

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4216 of 2023**

Arising Out of PS. Case No.-113 Year-2018 Thana- BARAUNI District- Begusarai

Chandan Kumar, son of Sunil Thakur, Village- Gaura P.S.- Teghra
District - Begusarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr.Ramakant Sharma, Sr. Advocate Mr.Bipin Kumar, Advocate Ms.Sarita Kumari, Advocate
For the Respondent/s	:	Mrs.Anita Kumari Singh, Addl.P.P.

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

Date : 02-12-2024

Heard Mr. Ramakant Sharma, learned senior counsel duly assisted by Mr. Bipin Kumar, learned counsel for the appellant and Mrs. Anita Kumari Singh, learned Additional Public Prosecutor for the State.

2. The present appeal preferred under Section 374(2) of the Code of Criminal Procedure (in short the 'Cr.P.C.') challenging the judgment and order of conviction dated 07.11.2022 and order of sentence dated 24.11.2022, respectively as passed by learned Additional District & Sessions Judge-XI, Begusarai in connection with Sessions Trial No. 736/2018 arising out of Begusarai Barauni (FCI) P.S. Case No. 113 of 2018, whereunder appellant-accused



was convicted for offence punishable under Section 307/120B of the Indian Penal Code and sentenced to undergo simple imprisonment for ten (10) years and fine of Rs. 10,000/-, in default of payment of fine, further to undergo S.I. for 4 months in addition to the substantive punishment. The learned trial court further sentenced him to undergo S.I. for one month under Section 341 of the I.P.C. The appellant further convicted for the offence under Section 387 of the I.P.C. and sentenced to undergo imprisonment for three (3) years and fine of Rs. 5,000/-, in default of payment of fine, further to undergo S.I. for two months and for the offence under Section 27 of the Arms Act, the appellant was sentenced to undergo imprisonment for three (3) years and fine of Rs. 1000/- and, in default of payment of fine, further to undergo S.I. for 15 days.

3. As per the prosecution story, the informant namely Manish Kumar (PW-1) stated that family members of Ajit Kumar @ Shutarwa, namely, Umesh Singh and Navin Kumar came at his residence and demanded extortion money. He alleged that about one year ago co-accused Ajit Kumar @



Shutarwa attempted to kill him by shooting for which he had filed a case in Barauni Police Station. Thereafter, co-accused persons came at his house and conveyed the message of Ajit Kumar regarding extortion money and threatened him that if he failed to do pay, be prepared to face the consequences. The informant further stated that Surendra Singh, Rahul Kumar and Ramesh Singh @ Batha demanded extortion money of Rs. 5 lakhs and, on 28.03.2018 at about 8:00 a.m., while the informant and his brother Anish Kumar were going to Refinery on motorcycle, which was driven by him and his brother was a pillion rider and so when they reached near Pratap Petrol Pump, two persons on motorcycle namely, Aman Kumar and Chandan Kumar (the appellant/convict) stopped them and said that Ajit Kumar @ Shutarwa has demanded extortion money. When they denied to give extortion money, the accused persons started making firing and throw bomb on them. When the informant and his brother tried to save their life, one bullet hit on the back of his brother, as a result of which, he got injured. Thereafter, both the accused persons fled away from the place of occurrence.



The informant further stated that he got admitted his brother in the hospital for better treatment and filed the instant case on 29.03.2018.

4. On the basis of the aforesaid written information, the informant namely, Manish Kumar registered a case being Barauni P.S. Case No. 113 of 2018 dated 29.03.2018 for the offence under Section 120B, 341, 307, 387/34 of the Indian Penal Code and Section 27 of the Arms Act and $\frac{3}{4}$ of the Explosive Substances Act.

5. After investigation, police submitted charge-sheet no. 343/2018 dated 24.07.2018 under the aforesaid sections against the appellant and co-accused Ajit Singh @ Shutarwa and Aman Kumar. The learned C.J.M., Begusarai vide order dated 03.08.2018 took cognizance against the accused persons under the aforesaid sections and after compliance of Section 207 of the Cr.P.C. committed the record of the case to the court of session on 20.12.2018 against the accused persons namely Ajit Kumar @ Shutarwa and Chandan Kumar after separating the trial of accused Aman Kumar showing him juvenile.



6. On the basis of material collected during investigation learned trial court framed charges against the accused persons including the appellant/convict under Sections 307/34, 387/34, 341/34 and 120B of the Indian Penal Code, Section 3 & 4 of the Explosive Substances Act and Section 27(1) of the Arms Act and explained to the appellant, which he pleaded “not guilty” and claimed to be tried.

