

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1935 of 2022

Arising Out of PS. Case No.-27 Year-2006 Thana- AWTARNAGAR District- Saran

1. Rabindra Singh, Son of Late Mathura Singh, Resident of Village - Fakuli, P.S.- Awtar Nagar, Distt.- Saran.
2. Anand Mohan Singh, Son of Ravindra Singh, Resident of Village - Fakuli, P.S.- Awtar Nagar, Distt.- Saran.
3. Siya Devi, W/o Rabindra Singh, Resident of Village - Fakuli, P.S.- Awtar Nagar, Distt.- Saran.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Rabish Kumar, Advocate Mr. Khalid Faizan, Advocate Mr. Ravi Kant Kumar, Advocate Mr. Vikash Kumar Jha, Advocate Mr. Adarsh Singh, Advocate
For the Respondent/s	:	Mr. Abhay Kumar, APP
For the informant	:	Mr. Amit Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 29-10-2024

The present appeal preferred by appellants/convicts against judgment of conviction and order of sentence dated 27.05.2022 passed by the learned 4th Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 759 of 2010, arising out of Awatar Nagar P.S. Case No. 27 of 2006, whereby and whereunder appellants/convicts have been convicted for



the offences under Sections 323/34, 325/34, 308/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for six months and fine of Rs. 1000/- (Rupees one thousand only) each. Further sentenced them to undergo rigorous imprisonment for 2 $\frac{1}{2}$ years and fine of Rs. 6000/- (Rupees six thousand only) each and in default of payment of fine for the offences under Sections 323/34, 325/34 and 308/34 of the Indian Penal Code, they shall further undergo for two months of simple imprisonment and three months of simple imprisonment respectively. All aforesaid sentences shall ordered to run concurrently.

2. The crux of prosecution, as it appears from the written information of the informant/PW-1, namely, Raghu Nayak Singh that he had land dispute with his uncle Rabindra Singh @ BDO pertaining to partition of the family property. His uncle used to give threat to his family members. On 30.03.006 at 5 AM Rabindra Singh, Anand Mohan Singh and Siya Devi (appellants) entered



into his house, they were accompanied with 2-3 unknown persons. Rabindra Singh instigated to eliminate all his family members, therefore, Rabindra Singh equipped with dab, Anand Mohan Singh, also equipped with dab and Siya Devi with danda, assaulted upon informant, his sister Rekha Kumari and his mother Savitri Devi and thereby severally injured them. His father sustained severe injury on his head. Informant had kept Rs. 30,000/- after selling land, same was taken away by Rabindra Singh from box contained in the room.

3. On receipt of aforesaid written information, (Exhibit 1 and 2) Awatar Nagar PS Case No. 27 of 2006 under sections 341, 323, 324, 448, 380, 307/34 of IPC and under section 27 of Arms Act on 30.03.2006 was registered against, above named accused persons.

4. After investigation, police submitted charge sheet on 31.05.2006 under Sections 341, 323, 324, 307, 325, 452, 389/34 of the Indian Penal Code. Whereas, learned trial court took cognizance on



19.08.2010 against appellants for the offences under Sections 341, 323, 324, 325, 380, 307/34 of the Indian Penal Code and thereafter case was committed to the court of Sessions for trial and disposal.

5. To established its case before the learned trial court, the prosecution altogether examined total of nine witnesses, namely, **PW-1** Raghu Nayak Singh (Informant), **PW-2** Ramji Singh, **PW-3** Vijay Kumar Singh, **PW-4** Savitri Devi (Wife of informant), **PW-5** Sanjiv Kumar (Son of Raghu Nayak Singh), **PW-6** Bhusan Paswan (I.O. of this case), **PW-7** Rafique Ahmad (SHO), **PW-8** Dr. J. Shekhar and **PW-9** Rekha Devi.

6. The prosecution also exhibited following documents during the trial to substantiate its case which are as:-

Exhibit-1 -Signature of Sanjiv Kumar Singh (PW) on written information.

Exhibit-2 Signature of SHO Rafique Ahmad.



