient came directly to him some time after arrival of police. He did not informed the police rather police had came on its own at the time of the treatment. Police came somewhere between 8:30 PM to 9:10 PM. The police did not prepare any injury report at that time. The patient was present, when police reached there. In his presence Ramjee Mahto(injured) did not gave any statement to the police. He cannot say that police proceeded within 30 minutes of his treatment. He failed to collect the name of the police officer, who had come at the time of treatment of Ramjee (P.W. 13).

He did not ask Ramjee Mahto about the injury. He had not asked any thing, to patient about finding what he mentioned in Ext 5 & 6.

He stated to know Ramjee Mahto since his posting i.e.,



about four years prior to the date of his examination i.e., on 12-7-95. At that time Ramjee Mahto was not an MLA. He was MLA prior to 1985.

He denied to depose falsely under influence of Ramjee Mahto, and also any manipulation in his injury report to oblige him.

18. P.W. 3 Arjun Prasad Mehta (cousin brother of injured) stated in his examination-in-chief that occurrence was of 12.07.1995, which took place at about 5:30 PM. He deposed that while returning to home in evening alongwith his nephew Pradeep Kumar Mahto/P.W. 4, through his cart loaded with mangoes and so they reached near to the orchard of one Nirdhan Choudhary, he heard that his brother Ramji Prasad Mahto (brother/P.W. 13), raised alarm as to save him, where accused/appellant Arjun Mahton alongwith co-accused Rajan Mahton and Sakaldeo Paswan fired upon him. They left their cart there and rushed to his brother and found that five persons were running towards south direction. He identified appellant/accused including other co-accused persons namely Rajan Mahton and Sakaldeo Paswan. He chased accused/appellant and other co-accused persons but as Arjun Mahton (accused/appellant) and co-accused Rajan threatened



him to return otherwise would kill him, he stopped to chase them. It was also stated by him that he alongwith his nephew Pradeep Kumar Mahto, Chando Mandal, Gurukul Mandal, Upendra Mahto, Setho Mahto and other co-villagers chased appellant/accused and other co-accused persons. He deposed further that when accused persons asked them to return, his nephew Pradeep and Chando Mandal returned to his injured brother Ramji Prasad Mahto (P.W. 13), where he was found in pool of blood. They brought injured/informant/P.W. 13 on cot near to cattle shed (*bathan*) of one Ramavatar Mahto and thereafter was taken to Surajgarha Hospital, where he was given first aid by Dr. Mishra. By looking at the seriousness and condition of the injured he was referred to P.M.C.H., from where police inspector (*daroga ji*) also accompanied him for P.M.C.H. He deposed about the cause of occurrence as accused/appellant suspected that his name alongwith other co-accused was given in police murder case by injured/informant/P.W. 13 being MLA. He also affirmed about the land dispute. It was deposed that injured gained his consciousness for a short period at Surajgarha Hospital.

18.1. Upon cross-examination he stated that land dispute was pending between the injured and appellant/accused.



It was related to the land having total area of about 11 decimals, bearing khata no. 221 of Medha Siwan. He also stated that proceedings were also initiated under Section 144 & 145 of the Code for said disputed piece of land. It was stated by him that they arrived at Surajgarha Hospital at about 8:40 PM and half an hour thereafter they proceeded for Patna where, they arrived at about 2:00 AM.

19. P.W. 4 Pradeep Kumar Mahto (son of the informant) stated that occurrence is of 12.07.1995 at about 5:30 PM. He narrated same story about the occurrence as narrated by P.W. 3 in his examination-in-chief, where it appears from his deposition that he is not the eye-witness of the actual occurrence and found appellant/accused running away along with other co-accused persons from the place of occurrence.

19.1. Upon cross-examination he stated that he did not meet with police inspector (*daroga ji*) in the Surajgarha Hospital.

20. P.W. 5 Chando Mandal also supported the time and date of occurrence and deposed that he heard the sound of two gun shots and also alarm as raised by injured/informant/P.W.-13, when Arjun Mahto (appellant/accused) fired upon him. He found appellant/accused



running away from the place of occurrence alongwith other co-accused persons.

20.1. Upon cross-examination he stated that he heard two gun shots. He stated that blood was not visible, as same was covered by towel (*gamcha*).

21. P.W. 6 Khartar Mahto & P.W. 7 Gurukul Mandal (hostile) turns hostile, where nothing surfaced out of their cross-examination as to corroborate or contradict the version of prosecution witnesses, who supported the occurrence.

22. P.W. 8 Ramdeo Mahto, who saw informant/injured/P.W. 13 in injured condition while lying on the cot in cattle shed (*bathan*) of one Ramavatar Mandal.

23. P.W. 9 Ramavatar Ram, one of the investigating officer of this case, who joined investigation of this case on 06.09.1995. He received the injury report of P.W. 13/informant from P.M.C.H. He contradicts the attention as drawn to P.W. 3 & P.W. 4 regarding their previous statement during the course of investigation by stating that they, did not made any such statement before police that they heard two gun shots and chased accused persons and when they threatened him to return back, stopped to chase them under threat of life. It was stated that major investigation of this case was done by P.W. 14.