7. To substantiate its case, prosecution examined total of nine (9) witnesses in support of the prosecution case. They are Manish Kumar (informant) (PW-1), Badri Prasad Singh (PW-2), Bhushan Singh (PW-3), Devan Ram alias Jha Ji alias Chandra Shekhar Ram (PW-4), Vidya Prasad (I.O.) (PW-5), Anish Kumar (PW-6), Dr. Dheeraj Kumar Shandilya (PW-7), Tribhuvan Kumar Thakur (PW-8) and Pallav (PW-9).

8. The prosecution has produced and relied upon following documentary evidences also as to substantiate its case during trial, which are as under:

Exhibit No(s).	List of documents
Exhibit -1	Handwriting and signature of the informant on written information.
Exhibit -2	Handwriting and signature of S.H.O.



	Gajendra Kumar on Formal F.I.R.
Exhibit -2/1	Handwriting and signature of endorsement and registration on written information.
Exhibit -2/2	Handwriting and signature of forwarding on written information.
Exhibit -3	Injury report of the injured Anish Kumar.
Exhibit -4	Signature of Tribhuvan Kumar Thakur on seizure list.
Exhibit -4/1	Signature of Anil Kumar on seizure list.
Exhibit -5	Charge-sheet of Barauni (Chakia O.P.) P.S. Case No. 112/18.
Exhibit -6	Deposition of witness Tribhuvan Thakur in S.T. No. 705/18.
Material Exhibit -I	8 mm kf written empty cartridge.

9. On the basis of evidences/incriminating circumstance during the trial, statement of accused was recorded under section 313 of the Cr.P.C. by explaining all incriminating evidences/circumstances as surfaced during trial, for which he shows his complete innocence and false implication.

10. After conclusion of trial, the learned trial court has awarded the sentence as stated hereinabove, being aggrieved of which appellant/convict preferred the present appeal.

11. Hence, the appeal.



12. Mr. Ramakant Sharma, learned senior counsel appearing on behalf of the appellant/convict, while opening his argument, submitted that the appellant acquitted by the learned trial court for the offence punishable under Section 3/4 of the Explosive Substances Act and, therefore, it can be said safely that the allegation of throwing bomb, which was exclusively against him, not found true against him during the trial. It is pointed out that through the impugned judgment itself, Ajit Kumar Singh @ Shutarwa, who appears to be the mastermind of the crime in question was acquitted. He was the person who instructed this appellant alongwith co-accused persons demand ransom of Rs. 5 lakhs from the injured. It is submitted that said Ajit Kumar @ Shutarwa has been acquitted by the learned trial court and did not believed the theory of criminal conspiracy. It is submitted that this is not a case where conviction was secured for the offence under Section 307 of the I.P.C. with aid of Section 34 of I.P.C.

13. It is further submitted by Mr. Sharma, that when one of the co-accused acquitted from the charges of 120B of the I.P.C., with same set of evidence, the conviction



of appellant for the offence under Section 120B appears questionable.

14. It is further pointed out that the doctor, who examined as PW-7, during the trial did not find any injury upon the injured/PW-6 namely, Anish Kumar due to bomb. It is submitted that in terms of the testimony of PW-6/injured, the informant/PW-1 of crime in question, who was none but the own brother was not the eye witness of actual assault of opening of firing and throwing of bomb. It is submitted by Mr. Sharma that aforesaid major contradiction was completely overlooked by learned trial court while recording the judgment of conviction.

15. It is submitted that even seizure list witnesses appears not independent as they are police personnel who were called for from their respective offices to be the witness of the seized items. It is pointed out by Mr. Sharma that evidence available on record suggest that appellant/convict was not under intention to cause death and was falsely implicated in the present case and having all such evidences, the appellant remains in custody for more than six (6) years



against fixed term sentence of ten years, which is fit to be set-aside and quashed. In support of his submission, Mr. Sharma, relied upon the legal report of Hon'ble Supreme Court as available through **Jage Ram v. State of Haryana** reported in **(2015) 11 SCC 366**.

16. Mrs. Anita Kumari Singh, learned Additional Public Prosecutor for the State, while opposing the appeal, submitted that presence of appellant with co-accused Aman Kumar who fired upon injured/PW-6 not appears disputed. It is submitted that the fire-arm injury appears fully corroborated with medical examination report as approved by PW-7 during the trial, however, she could not disputed the fact as submitted by Mr. Ramakant Sharma, learned senior counsel for the appellant/convict.

17. I have perused the Trial Court Records carefully and gone through the evidence available on record as also considered the rival submissions canvassed by learned counsel appearing on behalf of the parties.

18. It would be apposite to reproduce the provisions of Section **307** and **120B** of the I.P.C. for the sake of better



understanding of the position of law, which are as follows:

“307. Attempt to Murder: 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 murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts – When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”

“120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 1[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]”

19. With aforesaid note of legal position, it would be apposite to discuss the evidence, as surfaced during the trial, for the purpose of its re- appreciation for just and proper disposal of the present appeal.

