

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.519 of 2003

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Ram Awadhesh Yadav, Son of Ramyadi Yadav, Resident of village-
Dhankara, Police Station- Sasaram(M), District- Rohtas at Sasaram.

... .. Appellant

Versus

The State of Bihar.

... .. Respondent

=====

with
CRIMINAL APPEAL (SJ) No. 12 of 2004

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Mangal Yadav, Son of Ram Awadhesh Yadav, Resident of village-
Dhankara, Police Station- Sasaram(M), District- Rohtas at Sasaram.

... .. Appellant

Versus

The State of Bihar.

... .. Respondent

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Appearance :

(In CRIMINAL APPEAL (SJ) No. 519 of 2003)

For the Appellant/s : Mr. Sumit Shekhar Pandey, Amicus Curiae

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

(In CRIMINAL APPEAL (SJ) No. 12 of 2004)

For the Appellant/s : Mr. Sumit Shekhar Pandey, Amicus Curiae

For the Respondent/s : Mrs. Anita Kumari Singh (APP)

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 11-07-2024

Both these appeals have been heard together, which

arises out of same judgment, and disposing herewith by this

common judgment.

2. Heard Mr. Sumit Shekhar Pandey, learned

Amicus Curiae and Mr. A.M.P. Mehta and Mrs. Anita Kumari

Singh, learned A.P.Ps. for the State.



3. Both these appeals preferred by appellants/convicts namely, Ram Awadhesh Yadav (Cr. Appeal (SJ) No. 519 of 2003) and Mangal Yadav (Cr. Appeal (SJ) No. 12 of 2004) against judgment of conviction dated 15.11.2003 and order of sentence dated 17.11.2003 rendered by learned Fast Track Court No. 1, Rohtas at Sasaram, in S.T. No. 224 of 1992, (arising out of Sasaram (M) P.S. Case No. 238 of 1991), whereby and whereunder both these appellants have been convicted for the offence punishable under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment of four years each and to pay a fine of Rs. 2000/- (Two thousand), and in default of payment of fine, both appellants have to undergo further for rigorous imprisonment for a period of two months. So far as appellant namely, Mangal Yadav is concerned, he was further sentenced to undergo R.I. for one year under Section 27 of the Arms Act. Learned trial court has further ordered that both the sentences shall run concurrently.

4. The crux of prosecution case as springs through



written information of informant namely, Suchit Yadav (PW-3) that on 29.04.1991, after taking his meal he was sleeping on the roof of Dalan along with his brother Kanhaiya Yadav (PW-4) and Nisan Yadav (PW-2). His father (Pw-1) was sleeping in *Varandah* of the Dalan. It is stated that at about 10.30 P.M. his uncle Ram Awadhesh Yadav and cousin Mangal Yadav (both appellants/convicts) came with 8-10 unidentified miscreants and was searching him by name. On hearing, he came down and enquired into the matter. In the meantime, Mangal Yadav told that he would be kill and on the order of Ramadhesh Yadav, Mangal Yadav fired from gun upon him, as a result of which, he sustained gunshot injury on his thigh and he fell down. Thereafter the villagers assembled and accused persons fled away. He was brought to Sadar Hospital, Sasaram by his father and other co-villagers. It is stated that on the instigation of Ramadhesh Yadav his son Mangal Yadav fired gun from his weapon, On the basis of the aforesaid statement, Sasaram(M) P.S. Case No. 238 of 1991 dated 29.4.1991 was registered under section 307/34 of the Indian Penal Code with Section 27 of



the Arms Act.

5. On the basis of aforesaid written information, police took up investigation and after completion of investigation, investigating officer submitted charge sheet and finally the case was committed to the court of session on 14.11.2002.

6. After commitment, learned trial court explained charges to appellants/accused, on the basis of materials collected during investigation, which they pleaded "not guilty" and claimed trial.

7. To establish its case before the learned trial court, the prosecution altogether examined total of six witnesses, namely, **PW-1 Ram Naresh Yadav, PW-2 Nishan Yadav, PW-3 Suchit Yadav (informant) PW-4 Kanhaiya Yadav, PW-5 S.I. Lalan Upadhyay, PW-6 Dr. Devendra Tripathi**, who had examined injured Suchit Yadav/informant/injured of this case.