Exhibit-3 & 3/1 Injury report and supplementary injury report of Ravi Nayak Singh.

Exhibit-3/2: Signature of Dr. J. Shekhar (PW-8) on injury report of Ravi Nayak Singh.

Exhibit -3/3: Signature of Dr. J. Shekhar on injury report of Savitri Devi.

Exhibit-3/4 Injury report of Rekha Kumari.

7. On the basis of evidences, as surfaced during the trial, the appellant/convict was examined under Section 313 of the Cr.P.C., where he denied all the evidences as surfaced against him during the trial and claimed his complete innocence and false implication.

8. Total of two defence witnesses were examined on behalf of accused/appellant during the trial.

9. On the basis of aforesaid evidences, learned trial court convicted the appellant and passed order of sentence, as aforesaid, being aggrieved with,



appellant/convict preferred the present appeal.

10. Hence the present appeal.

11. Mr. Yogesh Chandra Verma, learned senior counsel appearing on behalf of the appellants/convicts submitted that as per the testimony of injured witnesses, it appears that appellants/accused persons were equipped with *Dab* (sharp edged cut weapon) and Katta (country made pistol) alongwith lathi and rod but from their deposition, it nowhere appears that any firing or any assault was made in such a manner on the basis of which it can be said that their act may be said as an attempt for committing culpable homicide not amounting to murder. It is pointed out that firing was alleged to be made in air and, moreover, the injury as alleged to be caused by *dabiya* not appears corroborated because the injury upon medical examination of all four injured was found lacerated, which makes the case of prosecution falsified on its face as same is not possible by a sharp edged weapon. It is



further submitted by Mr. Verma that none of the injuries of any injured persons upon medical examination was found grievous as per the deposition of PW-8, who is a doctor and examined all four injured persons. It is submitted that though impugned judgment discussed about the grievous injury but injury report of that effect was not brought on record and as such not proved during trial, and, therefore, conviction of learned trial court as recorded under Section 325 of the Indian Penal Code also appears bad in eye of law. It is also pointed out by Mr. Verma that the conviction under Section 379 of the Indian Penal Code is also not convincing for the reason that the injured witnesses of the occurrence are not consistent *qua* amount in issue which alleged to be stolen as PW-9 categorically stated that it was Rs. 20,000/- instead of Rs. 30,000/- as deposed by other prosecution witnesses and in view of same, the conviction under Section 379 of the Indian Penal Code also appears questionable. While concluding the



argument, it appears that prosecution could not established its case against major offences *qua* crime in question, therefore, the conviction as recorded under Section 323 of the Indian Penal Code also appears bad in eye of law and, moreover, from the testimony of prosecution witnesses not appears that heart was caused voluntarily.

12. In view of aforesaid, it is submitted that balance of appeal is in favour of appellants and, therefore, impugned judgment of conviction as recorded by learned trial court *qua* all above named three appellants deserve to be set aside/quashed.

13. Learned APP, duly assisted by learned counsel Mr. Amit Kumar Singh while appearing on behalf of the informant submitted that the injured received injuries on vital part of their body, which is sufficient to gather that it was an attempt for culpable homicide not amounting to murder, whereas he could not contradict the deposition of PW-8, who is a doctor and examined



all four injured, wherein none of the injury was found grievous.

14. In view of aforesaid, it is submitted that the judgment of conviction is not required to be interfered at appellate stage.

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

16. As to re-appreciate the evidence, while disposing the present appeal, it appears apposite to discuss the evidences available on record, which are as under:-

17. It appears from the perusal of record and out of available testimonies that **PW-1**, namely Raghu Nayak Singh, **PW-4**, namely, Savitri Devi and **PW-5**, namely Sanjiv Kumar, who is also the informant of this case and **PW-9**, namely Rekha Devi are the injured



witnesses of crime in question. They are appearing to be most important witnesses of the occurrence.

