

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.148 of 2018

Arising Out of PS. Case No.-368 Year-2015 Thana- BIHAR District- Nalanda

Raja Paswan Son of Faujdari Paswan, Resident of Village- Baignabad, P.S.- Bihar, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 180 of 2018

Arising Out of PS. Case No.-368 Year-2015 Thana- BIHAR District- Nalanda

1. Ravi Paswan and Ors
2. Gautam Paswan
3. Pratap Paswan All Sons of Faujdari Paswan,
4. Faujdari Paswan S/o Late Paro Paswan, All are R/o Mohalla- Baignabad, P.S.- Bihar, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 148 of 2018)

For the Appellant/s	:	Ms. Soni Srivastava, Advocate
		Mr. Indrajeet Bhushan, Advocate
		Mr. Ravi Bhardwaj, Advocate
For the Respondent/s	:	Mr. Sri Ajay Mishra, APP
For the Informant	:	Mr. Binit Kumar, Advocate
		Mr. Raj Kishor Prasad, Advocate

(In CRIMINAL APPEAL (SJ) No. 180 of 2018)

For the Appellant/s	:	Ms. Soni Srivastava, Advocate
		Mr. Indrajeet Bhushan, Advocate
		Mr. Ravi Bhardwaj, Advocate
For the Respondent/s	:	Mr. Sri Ajay Mishra, APP
For the Informant	:	Mr. Binit Kumar, Advocate
		Mr. Raj Kishor Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 07-10-2024

Both the appeals were taken up together for hearing.



2. Appellant/Raja Paswan [Cr. App. (DB) No. 148 of 2018] has been convicted vide judgment dated 23.11.2017 under Sections 148, 307, 302 of the IPC and Section 27 of the Arms Act by the learned Additional Sessions Judge-III, Nalanda at Bihar Sharif in connection with Sessions Trial No. 108 of 2016/Trial No. 37 of 2016, arising out of Bihar P.S. Case No. 368 of 2015. By order dated 06.12.2017, he has been sentenced to undergo R.I. for three years for the offence under Section 148 of the IPC; to undergo R.I. for five years, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer R.I. for four months under Section 307 of the IPC; to undergo R.I. five years, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer R.I. for four months and to further undergo imprisonment for life, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer R.I. for four months under Section 302 of the IPC.

3. All the sentences have been directed to run concurrently.



4. The rest of the appellants viz., Ravi Paswan, Faujdari Paswan, Gautam Paswan and Pratap Paswan in Cr. App (SJ) No. 180 of 2018 have been convicted under Sections 147 and 323/149 of the IPC by the same judgment. By order dated 23.11.2017, they have been sentenced to undergo imprisonment for one year for the offence under Section 147 of the IPC and to undergo imprisonment for one year under Sections 323/149 of the IPC.

5. We have heard Ms. Soni Srivastava for all the appellants in the two appeals and Mr. Binit Kumar, learned Advocate for the informant. The State is represented by the learned APP.

6. One Rishikesh Kumar @ Chhotan is alleged to have been shot dead by appellant/Raja Paswan.

7. According to the FIR lodged by Sunil Paswan (PW-9), a dispute had erupted with respect to passage of land between the parties on 15.08.2015 at about 8:30 in the evening. Nine named accused persons including the appellants are said to have congregated in front of the house of P.W.-9. Appellant/Raja Paswan wanted the passage to be vacated and



not to be used by the prosecution side in future. This had led to a scuffle and fight between the parties. In the meantime, appellant/Raja Paswan fired from his weapon hitting Rishikesh Kumar in his neck. He is alleged to have fired again, aiming at P.W.-9, but somehow or the other P.W.-9 remained unhurt. While all this was happening, the police party arrived and took all the injured persons viz., five in number (out of whom only three have been examined) along with the deceased to the hospital. At the time of lodging of the fardbeyan by P.W.-9, the deceased had not succumbed to the injuries.

8. Based on the fardbeyan of P.W.-9, Bihar P.S. Case No. 368 of 2015 dated 15.08.2015 was initially registered for investigation for offences under Sections 147, 148, 149, 341, 323, 324, 307, 337, 504 and 506 of the Indian Penal Code.

9. Rishikesh died after few days of treatment in PMCH, whereafter Section 302 of the Indian Penal Code was added.

10. Only the aforementioned appellants in the two appeals were chargesheeted, whereas the investigation with respect to others remained pending.