8. After examination of prosecution witnesses and by taking note of evidence and incriminating circumstances as surfaced during trial, statement of accused persons



including appellants/accused were recorded under Section 313 of the Cr.P.C. which was denied in totality by showing complete innocence.

9. Two witnesses were examined in defence.

10. On the basis of evidences as surfaced during the trial, the learned trial court convicted and sentenced the appellants/convicts, in aforesaid terms. Being aggrieved of which present appeal was preferred.

11. Hence the present appeal.

Submission on behalf of the appellants/convicts

12. Mr. Sumit Shekhar Pandey, learned *Amicus curiae*, while assisting this Court submitted that firing was made by appellant/convict Mangal Yadav (appellant in Cr. Appeal (SJ) No. 12 of 2004) upon instruction/instigation of appellant/convict Ram Awadhesh Yadav (appellant in Cr. Appeal (SJ) No. 519 of 2003), who are none but the father and son, which hit on non-vital part of the body from very close range. This fact supported almost by all prosecution witnesses including injured/PW-3 namely, Suchit Yadav. It is submitted that there is no repetition of firing and as it was



fired upon non-vital part of the body, it is sufficient to gather that appellants/convicts were not under "intention to cause death" of the injured/PW-3.

13. It is pointed out by learned *Amicus* that PW-1 namely, Ram Naresh Yadav, failed to depose even about the year of occurrence. It is submitted that occurrence is of midnight having no source of light and from the deposition of PW-3/injured, it can be safely gathered that he could not identified the appellants/accused, who alleged to fired upon him. It is pointed out that learned trial court wrongly presumed in favour of identification out of voice acquaintance without hearing any such evidence on record. It is also pointed out that previous enmities are admitted position for which PW-3/injured asked to forgive him, which is sufficient to suggest that provocation was on the part of injured. It is further pointed out that prime consideration as to established a case under Section 307 of the Indian Penal Code is "intention to cause death". To establish the same several factors are required to be considered. It is pointed out that in the present case, merely on the ground as injury



was caused due to gun-shot, the learned trial court recorded the judgment of conviction, which is not convincing as per established principle of law. In support of submission, learned *amicus* relied upon the judgments of Hon'ble Supreme Court as reported in the matter of **Jage Ram and Others Vs. State of Haryana** reported in **(2015) 11 SCC 366** and **Nand Lal Vs. State of Chhatisgarh (2023) 10 SCC 470**.

14. It is further submitted that beside injured/PW-3; PW-1, PW-2 and PW-4 are also the eye witnesses of the occurrence. From their deposition, several material contradictions appears to surfaced during the trial which cannot be overlooked and if same be taken into consideration, then, it can be said safely that prosecution failed to established its case beyond all reasonable doubt *qua* appellants/convicts for the offence under Section 307 of the I.P.C., during the trial.

15. It is also pointed out by learned *amicus* that no fire-arm or empty cartridge was seized during investigation, even Investigating Officer failed to collect the blood-stains



from place of occurrence, despite of its presence. It is also pointed out that all the four prosecution witnesses are family members and they are interested witnesses. The witnesses likely Shivnath and Bahadur were not examined, who arrived at the place of occurrence immediately in terms of deposition of PW-1.

16. Learned *amicus* further pointed out that during investigation, it surfaced that on the instigation of co-accused/convict Ram Awadhesh Yadav, alleged firing was made by appellant Mangal Yadav, where occurrence was out of previous enmities, but this material evidence as surfaced during the trial was not put before both appellants/convicts while examining them under **Section 313** of the Code of Criminal Procedure and, therefore, on this score alone, conviction as recorded by learned trial court deserves to be quashed/set-aside as trial court failed to draw to the notice of accused/appellants/convicts all such questions rather it was recorded in very cryptic and mechanical manner. In support of aforesaid submission, learned counsel relied upon the legal report of Hon'ble Supreme Court in the case of



Sukhjit Singh vs. State of Punjab [(2014) 10 SCC 270].