18. It appears from the deposition of PW-1, namely Raghu Nayak Singh that appellants/accused Rabindra Singh, Anand Mohan Singh and Siya Devi entered into his courtyard in early morning at about 5:00 AM having *Katta* (country made pistol) and *Dab* in their hands. It appears that Siya Devi was equipped with wooden rod (lathi). From the deposition of PW-1, it appears that the appellant Rabindra Singh assaulted on his head by *dabiya* and it was repeated, which was stopped by him and in said course, he received a cut injury on his finger. It was also deposed by him that appellant Anand Mohan assaulted by *dabiya* to his wife, which caused injury on her head. Assault was also made repeatedly on her neck. It was deposed that appellant Siya Devi assaulted to his son and daughter, namely Sanjeev Kumar (PW-5) and Rekha Kumari (PW-9), wherein Rekha Kumari received injury on her nose,



Sanjeev (PW-5) received injury on his neck and knee. He also received injury out of assault caused by Rabindra Singh (appellant) on his head and hand. After occurrence, appellant taken away cash of Rs. 30,000/- from his house and went away by opening fire in air.

18.1 Upon cross-examination, it appears from his statement that there was a land dispute with appellant and it was pending since last ten years. PW-1 appears to be own brother of appellant Rabindra Kumar. It was stated that he became senseless after receiving injury. He received total of three injuries and his wife received total of two injuries. During occurrence blood oozes out from his wound which dropped to the ground and his clothes also spotted with blood.

19. PW-2 is Ramji Singh. It appears from his testimony that he arrived at place of occurrence after real occurrence of assault and, therefore, he is not appearing an eye-witness of the real occurrence of physical assault as stated by PW-1. He also approved



the land dispute between the parties.

20. PW-3 is Vijay Kumar Singh, who claimed himself as an eye-witness of the occurrence and stated that Rabindra Singh was equipped with *dabiya* and country made pistol, whereas Anand Mohan was equipped with *dabiya* and the wife of Rabindra Singh was equipped with *labda* (wooden stick). It was deposed by him that they used their respective weapons indiscriminately. It appears from his deposition that during assault, injury was caused to Raghu Nayak Singh (PW-1) and Savitri Devi (PW-4), who is the wife of PW-1. It further appears from his deposition that the son and daughter of PW-1 were assaulted only by the wife of appellant Rabindra Singh i.e. Siya Devi, which appears contrary to the statement of PW-1, who stated that Sanjeev was assaulted by appellant Anand and Siya Devi assaulted on neck and knee. He also approved land dispute between the parties.

21. PW-4 is Savitri Devi, who is the wife of



PW-1 and also one of the injured witness of the occurrence. She deposed to be assaulted by appellant Anand Mohan by using *dabiya*. Assault was made on her head.

21.1 Upon cross-examination, it was stated that PW-1 received injury on 8-9 places of his body, whereas his son and daughter received at two places. She also approved land dispute. She did not supported the fact that the appellant Rabindra Singh was equipped with country made pistol as it was deposed by her husband PW-1. She also not deposed that the appellants were opened firing in air while leaving the place of occurrence. The deposition of this injured witness, creates a doubt *qua* testimony of PW-1 regarding the manner of the occurrence.

22. PW-5 is Sanjeev Kumar, who is the son of PW-1 and also one of the injured witness of the occurrence. He appears to be the informant of this case. It appears from his deposition that occurrence is of 30th



March, 2006. At that time he was at his home, appellants entered into his house alongwith 2-3 unknown persons. This fact was first time introduced by the informant as it was never stated by earlier prosecution witnesses that appellants were accompanied with unknown persons. It appears from his deposition that his father was assaulted by uncle Ravindra Singh. His brother was assaulted by Anand Mohan Singh. It was deposed that Anand Mohan Singh also assaulted him by *dabiya* and appellant Siya Devi assaulted his sister by wooden stick. He also deposed that the appellants taken away cash of Rs. 30,000/-. He tried to stop them but as firing was made by appellant Rabindra, he could not stopped them. Consequent upon, appellants fled away from the place of occurrence. This part of the deposition of informant appears to project a new story that firing was made when he stopped appellants while taking cash of Rs. 30,000/-, which was kept in box in his room. He identified his signature on his written information, which



upon his identification exhibited as **Exhibit-1**. He also approved the land dispute. It was stated that his both parents (mother and father) regained to their sense after 20 minutes of the occurrence.