11. The Trial Court after having examined fourteen witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellants as aforesaid.

12. While assailing the Trial Court judgment, Ms. Soni Srivastava, learned Advocate has argued that from the bare reading of the fardbeyan, it would appear that there was a dispute with respect to passage of land and that the accused persons had not assembled there for killing any person; rather the congregation at the house of P.W.-9 was for the purposes of intimidating and forcing the members of the prosecution party to abandon their claim or eschew from causing any hindrance in the free passage on the lane, which apparently was in the possession of the accused persons.

13. With this background in mind, it has been argued, the prosecution has failed miserably in proving the case beyond all reasonable doubts.

14. The story narrated in the fardbeyan was embellished later by almost all the witnesses. P.W.-9 for the first time at the Trial introduced the name of one Devanand



Paswan (P.W.-4) as being one of the witnesses to the occurrence. The story first narrated by P.W.-9 disclosed that all the accused persons had come together and appellant/Raja Paswan, while the parties were discussing amongst themselves and also resorting to brickbats against each other, fired from his pistol which hit Rishikesh Kumar.

15. However, during Trial, some changes appear to have been brought about in the story not only by P.W.-9 but by other witnesses as well.

16. With regard to the post-mortem report not being in sync with the prosecution version *viz.*, that when the father of the deceased *viz.*, Binda Paswan (P.W.-10) was being assaulted by the accused persons, Rishikesh Kumar rushed to rescue him. While the deceased was lifting his father, who had fallen on ground, appellant/Raja fired at. This perhaps was introduced for explaining away the reason for the upward direction of the projectile in the body of the deceased.

17. It has been urged that most of the witnesses, who claimed to be present at the time of the occurrence gave



their statements before the investigator after a month, which makes the prosecution case highly doubtful.

18. Most of the witnesses, as would appear from the deposition of the investigator *viz.*, Anup Kumar (P.W.-12), had not made any specific statement before him regarding the manner of occurrence.

19. What has struck the prosecution case as a death knell is the F.I.R. lodged by Rajesh Kumar Sharma, the S.H.O. of the concerned police station *vide* Bihar P.S. Case No. 369 of 2015, who claims to have arrested appellant/Raja Paswan from his house; had recovered the weapon of offence and had prepared the seizure list. The records of the case though have been brought on record by way of defence exhibit but the same has not been proved.

20. Rajesh Kumar Sharma, the then S.H.O. has not also been examined in this case.

21. It was thus argued that if the police had arrived at the scene of the occurrence within ten minutes of the fight having started and the weapon of offence was recovered for which FIR has registered on the self-statement of the S.H.O.,



there was no reason for not recording the fardbeyan of anyone of those injured witnesses or even P.W.-9 at that time.

22. There could be some explanation of the police party being engaged in taking the injured persons including the deceased to the hospital for treatment, but it has really caused serious doubts about the manner in which the occurrence is said to have taken place.

23. It was also argued that the veracity of witnesses could be questioned on the ground of their having made their first statements before the police after a month of the occurrence. Many of the witnesses have not been named as being present at the scene by the other witnesses deposing before the Trial Court.

24. With reference to the deposition of the Investigating Officer (P.W.-12), Ms. Soni Srivastava has tried to impress upon the Court that the story was developed much later, clearly suggesting that every aspect of the prosecution case which has been relied upon by the Trial Court was developed much later and therefore, it was the outcome of a



concerted plan by the witnesses, all of whom are related or are neighbours, to anyhow frame the appellants.

25. All the injured witnesses *viz.*, P.Ws.-1, 2 and 13 have received simple injuries; so have the appellants. Their injury reports are also on record. In fact, the injured persons of the prosecution side and of the side of appellants were taken to hospital by the police. In fact, most of the witnesses have admitted that when they visited the hospital, they found accused persons also receiving treatment there.

26. Coupled with this, against the accusation of appellant/Raja Paswan having fired at the deceased while the deceased was proceeding towards the scene of occurrence, the doctor conducting the post-mortem examination on the dead body *viz.*, Dr. Arun Kumar Singh (P.W.-11) surprisingly found the track of the wound to be in an upward direction. This could have happened only if the shooter was at a lower plane than the victim.

27. The injuries on appellant/Raja Paswan especially on his eye-brows and the deposition of witnesses that while scuffling, appellant/Raja Paswan was carrying a pistol in his



hand, it becomes very clear that the firing was not intentional but only accidental, if at all the story of appellant/Raja Paswan wielding a weapon is believed to be true.