17. Learned A.P.P. for the State while opposing the appeal submitted that deposition of all the prosecution witnesses are consistent on the point that on the instigation of accused-appellant Ram Awadhesh Yadav, accused-appellant Mangal Yadav fired upon PW-3/injured. It is pointed out that there is no reason to disbelieve their version. It is also pointed out by learned A.P.P. that minor contradiction are bound to be surfaced and they are not of such nature on the basis of which conviction, as recorded by learned trial court, can be questioned.

18. I have perused the materials available on the record and also taken note of the argument as advanced by learned counsel appearing on behalf of the parties. It appears to this Court that re-appreciation of evidence is required for just and proper disposal of the present appeal.

19. PW-1 is Ram Naresh Yadav, who is the father of PW-3. He deposed that at about 10:30 P.M. both these appellants along with ten unknown persons came to



his house and asked whereabouts of PW-3 namely, Suchit Yadav. He clarified that Sheo Mangal is also known as Mangal. It appears from his deposition that when they were in conversation with each other, PW-3/Suchit Yadav, who was sleeping over roof alongwith Kanhaiya Yadav (PW-4) and Nishan Yadav (PW-2), came down, where PW-3 requested to informant to forgive him for his wrong and assured that he would not commit such wrong in future. It was deposed that thereafter appellant/convict Mangal Yadav told that he will kill him, he was also instigated by appellant/convict Ram Awadhesh Yadav and upon same he fired on Suchit Yadav/PW-3 with his double barrel country made gun, which hit on his upper thigh, whereafter upon cry, several villagers like Shivnath, Bahadur and others came over there, whereafter appellant-accused ran away. It appears from his deposition that an occurrence took place before 4/5 days of the occurrence regarding storing place of straw. He failed to depose the date, month and even year of the occurrence. He categorically stated that occurrence took place on the dark night. He deposed as not to report the



occurrence on same very day to police as he was busy with the treatment of his son, rather information of occurrence on first occasion was given by Chowkidar to Police Station. It was stated by him that he did not saw accused/appellants to go up-stairs for roof. He also stated that his son/PW-3 received injury on the ground floor not on roof. It was stated by him that the accused-appellants dragged his son to ground floor from roof of the house. It was stated that he could not saw whether any firing was made on roof or not. He stated that at ground floor/Varandah, Lantern light was available. It was stated that the accused persons are his younger brother and nephew. He denied the suggestion that his son/PW-3 involved in several dacoity cases which is pending in the court, where he also denied the suggestion that in one such occurrence of dacoity he received gun-shot injury and drawing benefit of that implicated falsely his younger brother and nephew due to property dispute.

20. PW-2 is Nishan Yadav, who stated that occurrence is of 28.04.1991, which took place at 10:30 P.M. and by that time, he was sleeping on the roof of the house



alongwith Kanhaiya Yadav (PW-4) and his father was sleeping at ground floor/Varandah. It was deposed that both appellants/convict alongwith 8-10 unknown persons came over there and started to assault his father/PW-1. Whereafter, when his brother came down from roof, accused/appellants for purpose of killing him on instigation of appellant Ram Awadhesh Yadav, the appellant Mangal Yadav fired on his brother Suchit Yadav (PW-3), whereafter he ran away from the place of occurrence out of fear. He stated to come back again on the place of occurrence and thereafter taken away Suchit Yadav/PW-3 to Sasaram Hospital, where he was treated. The occurrence was taken place regarding storing of straw, for which a quarrel was taken place just 4/5 days before the occurrence.

20.1. In cross-examination, he stated that he took ten minutes as to arrive at the place of occurrence. It was stated that he did not arrive at the place of occurrence immediately, rather he was remained at place of his sleeping. He stated that none of his family members arrived before his arrival, at the place of occurrence. It was stated



categorically that he arrived at the place of occurrence after 20 minutes. It was stated that when he arrived at the place of occurrence, he found his brother/PW-3 was lying right side of his body. It was stated that his brother was only wearing 'Gamchha', blood was also sprayed over there and 'Gamchha' was also stained with blood. It is stated that after five minutes of his arrival co-villagers were also came over there. It is stated that his deposition was recorded on the next day of the occurrence by police in presence of his nephew Rajendra and local chowkidar. It was stated that he shown the place of occurrence to police, where soil was taken by Investigating Officer. It is stated that appellant/convict Mangal Yadav is his uncle, who is son of Ram Awadhesh Yadav. He denied the suggestion that injured/informant received bullet injuries out of his own negligence.