20. Informant of this case namely, Manish Kumar (PW-1), who is none but the brother of the injured is the eye witness of the occurrence. He did not received any injury



during course of occurrence. As per his deposition, the occurrence took place on 28.03.2018 at about 8:30 a.m. while he was going alongwith his brother Anish Kumar on motorcycle. His brother was the pillion rider and while they reached near the Pratap Petrol Pump, they were stopped by the co-accused Aman Kumar and this appellant and asked for Rs. Five Lakhs as a ransom money, which was demanded by co-accused Ajit Kumar @ Shutarwa. It appears from his deposition that appellant alongwith co-accused Aman Kumar opened fire and also thrown bomb upon them which hit his brother Anish Kumar. It appears further that upon alarm Kundan Kumar, Dheeraj Kumar etc. came over there and the injured was brought to Alexiya Hospital, where he was treated and further referred to Patna for better treatment by observing his medical condition. It appears that on 29.03.2018, he came to police station and thereafter lodged the present F.I.R., which is in his handwriting, bearing his signature, and upon his identification same was exhibited as **Exhibit '1'** during the trial.

20.1. Upon cross-examination, it appears that he



was doing the work as contractor with Refinery factory at Barauni. It was stated that his motorcycle was overtaken by appellant and co-accused and after going one meter ahead, Aman Kumar fired upon his brother, where bullet hit on his back. Appellant was said to throw bomb which hit to the leg of his brother. He did not received any injury during the occurrence out of the said attack. Motorcycle was also said to be damaged. Motorcycle was not seized by police. It was stated that his injured brother was unconscious while he was brought to the hospital. He could not state the registration number of motorcycle of appellant. He categorically stated that his injured brother received bullet injury on his back and his both legs received injury out of explosion of bomb thrown by this appellant. He saw bomb in the hand of appellant. The bomb was of 5 inch diameter. He stayed there for about five minutes at the place of occurrence. It was stated that 'jute' thread of bomb was seized by police from the place of occurrence but seizure list was not signed by him. It was stated that empty cartridge was also seized which was also not signed by him for the reasons that he was not available at



the time of preparation of seizure list. He denied the suggestion that he raised false allegation *qua* appellant as throwing bomb on his brother and also that his brother did not received injury out of said bomb, thrown by the appellant.

21. PW-2 Badri Prasad Singh, PW-3 Bhushan Singh and PW-4 Devan Ram @ Jha Jee @ Chandrashekhar Ram turned hostile during course of trial, where upon their cross-examination by State, nothing surfaced substantial which may contradict or corroborate the version of other prosecution witnesses, who appears to support the crime in question and, therefore, their testimony not appears relevant *qua* crime in question.

22. Now coming to PW-6, who is Anish Kumar and injured witness of the present crime in question and for the said reason he is appearing most reliable and important witness of the present crime. It appears from his deposition that occurrence took place somewhere between 8-8:30 a.m. on 28.03.2018, while he was going with Manish Kumar (PW-1) on motorcycle to Refinery for work and as they reached Bihat – Mahna Road (Pratap Petrol Pump), two persons



stopped them namely, Aman Kumar and Chandan Kumar and they asked his brother that why not he paid Rs. Five Lakhs as asked by co-accused Ajit Kumar @ Shutarwa (who acquitted through impugned judgment itself) and thereafter scuffle took place with his brother where anyhow he managed to escape from the place of occurrence and thereafter the co-accused Aman Kumar opened fire upon him which hit on his back and the present appellant Chandan Kumar thrown bomb on him, resultantly he received severe injuries and fell down to the ground. After the occurrence, the accused persons fled away. Thereafter, his brother came to the place of occurrence alongwith nearby villagers and brought him to Alaxiya Hospital for his treatment, from where he was referred to Paras Hospital, Patna for better treatment, where he was still under treatment.

22.1. Upon cross-examination, it was stated by him that firing was made from front by putting pistol on his back. It was stated that after firing, bomb was thrown, whereafter he lost his sense. He regained to his self at Alaxiya Hospital, Begusarai. It was stated that he said to police during his



investigation that firing was under instruction of Shutarwa @ Ajit Kumar, who also attempted earlier to kill him. He denied the suggestion that appellant did not throw bomb on him.

23. PW-7 is Dr. Dheeraj Kr. Shandilya, who examined the injured, which are as under:

Cause of Injury – Gun shot injury

size of injury – upper back.

Entry point – median to scapular and lateral to spinal column 1 cm x 1.5 cm wound.

Margin – inverted and burn.

Evidence of gun powder injury present.

No exit wound.

Active bleeding from wound.

C.T. Scan at chest and spine shows – bullet lodged in vertebral column.

Structure of vertebral bone.

Patient was not able to move his lower limb and patient lost sensation for urination and defecation due to spinal cord injury.

Patient went to Patna on 30 July 2018.