28. That also appears to be doubtful, Ms. Soni Srivastava has argued, for the reason that no effort was made by the prosecution to match the weapon of offence so seized by Rajesh Kumar Sharma, the S.H.O. and the stuck up bullet in the body of the deceased. The I.O. (P.W.-12) on his visiting the P.O. did not find any incriminating circumstance suggesting that the occurrence of the kind as reported by P.W.-9 at the P.O., had actually taken place.

29. There is complete absence of any explanation of the injuries on the appellants, even though those are simple in nature.

30. Thus, at best, it has been argued, that the entire prosecution version presents a scenario where there was a free fight between the two groups in which a firearm weapon got accidentally fired. There are more than one reason for suggesting such an alternative; viz., (i) no repetition of fire; (ii)



firing resorted to sometimes at the end of the dispute and; (iii) non-targeting of the main person viz., P.W.-9.

31. The story of appellant/Raja Paswan having fired at P.W.-9 also requires to be discounted for the reason that he has not been hurt at all.

32. That apart, most of the persons of the prosecution side were standing in close proximity. Had it been intentional firing, many persons would have been injured by the gun-shot.

33. On such grounds, it has been argued, that the appellants deserve to be acquitted of the charges.

34. As opposed to the aforementioned contentions, Mr. Binit Kumar has laid emphasis on the consistent accusation of all the witnesses whose presence at the scene of occurrence cannot be doubted at all. Some of them are injured witnesses, clearly establishing that they were present at the P.O. and therefore, it was very natural for them to have seen the entire assault.

35. He has further contended that in the background of consistent eye-witness account of so many witnesses,



merely because the track of the projectile was upward moving, cannot be a ground to discredit the entire prosecution version.

36. Appellant/Raja Paswan also has filed a complaint case. Assuming but not admitting that there was a free fight between the parties, the accusation against the appellants of having caused hurt to the members of the prosecution side cannot be ignored totally.

37. Despite there being many persons present at the P.O., there is no discrepancy in all of their accounts with respect to appellant/Raja Paswan being armed with a pistol.

38. Evidence during Trial further discloses that the dispute had been continuing for quite some time and a fight had taken place a day before as also a few hours before the main occurrence. It was only after the second round of scuffle ended that the accused persons decided to finally lay at rest the entire controversy and use force to prevent the members of the prosecution side from staking any claim over the passage. It was with this mindset that the appellants had arrived at the house of P.W.-9 and after preliminary



skirmishes, appellant/Raja Paswan, with all intention, fired from his weapon hitting the deceased.

39. That the shot fired by him against P.W.-9 not having hit P.W.-9 is no ground to disbelieve the entire prosecution case.

40. Nobody expects a person in the village to be a marksman. There could be a possibility of appellant/Raja Paswan having missed his target.

41. Lastly, in support of the Trial Court judgment, it has been submitted that even assuming that the deceased was not the target of the accused persons as the dispute was between appellant/Raja Paswan and P.W.-9, the act of the appellants would attract the mischief of Section 302 of the Indian Penal Code.

42. Almost similar arguments have been advanced in support of the judgment by the learned Additional Public Prosecutor.

43. On an analysis of the evidence on record, what is very stark is the non-examination of Rajesh Kumar Sharma, the then S.H.O., who had lodged his self-statement, accusing



appellant/Raja Paswan for having kept of firearm weapon illegally *vide* Bihar P.S. Case No. 369 of 2015. The aforementioned F.I.R. was lodged at the house of the appellant on the same day.

44. It is really difficult to assign any reason for non-lodging of the F.I.R. of this case there only when some of the witnesses to the seizure and arrest of the appellant are witnesses in this Trial as well.

45. What must have happened?

46. Admittedly, there had been a dispute over a passage of land. There is nothing on record to conclusively hold as to which faction of the neighbourhood was in actual possession of the passage of land. It appears that the right of easement was being exercised by the accused persons.

47. During the Trial, evidence has unfolded that perhaps one of the neighbours, in the process of erecting a damaged wall, made an opening in the passage which was objected to by appellant/Raja and his associates.