21. PW-3 is the injured Suchit Yadav, who is also the informant of this case and on the basis of his *fardbeyan* the present case was lodged. He stated that occurrence took place before six years and it was 10:00 P.M. and by that



time he was sleeping on his house-roof alongwith his brother Kanhaiya Yadav (PW-4) and Nishan Yadav (PW-2) and his father (PW-1) was sleeping at ground floor/Varandah. It was deposed that his uncle Ram Awadhesh Yadav and cousin brother Mangal Yadav, alongwith 7-8 unknown persons came over there, they surrounded his father and asked about him. Hearing the conversation, he came down, where his cousin brother Mangal Singh (Yadav) said that he will kill him. He prayed to forgive him, but his uncle instigated him to kill, whereupon his brother Mangal Yadav by using double barrel country made gun fired on him which hit on his thigh, resultantly he fell down. Thereafter, accused persons fled away. Upon cry and alarm, Hira Singh, Bahadur Singh, Shivnarayan Singh etc. came over there, whereafter he was brought to Sasaram Hospital, where his statement was recorded by the police.

21.1. Upon cross examination, he denied to be an accused of S.T. No. 228/92. He failed to depose about date, time and even year of the occurrence. He also failed to depose whether the night of occurrence was a dark night or



moon light. It was stated that accused/appellants went up to his house-roof in his search. It was stated by him that there was no electric bulb at the place of occurrence. He came to ground on self. He also stated that he did not saw any appellants/accused as to assault his father. He saw some *Hurra* (blunt end of *lathi*) injuries on his father. He did not saw who assaulted with *Hurra*. He came to know from father/PW-1 as to received one or two *Hurra* injuries. His father was not examined medically. He failed to identify those 7-8 unknown persons till date. He was in conversation with accused/appellants for about 10 to 20 minutes and during said conversation, 3-4 co-villagers were also present. Subsequently, he said that only accused persons were there. During ten minutes of conversation none of the appellants/accused fired on him. He could not saw anything in the hand of unknown 7-8 persons who were standing beside appellants/accused. He could not saw the face of those unknown persons, as their face was not visible. It was categorically stated by him that his statement was recorded by police and his thumb impression was obtained. He cannot



say whether I.O. (Daroga Jee) read over him to his statement as he remained senseless for whole night. He could not say that when he regained to self. It was stated that he remained in sense for about only 15-20 minutes after receiving gun-shot injuries and thereafter he became senseless and he cannot say that when he regain to his self. It was stated that after getting thumb impression in night, his statement was also recorded on next day. He denied that he is not facing case under Arms Act and he cannot say whether he is an accused in S.T. No. 28/92 or not. Subsequently, he said that one case is pending against him and in connection of said case he remained in custody for three months. It was stated that at the place of occurrence there was no electric bulb rather it was Lantern which was burning at that time. It was stated that he cannot say that whether the Lantern was in full blow or it was deem. His father was present near to Lantern. He failed to depose whether the light of lantern was available at the place where he received the gun-shot injury. He was not with torch or lighter. He said on self that it was moon light. He stated to



identify only two persons i.e. both appellants/convicts out of ten.