24. P.W. 10 Setho Mahto (hostile) did not supported the case of prosecution. Nothing surfaced from his cross-examination as conducted by learned APP, which may be used to contradict or corroborate the version of other prosecution witnesses, who supported the case of prosecution.

25. P.W. 11 Rajendra Mahto, who is witness of seizure list and stated not to be an eye-witness of the occurrence.

26. P.W. 12 Upendra Mahto (hostile) during trial he stated in his examination-in-chief that while he was at his home at about 4:00 PM he heard two gun shots, whereafter he rushed towards the direction of sound but returned back from the mid-way and thereafter he never visited to the place of occurrence.

26.1. Upon cross-examination by learned APP nothing substantial surfaced as to corroborate or contradict the version, *qua*, other prosecution witnesses, who supported the occurrence.

27. P.W. 14 Shiv Narayan Lal, who is first investigating officer of this case, who on 12.07.1995 stated to be posted as ASI. He deposed that when he was crossing Surajgarha Hospital, he heard that someone fired upon ex-MLA,



Ramji Prasad Mahto/P.W. 13, who referred to P.M.C.H. Injured was not in a position to give his statement at Suryagarha Hospital and for that reason his statement was not recorded there. He also stated to accompanied him upto Patna, where he reached at about 2:00 AM. After receiving treatment he gained consciousness and thereafter he recorded his statement/*fardbeyan*. He identified his signature and signature of P.W. 13 over *fardbeyan* which on identification, exhibited as **Exhibit 8**. He found two injuries, on inspection, both on the right waist. It was all due to bullet injuries. He also recorded re-statement of the informant/P.W. 13 and on the basis of said information he lodged Surajgarha P.S. Case No. 168 of 1995. After receiving the charge of investigation, he visited the place of occurrence and recorded the statement of witnesses. He found the place of occurrence disturbed, having several foot marks. On 05.09.1995 investigation was handed over to him by Ramavatar Ram/P.W. 9.

27.1. Upon cross-examination he stated that he did not record the statement of injured at Surajgarha Hospital. He did not came to know at hospital from family members of the injured present over there that the bullet was fired by accused/appellant and co-accused Rajan and Sakaldeo Paswan.



It was stated by him that he visited Patna with armed forces and categorically stated that he was not directed or authorized by any senior police officer to go Patna, with injured/P.W. 13. He stated that he went Patna through government jeep, which was provided by Station House Officer of Surajgarha Police Station. Entry of the said jeep was not made in the log book. He also failed to state whether police forces were duly authorized to go Patna alongwith injured. It was stated that it took 4 ½ hours to reach Patna. He recorded statement of the injured after half an hour when they reached Patna. He did not made any attempt as to record statements of his relative during said time-gap. The case at Surajgarha Police Station was lodged only when he returned from Patna. He did not receive any information regarding occurrence from Surajgarha Police Incharge. He did not prepare any injury report at Surajgarha Hospital. It was stated by him that he started to write case diary from the Surajgarha Hospital, later he stated to write case diary at 2:30 PM from Patna, only. He denied that *fardbeyan* was recorded *ante* dated. He denied to manipulate the fact of occurrence by cutting several statements recorded in case diary. He stated that he was accused in a rape case, where he was acquitted. He denied that he manipulated this case in collusion with



injured/informant/P.W. 13. He did not saw mango tree as stated by injured and also did not find any blood stain or cartridges at the place of occurrence. He did not seize cloth of injured/informant/P.W. 13 and stated by contradicting the statement of Arjun Mehta/P.W. 3 that he never made statement before him that injured was unconscious at the place of occurrence and gained consciousness for a while at the place of occurrence and also at Surajgarha Hospital. He also contradicted the version of P.W. 3 and stated that he did not made any statement before him that he chased accused persons with Pradeep, Chando, Upendra etc., He also contradicted by saying that P.W. 3 did not stated that co-accused Sakaldeo Paswan, was equipped with pistol. He also contradicted the version of Chando Mahto/P.W. 5 by stating that he did not stated to heard firing of two gun shots. He affirmed statement of P.W. 5 that he stated during investigation that when he arrived at the place of occurrence, he found injured/informant/P.W. 13 was holding his injury and was running towards west direction, whereas the accused/appellant alongwith other co-accused persons were running towards south. He contradicted the version of P.W. 5 by stating that he did not made statement before him to chase appellant/accused and other co-accused persons. He also



contradicted the version of P.W. 5 by stating that he did not make statement that he saw five persons running away near to mango tree of one Nirdhan Choudhary and all were equipped with pistols.