48. This was the main bone of contention between the parties.



49. There is every likelihood of all the persons of the neighbourhood, most of whom are related to each other, to be affected by such a dispute. The prosecution side was not unprepared. A day before the occurrence, a fight had taken place but it had ended only with parties abusing each other. Sometimes prior to the main occurrence at 8:30 PM on 15.08.2015, there had been a fight in the afternoon but the parties had gone back to their respective houses. Both sides appear to have been prepared for a clash.

50. In this context, we have taken into account the suggestions to the witnesses that while the scuffle was going on, appellant/Raja also fell down on the ground and that he fired in his self-defence or that the weapon held by him got fired accidentally.

51. Though all the witnesses have denied such suggestions but looking at the upward movement of the bullet in the body of the deceased, it can safely be presumed that appellant/Raja was in a supine position when the shot got fired.

52. It could not have been a case of appellant/Raja having fired pointedly towards any person. In that case, the



trajectory of the bullet would have been straight and not upward moving.

53. Seen in this background and also taking into account that the appellants also were injured and about which there is no explanation at all in the fardbeyan of P.W.-9, the case of the prosecution so far as the intention of appellant/Raja Paswan in killing Rishikesh Kumar stands doubted.

54. As we have already noted, whether the weapon, which was seized by Rajesh Kumar Sharma, the S.H.O. was actually the weapon of assault also remains doubtful. However, no conclusive opinion could be given by this Court in the present appeal for the reason that that case lodged by Rajesh Kumar Sharma, viz., Bihar P.S. Case No. 369 of 2015 still not having reached its finality.

55. The argument of Mr. Binit Kumar, learned Advocate for the informant that the consistent version of injured eye witnesses cannot be ignored, is not correct in the present set of facts.



56. The question of weight to be attached to the evidence of an injured witness has engaged the attention of the Supreme Court in a number of cases.

57. The line of reasoning of the Supreme Court is that when a witness to the occurrence himself is injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness who comes in with a built-in guarantee of his presence at the scene of crime and he is unlikely to spare his actual assailant(s) in order to falsely implicate others. (Refer to ***Abdul Sayeed Vs. State of Madhya Pradesh, (2010) 10 SCC 259***).

58. On a number of occasions, the Supreme Court has ruled that very convincing evidence is required to discredit an injured witness [also refer to ***Ramlagan Singh v. State of Bihar, (1973) 3 SCC 881; Malkhan Singh vs. State of U.P., (1975) 3 SCC 311; Machhi Singh vs. State of Punjab, (1983) 3 SCC 470; Mohar v. State of U.P. (2002) 7 SCC 606; Balaji vs. State of Maharashtra (2010) 6 SCC 673*** and ***Jarnail Singh vs. State of Punjab (2009) 9 SCC 719***].



59. The law on the issue has been very aptly summarized in ***Abdul Sayeed (supra)*** that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of crime and because the witness will not let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence.

60. There could be no quarrel with such proposition.

61. However, in the present case, several persons from both sides have been injured, though injuries on all such persons including the members of the prosecution and appellants' side have been found to be simple in nature.

62. Nonetheless, Mr. Binit Kumar is correct in his assertion that the presence of the witnesses at the scene of occurrence cannot be doubted, no matter their statements before the police were given after a month of the occurrence.

63. However, that consistency of the witnesses cannot be a guarantee for the other part of the accusation viz. intentional firing at the deceased by appellant/Raja Paswan can



be accepted without a demur. The members of the appellants' side also were injured. Appellant/Raja Paswan, himself, was injured on his eye-brows.

64. For the moment, we are not focussing on the recovery of weapon from the possession of appellant/Raja Paswan and the accusation of that weapon being the weapon of assault in this case but for the prosecution to succeed, it is required to be proved that appellant/Raja Paswan had the intention of killing the deceased.

65. We have taken into account the arguments advanced on behalf of the prosecution that ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses; unless the medical evidence completely rules out all possibilities of the injuries taking place in the manner alleged by the eye witness. The testimony of the eye-witnesses cannot be thrown out on the ground of alleged



inconsistency between it and the medical evidence [refer to ***Solanki Chimanbhai Ukabhai v. State of Gujarat (1983) 2 SCC 174***; ***Mani Ram and others Vs. State of U.P., 1994 (Supp) 2 SCC 289***; ***Khambam Raja Reddy v. Public Prosecutor, (2006) 11 SCC 239*** and ***State of U.P. v. Hari Chand, (2009) 13 SCC 542***].