22. PW-4 Kanhaiya yadav, who deposed that occurrence is of about five years before at about 10:00 P.M. and at that point of time, he was at his Dalan (Varandah) alongwith his father Ram Naresh yadav (PW-1) and also with brother Suchit Yadav (PW-3) and Nishan Yadav (PW-2). His father was sleeping at Varandah. He alongwith his brother Suchit Yadav and Nishan Yadav was sleeping at roof. Appellant/convict Mangal Yadav came there alongwith several unknown persons alongwith his father, Ram Awadhesh Yadav, to whom he identified. He deposed that Mangal Yadav fired upon Suchit Yadav, who later on taken to hospital. Except him, no any other persons received injury during occurrence. It was stated by him that after this occurrence, S.H.O. Sasaram, raided his house, whereupon his brother (PW-3) was arrested with illegal arms. It was stated that when accused persons including appellants/convicts came to his house by that time only electric bulb was available. No accused persons were covered



their face. He stated to depose first time before this Court as his statement was never recorded earlier to this statement. He did not raise alarm when appellants/convicts came to his house. It is stated that accused persons who came alongwith appellants/convicts were also equipped with gun. He cannot say that how many out of that was gun and how many was rifle. All accused persons came together to his house and were standing together. It is stated that only single firing was made. He also stated that accused/appellant Mangal Yadav is his cousin brother. His statement was never recorded by police in this case.

23. PW-5 is Lalan Upadhyay, who is the Investigating Officer of this case and supported the occurrence and deposed that he recorded the statement of Suchit Yadav (injured/PW-3), and Ram Naresh Yadav (PW-1), in hospital itself on 28.04.1991 at about 2:30 A.M. He stated that statement of PW-3 was recorded by him and upon his identification, that same was written in his handwriting, *fardbeyan* of PW-3 was exhibited before the court during trial as **Exhibit-1**. He identified the



endorsement of S.H.O. (Town) regarding lodging of F.I.R. and upon his identification, it was exhibited as **Exhibit -2**. He found bleeding injury on right thigh of injured (PW-3) for which he prepared the injury report, which was prepared in duplicate by using carbon process, which he identified before the court and upon his identification same was exhibited as **Exhibit -3**. He recorded the statement of PW -2 and PW -4 during investigation and also inspected the place of occurrence. As per description of the place of occurrence, as deposed by him, it appears a plain land attached with Dalan (Varandah) of the house of informant/PW-3. He identified his handwriting and signature on charge-sheet also, which upon identification exhibited as **Exhibit -4**.

23.1. Upon cross examination, he stated that he received information regarding the occurrence by S.H.O. town at about 2:00 P.M. He went alone to hospital by motorcycle. He did not obtain permission from any doctor before recording statement of PW-3/injured. The injured/PW-3 was admitted in male ward and he failed to depose whether injured was formally admitted in hospital or



not. He did not mention the bed number and ticket number of injured in case diary. It is stated by him that after entering into male ward he enquired about the injured who is from village Dhankarha and on that Naresh Yadav (PW-1) who is the father of injured said that informant (PW-3) received gun-shot injury. He did not seized the cot on which the injured was brought to hospital. He met with Naresh Yadav (PW-1) outside the hospital. It was stated by him that he recorded the statement of injured when he was in sense. He did not saw the injured taking any injection or saline, till when he was present there. Injury of PW-3 was not put under bandage by that time. He did not enquire from any register of hospital that when injured/PW-3 was admitted. He recorded statement of Naresh Yadav and Kanhaiya Yadav(PW-4) in hospital itself. He visited to the place of occurrence on 29.04.1991 at 5:30 A.M. It is submitted that when he reached at the place of occurrence at that time Nishan Yadav (PW-2) was present there. He obtained injury report prepared by the doctor on 28.05.1991. He found blood-stained at the place of occurrence. It was stated by



him that none of the witnesses told him that informant/injured is not in his sense. He was not even told by injured/informant/PW-3 that he is not in position to give his statement.

24. PW-6 is Dr. Devendra Tripathi, who examined the injured/informant/PW-3 at 1:30 P.M. on 29.04.1991 itself and found lacerated wound with charring and inverted margin on the upper part of right eye laterally 1/3" x 1/3" cavity deep and another a lacerated wound with inverted margin on right gluteal region 1/2" x 1/2" communicating with injury no. 1, hence injury no. 1 is the wound of entrance and injury no. 2 is the wound of exit. Both injuries are deposed to be caused by fire-arms. The nature of injury was reserved till x-ray report.