23. PW-6 is Bhushan Paswan, who is Investigating Officer of this case, who proved FIR and written information as he identified his signature over there, which upon his identification exhibited as **Exhibit-2**. He appears to be visited place of occurrence. The blood droplets was not collected by him during course of investigation. He did not seized blood stained cloths and also the weapons which alleged to be used during the occurrence.

24. PW-7 is Rafique Ahmad, who is Investigating Officer of this case, who only submitted charge-sheet after completion of the investigation. He did not recorded statement of any of the witnesses during the course of investigation and same was recorded by PW-6 only.



25. PW-8 is Dr. J. Shekhar, who was posted at
PHC Dighwara as Medical Officer and examined all four
injured i.e. PW-1, PW-4, PW-5 and PW-9 on 27th March,
2018 and found following injuries on their person:-

*i. Lacerated wound measuring 2"X1/2
X scalp deep on the mid part of the scalp. Advice
X-ray skull A.P. and lateral view.*

*ii. Lacerated wound 1/2" X 1/4" X skin
deep on the dorsal surface of
right hand near little finger.*

*Advice X-ray right hand A.P. and
lateral view.*

*iii. Teeth bite on the right frontal part
of arm.*

M/I. A black mole on nose.

*Nature of Injury: Above all injuries are
cause by hard and blunt substance and injury No.
3 is in simple in nature whereas injuries no. 1
and 2 Opinion reserve for x-ray.*

Time of injuries: within 6 hours.

*2. Regarding injury Nos. 1 and 2 no
x-ray report was received and the injury may be
simple in nature.*

*3. The injury report and
supplementary injury report of Raghunayak Singh
are in my pen and signature, Which are marked
as Exhibit -3 and 3/1.*

*4. On same day at about 7:50 am I
examined Sanjeev Kumar aged about 20 years
old s/o Raghunayak Singh of Village Fakuli, P.S.
Awatar Nagar, Dist-Saran and found the
following injuries over his person.*

*i. Soiling 1"X1/2" on the left knee
joint.*

ii. Complain of pain on neck.

M/I And old scar mark on nose.



*Nature of injury: Time of Injury:
Above injury are simple in nature cause by hard
and blunt substance.*

Time of Injury: With in 6 hours.

*5. This injury report is in my pen and
signature. The injury report of Sanjeev Kumar is
marked as Exhibit- 3/2.*

*6. On same day at about 7:40 am I
examined Savitri Devi aged about 40 w/o
Raghunayak Singh of Village Fakuli, P.S. Awatar
Nagar, Dist-Saran. and following injuries on her
person.*

*I. Lacerated wound 2½"X1/2Xscalp
deep mid of scalp*

*ii. Lacerated wound on left between
for finger and thumb*

ii. Complain of pain on back.

M/I Two moles on right cheek

*Nature of injury: Above injuries are
simple in nature cause by hard and blunt
substance.*

Time of Injury: within 6 hours.

*7. This injury report is in my pen and
signature. The injury report of Savitri Devi is
marked as Exhibit – 3/3.*

*8. On same day at about 7:50 am I
also examined Rekha Kumari aged about 12
years old w/o Raghunayak Singh of Village
Fakuli, P.S. Awatar Nagar, Dist-Saran. and found
the following injuries on her person.*

*I. Abrasion 1/4"X1/8" on the nose.
Bleeding from notris.*

M/I A black mole on right arm.

*Nature of injury: Above injuries are
simple in nature cause by hard and blunt*

Time of Injury: With in 6 hours.

*9. This injury report is in my pen and
signature. The injury report of Rekha Kumari is
marked as Exhibit – 3/4.*

Cross Examination

10. I have mentioned the time of



injuries on the basis of the color of the injuries but I am not mentioned the color of injuries of any injured.