66. In any event, the Supreme Court has ruled, unless the oral evidence is totally irreconcilable with the medical evidence, it has to be given primacy. The position of law is that in cases where the contradiction between the medical evidence and ocular evidence, greater evidentiary value is of ocular testimony *vis a vis* medical evidence. There is no question of departure from the said rule.

67. The deceased had died of gun-shot. It is in the same transaction which has been complained against but what could be culled out from the evidence is that appellant/Raja Paswan also had fallen down on the ground and in that position, the weapon was fired.

68. Whether it was accidental or deliberate is the issue that confronts us.



69. We have already noted the submission of the counsel for the appellants, and which reasoning has some force, that if there had been any intention on the part of appellant/Raja Paswan to kill, the first target accessible was PW-9. Nobody else was armed with a gun. If the entire prosecution case is believed, then perhaps the persons who had assembled at the scene got scared or they could not apprehend the appellant/Raja Paswan. Appellant/Raja Paswan had not run away from the village. He remained in his house if we believe the version of Rajesh Kumar Sharma in his self-statement. Appellant/Raja Paswan was arrested from his house and the weapon was recovered.

70. In this background, we seriously doubt whether Raja had the intention to kill Rishikesh Kumar. But how are the injuries on the person of the appellants to be explained.

71. In State of ***State of Gujarat v. Bai Fatima, AIR (1975) SC 1478***, the Supreme Court was of the view that in a situation like this when the prosecution fails to explain the injuries on the person of an accused, several inferences could be drawn viz. (I) that an accused has inflicted injuries on



the members of the prosecution party in exercise of his self-defence; (II) it makes the prosecution version of the occurrence doubtful and the charge against accused cannot be held to have been proved beyond all reasonable doubts and; (III) that it does not affect the prosecution case at all. In ***Lakshmi Singh v. State of Bihar (AIR 1976 SC 2263)***, the Supreme Court again explained that in a murder case the non-explanation of the injuries sustained by the accused at about the same time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw many inferences viz. (i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore, their evidence is unreliable and; (iii) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case.



72. However, one cannot lose sight of the fact that the injuries on all others are simple in nature.

73. The facts situation of this case presents a totally different scenario. The accused persons and the appellants were all, in some way or the other, affected by the dispute regarding the passage. Several persons being injured on both sides only reflects that there was a free fight. That the appellants have chosen to prefer a complaint case which has yet not seen its finality, in this circumstance is no ground to doubt the prosecution case of the appellants having assaulted the injured persons.

74. There are five injured persons in this case from the side of the prosecution, out of whom, three have been examined. The appellants also were injured in the same transaction and their injuries were medically attended to at the behest of the police.

75. Thus, it cannot also be said that those injuries on the person of the accused are manufactured for the purposes of weakening the prosecution case.



76. The only filtrate of this is that there was a free fight but that would not in any manner take the case of the other appellants away from the pale of the mischief of Section 323 of the IPC. That others were also injured in the same transaction would only justifiably be used for sentencing of the appellants.

77. With the aforementioned discussion, we have come to the irresistible conclusion that appellant/Raja Paswan did not have the intention to kill Rishikesh Kumar. However, the shot fired at his behest hit the deceased which led to his death. He is therefore, liable for the offence under Section 304(II) of the IPC and not for Section 302 of the IPC.

78. Thus, his conviction is altered to one under Section 304(II) of the IPC.

79. The conviction of the rest of the appellants is not interfered with.

80. However, considering the entire set of facts, we are of the considered view that the period of custody of the rest of the appellants namely Ravi Paswan, Gautam Paswan,



Pratap Paswan and Faujdari Paswan [Cr. App. (SJ) No. 180 of 2018] would suffice and would meet the ends of justice.

81. The aforementioned appellants are on bail. They are discharged of the liabilities of their bail bonds.

82. We have been informed at the Bar that appellant/Raja Paswan [Cr. App. (DB) No. 148 of 2018] is in jail since 15.08.2015. This period of custody would be sufficient as against the offence under Section 304(II) of the IPC.

83. Appellant/Raja Paswan is directed to be released from jail forthwith, if not wanted or detained in any other case.

84. Thus, both the appeals are partially allowed, making alterations in the conviction and sentence of appellant/Raja Paswan and the sentences of the other appellants.

85. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

86. The records of this case be returned to the Trial Court forthwith.



87. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

krishna/ravi

AFR/NAFR	AFR
CAV DATE	NA
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