25. It would be apposite to reproduce para **12, 13 & 14** of the judgment of Hon'ble Apex Court in the case of **Jage Ram (supra)**, which reads as under for a ready reference:

"12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the



accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.

13. In *State of M.P. v. Kashiram* [*State of M.P. v. Kashiram*, (2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40 : AIR 2009 SC 1642], the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under: (SCC pp. 29-30, paras 12-13)

"12. ... '13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in *State of Maharashtra v. Balram Bama Patil* [*State of Maharashtra v. Balram Bama Patil*, (1983) 2 SCC 28 : 1983 SCC (Cri) 320] , *Girija Shankar v. State of U.P.* [*Girija Shankar v. State of U.P.*, (2004) 3 SCC 793 : 2004 SCC (Cri) 863] and *R. Prakash v. State of Karnataka* [*R. Prakash v. State of Karnataka*, (2004) 9 SCC 27 : 2004 SCC (Cri) 1408] .

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16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.'

See *State of M.P. v. Saleem* [*Saleem case*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , SCC pp. 559-60, paras 13-14 and 16.

13. '6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.* [*Sevaka Perumal v. State of T.N.*, (1991) 3 SCC 471 : 1991 SCC (Cri) 724] ' (*Saleem case* [*Saleem case*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , SCC p. 558, para 6)"

14. Having regard to the weapon used for causing the head injuries to Sukhbir, nature of injuries, situs of the injuries and the severity of the blows, the courts below recorded concurrent findings convicting the second appellant under Section 307 IPC. In our considered view, the conviction of the second appellant Rajbir alias Raju under Section 307 IPC is unassailable."

26. From the deposition of PW-1 Ram Naresh Yadav who is father of PW-3, it appears that occurrence took place in presence of Kanhaiya Yadav (PW-4) and Nishan Yadav (PW-2), who are also his son and brother of injured/PW-3. He nowhere stated during trial that he



received any injury during the occurrence. From deposition of PW-2 it appears that he came at the place of occurrence after 20 minutes and before his arrival no one from his family was present there. The deposition of these two witnesses who claimed to be an eye witness of the occurrence contradicted the presence of each other at the place of occurrence when the actual occurrence of firing was taken place. It also appears from deposition of PW-3/injured that his father/PW-1 also received *Hurra* (blunt end of *lathi*) injury during the occurrence, but this fact was not supported by even PW-1. It is further important to mention that PW-1, PW-2 and even the injured-informant/PW-3 deposed that upon instigation of accused appellant Ram Awadhesh Yadav firing was made by accused-appellant Mangal Yadav, but from the deposition of PW-4 Kanhaiya Yadav, it nowhere appears that firing was made on the instigation of convict-appellant Ram Awadhesh Yadav. It also stated that except PW-3 no one received the injury during the occurrence. The deposition of PW-4, who is the brother of injured PW-3 is completely negating the allegation of instigation as to open



fire and, thus, creating a serious doubt *qua* case of prosecution which is the root of alleged firing, as deposed by PW-1, PW-2 and PW-3.

27. All four prosecution witnesses consistently deposed that both accused/appellants were came to the house of informant alongwith 7 – 8 unknown persons. None of them (except two appellants) were identified. The source of light also appears doubtful as per deposition of PW-1, PW-2 and PW-3, but as per deposition of PW-4 it appears that when accused persons alongwith appellants/convicts came to the house of informant, light of electric bulb was available. It was deposed by him that all the accused persons were equipped with fire-arms like rifle and gun, whereas PW-3 and PW-2 specifically deposed that except appellants/convict, none of the unknown accused persons were equipped with any arms. PW-3 also denied to have availability of any electric bulb light by the time when accused persons came to his home. Learned trial court presumed that identification of appellants/convicts appears possible out of voice recognition, being agnate and



acquaintance, but same can not be accepted as no evidence surfaced during trial that any such recognition of appellants/convicts was made out of their voice recognition, making identification of appellants doubtful.