11. I had examined the injured person one by one.

12. The injuries found on the persons of injured persons may be possible by fall on hard surface.

13. It is wrong to say that the above injuries reports issued by me are collusive."

26. PW-9 is Rekha Devi, who is the injured daughter of PW-1 and PW-4 and also sister of PW-5/informant. She was at her parental home at the time of occurrence as she was unmarried at the time. She deposed in her examination-in-chief itself that accused persons took away cash of Rs. 20,000/- contrary to the all previous testimony, where injured including informant stated categorically that it was Rs. 30,000/-. She said that only 3-4 visible injuries was present on the body of her father contrary to the statement of her mother (PW-4), who stated that there was nine visible injuries. It appears from her deposition that she also loosed her sense after physical assault, which was never deposed by PW-5, PW-3 and PW-4 that PW-9 also loosed her



sense during the occurrence. This witness was also the injured witness of this occurrence, who falsified the allegation of theft *qua* amount in issue and manner of assault etc. She also not appears to be stated that any firing was made during the occurrence like PW-4 and PW-1.

27. For the sake of convenience and also for the better understanding of the fact, it would apposite to reproduce the provision of Sections 320 and 308 of the Indian Penal Code, which are as under:-

“320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:—

1. *First.—Emasculation.*
2. *Secondly.—Permanent privation of the sight of either eye.*
3. *Thirdly.—Permanent privation of the hearing of either ear.*
4. *1. Subs. by Act 26 of 1955, s. 117 and the Sch., for “transportation for life” (w.e.f. 1-1-1956).*
5. *78*
6. *Fourthly.—Privation of any member or joint.*
7. *Fifthly.—Destruction or permanent impairing of the powers of any member or joint.*
8. *Sixthly.—Permanent disfiguration*



of the head or face.

9. Seventhly.—Fracture or dislocation of a bone or tooth.

10. Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

"308. Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

28. It appears from the aforesaid discussed evidences that out of four injured witnesses i.e. PW-1, PW-4, PW-5 and PW-9, PW-4 and PW-9 did not deposed that any firing was made during the occurrence. The number of injury also appears to be varied from the testimony of PW-4 and PW-9 *qua* PW-1. The fact regarding loosing sense by PW-9 during the course of occurrence was not supported by PW-1, PW-4 and PW-5. Hence, the deposition of all injured witnesses itself



creates doubt regarding manner of assault and also the occurrence.

29. It further appears that none of the injuries as received by all of the four witnesses said to be grievous in terms of deposition of PW-8 to make out a case for conviction under Section 325 of the Indian Penal Code. From perusal of the medical report of the injured persons, it appears that they received maximum of laceration and abrasion wounds and no cut injury was received by them, which further falsified the allegation on its face as PW-1 and PW-2 consistently stated that they received injuries from appellants, which was caused by using *dabiya*, which is a sharp edged cut weapons and, therefore, absence of any sharp cut injury makes case falsified on its face.

30. It also appears from the depositions of PW-4 and PW-5 that firing was made at the end of the occurrence. As per the deposition of PW-1, it appears that firing was made while leaving the place of



occurrence by appellant Rabindra Singh, whereas it was deposed by PW-5 that firing was made when he chased appellants while taking away cash of Rs. 30,000/-. It appears non-convincing that having country made pistol in hand, no firing was made while entering into courtyard, which in itself is sufficient to constitute that act of appellants cannot be said to be an attempt for causing death, which amount to culpable homicide not amounting to murder within the meaning of Section 308 of the Indian Penal Code.

31. In view of aforesaid, it can be said safely that the several major questions surfaced during the trial creating a doubt *qua* occurrence, which not appears duly answered by the prosecution. The benefit of which be certainly extended to the appellants.

32. Hence, appeal stands allowed.

33. The impugned judgment of conviction and order of sentence dated 27.05.2022 passed by the learned 4th Additional Sessions Judge, Saran at Chapra



in Sessions Trial No. 759 of 2010 arising out of Awatar Nagar P.S. Case No. 27 of 2006 is hereby quashed and set aside. Appellants/accused are acquitted of the charges levelled against them.

34. Appellants are on bail as submitted, on acquittal, their bailor and sureties stand discharged from their respective liabilities.

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

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.11.2024
Transmission Date	12.11.2024