28. On the basis of aforesaid discussed evidence, it appears that except injured/informant/P.W. 13 none are the eye-witnesses of the actual occurrence, where P.W. 3 & P.W. 5 are son and cousin brother of P.W. 13 and they also not appears the eye-witness of actual occurrence of firing rather they arrived at the place of occurrence on the alarm raised by injured/informant/P.W. 13. From the deposition of P.W. 13, it appears that P.W. 3 & P.W. 5 were ahead of him on same way but from their depositions it nowhere appears that they saw five co-accused persons gathered near mango tree of Nirdhan Chaudhary. It appears highly impossible that how P.W. 3 & P.W. 5, who were just few steps ahead of injured/informant/P.W. 13 on same way, failed to notice appellant/accused and other co-accused persons, gathered over there. This material aspect creates serious doubt regarding presence of appellant/accused at the place of occurrence.

29. No doubt, the testimony of injured witness is of higher degree of acceptance but as there is admitted previous



enmities between the parties and other witnesses particularly P.W 3 & P.W. 5, who are close relatives, being cousin brother and son of the injured/informant/P.W. 13, their statement are required to be viewed strictly.

30. In this context it would be apposite to refer the legal report of **Khema @ Khem Chandra (supra)**, wherein Hon'ble Supreme Court in Para-31 of the legal report observed as under:-

“From the perusal of the evidence as well as the findings of the trial court itself, it is clear that Omveer (PW 1) cannot be said to be an eyewitness. Though, Inder (PW 2) is an injured eyewitness, there are serious discrepancies and inconsistencies with regard to time of the injuries sustained and time at which he was medically examined. Dr Anoop Kumar (PW 6), in his evidence, has changed his stance on several occasions. His testimony is totally contrary to that of Omveer (PW 1) and Inder (PW 2). As held by us, it will not be safe to base the conviction on the sole testimony of Inder (PW 2) though he is an injured witness. The corroboration sought by the prosecution with regard to alleged recoveries of the weapons used in the crime is also not free from doubt. Neither the station diary entry with regard to telephonic intimation given by Vijay Singh at 9.05 a.m. has been brought on record nor has Vijay Singh been examined. Though



independent witnesses were available, the prosecution has failed to examine them. We therefore find that this is a case wherein the appellants are entitled for benefit of doubt.”

31. From the depositions of P.W. 14, who is the first investigating officer of this case, it appears that he did not even visited/examined the place of occurrence properly and stated that he did not even saw the mango tree behind which accused/appellant alongwith other co-accused persons were said to hidden. I.O. did not even find any empty cartridges at the place of occurrence and not even noticed and blood stains over there. He also failed to seize any blood stained cloth of the injured/informant/P.W. 13. It is also admitted position that no firearms as alleged to cause bullet injuries were recovered from the appellant/accused. All these aspects of investigation makes this case further doubtful.

32. From the depositions of P.W. 14, it appears that he saw injured first time at Surajgarha Hospital, where he regained his consciousness for a while. As per his deposition P.W. 3, P.W. 5 & P.W. 9, were present at Suryagarha Hospital but he did not asked them to know that, who fired upon P.W. 13, until he reached Patna, till then, he was clueless about the fact that whether appellant fired upon injured/informant/P.W. 13. He



did not even came to know this fact from the attendants of the injured, who are none but his son and cousin brother i.e., P.W. 3 & 5 though accompanied them upto Patna. His statement that he started to write case diary from the Surajgarha Hospital itself, also creates a doubt as how he started investigation without lodging the F.I.R.

33. During the course of trial, it appears that P.W. 5 & P.W. 3, who immediately arrived at the place of occurrence and saw other co-accused persons running towards south direction equipped with pistol, but when contradiction was drawn regarding said statement to I.O./P.W. 14, he stated that they never made such statement before him during the course of investigation, which is sufficient to doubt the version of P.W. 3 & P.W. 5 by importing the provisions of Section 155 of the Indian Evidence Act, as to impeach their credibility. Moreover P.W. 3 & P.W. 5 are relatives and they were also in enmical terms with appellant/accused as per their testimony, which makes them interested witnesses. It is settled law that the testimony of interested witnesses are to be scrutinized strictly and cautiously acted upon.

34. In this context, it would be apposite to refer to the legal report of **Dalip Singh (supra)**, wherein Hon'ble



Supreme Court in Para-26 of the said legal report observed as under:-

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

35. In view of above factual and legal discussion, it appears that there are several doubts surfaced during the course of trial, which remains unanswered by the prosecution to establish its case beyond reasonable doubts.



36. Accordingly, the appeal stands allowed.

37. The impugned judgment of conviction and order of sentence dated 15.05.2003 passed by learned 7th Additional Sessions Judge, Munger in Sessions Trial No. 25 of 1997 arising out of Suryagarha P.S. Case No. 168 of 1995 is quashed and set aside.

38. The appellant, above-named, is therefore acquitted of the charges levelled against them by giving benefit of doubts. Since the appellant is on bail, he has been discharged from the liabilities of their bail bonds. Sureties are also stands discharged from their respective liabilities.

39. Office is directed to send back the Trial Court Records (TCR) along with a copy of the judgment, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