28. From the deposition of PW-1, it appears that soon after the occurrence, Shivnath, Bahadur and other co-villagers immediately came to the place of occurrence. Similarly, PW-2 also stated that after the occurrence co-villagers of different caste came over there. PW-3/injured/informant also stated that immediately after the occurrence Hira Singh, Bahadur Singh and Shiv Narayan Singh came at the place of occurrence. They could be independent witnesses in support of the case of the prosecution, but they were not examined during the course of investigation/trial. All prosecution witnesses, except who are formal in nature, are relative and appears highly interested with the outcome of the case. No doubt, the conviction was secured on the basis of interested witnesses only, despite of the availability of independent witnesses.

29. It appears that there are several latches on



the part of the Investigating agencies. As despite of the availability of blood-stains at the place of occurrence, it was not collected by the I.O. of this case. The informant, at the time of occurrence, was wearing only Gamchha which was also said to be stained by blood, but same was also not seized. There is no seizure of gun or empty cartridge, even whether injured formally admitted in hospital or not, it was not examined. It also appears doubtful in view of deposition of PW-3 that he became senseless immediately after 15 to 20 minutes of the occurrence and he remain senseless during his journey to hospital and he is not in position to say that when he regain to self. In such circumstances, a formal approval of attending doctor appears essential in this case before recording the *fardbeyan* of the injured/PW-3 as to ascertain, whether it was recorded when PW-3 was in conscious position. It appears from deposition of PW-3/injured that I.O. went away after taking his thumb impression and again came on very next day and recorded his statement. This very thing creates serious doubt to 'Exhibit-1' which alleged to be recorded at Sasaram



Hospital at 1:30 A.M. and basis of present case. With aforesaid fact, PW-3 cannot be categorized as a "wholly reliable" witness.

30. It would be apposite to refer **para 32 and 33** of the legal report of Hon'ble Supreme Court in the matter of **Nand Lal (supra)**, which reads as under:-

"32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in Vadivelu Thevar v. State of Madras [1957 SCC OnLine SC 13], has observed thus:

"11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

33. It could thus be seen that in the category of "wholly reliable" witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of "wholly unreliable" witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a "wholly unreliable"



witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial."

31. From perusal of the records, it appears that statement of appellants/convicts **U/S 313 of Cr.P.C.** was recorded in very cryptic and mechanical manner, without putting the relevant evidence as surfaced during the trial against them, even the material aspects of instigation as alleged against appellant/convict Ram Awadhesh Yadav *qua* appellant/convict Mangal Yadav, as to open fire upon PW-3/informant was not put there.

32. It would be apposite to reproduce para **10, 11, 12 & 13** of the legal report of Hon'ble Apex Court in the matter of **Sukhjit Singh** (supra), which reads as under:

"**10.** On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in ***Ranvir Yadav v. State of Bihar* [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92]**. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction



vitiating in law.

11. In this context, we may profitably refer to a four-Judge Bench decision in ***Tara Singh v. State* [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491]** wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30).

"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure



Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933], Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused’s failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be



drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

33. In view of aforesaid factual and legal submissions, it is safe to arrive on conclusion that prosecution failed to established its case beyond all reasonable doubt against appellants/convicts during the trial.

34. Hence, the judgment of conviction dated 15.11.2003 and order of sentence dated 17.11.2003 as recorded by the learned Fast Track Court No. 1, Rohtas at Sasaram, in S.T. No. 224 of 1992 (arising out of Sasaram (M) P.S. Case No. 238 of 1991) is hereby quashed and set-aside.

35. Accordingly, both the appellants/convicts, namely, Ram Awadhesh Yadav and Mangal Yadav are acquitted of the charges levelled against them by the learned trial court, by giving benefit of doubt. As both appellants/convicts were on bail, they are discharged from the liabilities of their respective bail bond.

36. Accordingly, both above-mentioned appeals stand allowed.



37.The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.7,500/- (Rupees Seven Thousand and Five Hundered only) to Mr. Sumit Shekhar Pandey, learned *Amicus Curiae* as consolidated fee for rendering his valuable professional service for the disposal of these two appeals.

38. Let a copy of this judgment along with Trial Court Records be sent to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.07.2024
Transmission Date	19.07.2024