For second opinion –

Age of injury – less than 6 hours.

Nature of injury – grievous in nature.

2. Such injury prepared by me in my writing bears my signature.

23.1. Upon cross-examination, it was stated by him that he examined the patient namely, Anish Kumar (PW-6), which upon his identification exhibited as **Exhibit '3'** during the trial. It appears from his deposition which was recorded



upon recall on 10.02.2022 that he corrected the name of injured, as on earlier occasion when he deposed before the court on 14.09.2021, he disclosed the name of patient as Mr. Manish Kumar, which was wrong. The name of father of Anish Kumar was not recorded even upon recall which still creates a doubt whether the Anish Kumar was the son of Dinkar Choudhary or not.

24. PW-8 and PW-9 both are the police personnel and are appearing the seizure list witnesses. It appears from the deposition of PW-8 namely Tribhuvan Kumar Thakur that he was posted at F.C.I. O.P., Barauni Police Station. He was called at the place of occurrence and signed the seizure list as a witness, which upon his identification exhibited as **Exhibit '4' and '4/1'**. Upon his cross examination, it was stated that seized materials are not before him and he never made any statement to police. He came to the place of occurrence after fifteen minutes of the occurrence. Whereas PW-9 namely, Pallav, who had brought the seized materials before the court, which upon his identification exhibited as **Material Exhibit '1'**, which was empty cartridge of .315 bore and one cotton



thread, which was said to be of the bomb alleged to be thrown by the appellant. It appears from his deposition that no FSL report of said cotton thread was brought on record during the trial. Upon cross-examination, it was stated that the sealed material exhibit does not bears the signature of any police officers. It also not bears the signature of any judicial officers. The empty cartridge is not marked separately or bears any signature of any police officers or court. It was stated that it cannot be said by looking sealing box that by which police officers it was sealed and seized. There was no 'Malkhana' number on sealing box and on empty cartridge.

25. It is well-settled law that to make out a case under Section 307 of the I.P.C., the prime consideration is to establish the intention of the appellant which can be gathered from the different facts and circumstances like the nature of weapons which alleged to be used during the occurrence, the conduct of accused pre and post occurrence and also during the time of occurrence, the manner of assault etc. In this context, it would be apposite to reproduce the paragraph No. 12 and 13 of **Jage Ram's** case (supra), which are as under:

"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.”

26. Now, taking shelter of the testimony of most important witness of the present occurrence, who is injured/PW-6, it appears that the informant (PW-1) fled away before actual occurrence of assault i.e. firing and throwing of bomb. He categorically stated that he received bomb injury in both legs. If the version of this injured witness be taken into consideration then, certainly PW-7, who is a doctor and conducted medical examination upon injured/PW-6, must find said injuries on his legs, but it appears from his deposition that only single injury was found upon him which was gunshot injury found upon upper back. Save and except the aforesaid injury, no other injury was found upon him and, therefore, in view of medical finding, it appears that the testimony of injured/PW-6, who is injured witness, not appearing reliable.

27. It is established principle of law that ordinarily the testimony of injured witness should not be discarded as there is rare occasion to implicate the innocent persons to the crime in question. In this context, it would be apposite to reproduce paragraph **32 and 33** from the judgment of Hon’ble Supreme Court as available through **Nand Lal v.**



State of Chhattisgarh reported in **(2023) 10 SCC 470,**

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* [*Vadivelu Thevar v. State of Madras*, 1957 SCC OnLine SC 13 : 1957 SCR 981 : AIR 1957 SC 614], has observed thus: (AIR p. 619, paras 11-12)

"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."



28. In view of non-corroboration with medical injury report, the testimony of injured witness *qua* injury as alleged to be caused by bomb thrown by the present appellant is not appearing convincing and, therefore their testimony *qua* allegation of bomb injury appears unreliable. The learned trial court also acquitted the appellant from the offences punishable under Section 3/4 of the Explosive Substances Act. The theory of conspiracy was also not believed by the learned trial court and, therefore, co-accused Ajit Kumar @ Shutarwa was acquitted with same set of evidence with the help of which the present appellant was convicted through the impugned judgment.

29. Hence, the present appeal stands allowed.

30. Accordingly, the impugned judgment of conviction dated 07.11.2022 and order of sentence dated 24.11.2022, respectively as passed by learned Additional District & Sessions Judge-XI, Begusarai in connection with Sessions Trial No. 736/2018 arising out of Begusarai Barauni (FCI) P.S. Case No. 113 of 2018, is quashed and set aside. Resultantly, the appellant/convict namely, Chandan Kumar, is



acquitted of the charges leveled against him by the learned trial court. He is directed to be released forthwith, if his presence is not required in any other case. Fine, if any paid, be returned to appellant immediately.

31. Let a copy of this judgment alongwith the Trial Court Records be sent to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2024
Transmission Date	04.12.2024

