

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.213 of 2003

Arising Out of PS. Case No.-90 Year-1996 Thana- LALGANJ District- Vaishali

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1. Surendra Prasad Singh @ Sonelal Singh Son of Radha Kant Singh Resident of Village - Manikpur Pakri, P.S. - Lalganj, District - Vaishali
 2. Radha Kant Singh S/o Late Shobhit Singh Resident of Village - Manikpur Pakri, P.S. - Lalganj, District - Vaishali. (case against the appellant was abated vide Hon'ble Court order dated 23-10-2024)
 3. Manoj Kumar Singh @ Guddu @ Guddu Singh S/o Surendra Prasad Singh Resident of Village - Manikpur Pakri, P.S. - Lalganj, District - Vaishali
 4. Ajay Singh S/o Rajdhari Singh R/o vill - Semra Manain, P.S.- Sahebganj, Distt.- Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kushal, *Amicus Curiae*

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

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 01-05-2025

1. The criminal appeal is arising out of the judgment and sentence dated 21.04.2003 in Sessions Trial No. 92 of 1998, on the file of Additional Court No. 1 (Fast Track Court), Vaishali at Hajipur, wherein all the four appellants were convicted under Section 307 r/w 34 of IPC, and they were sentenced to undergo rigorous imprisonment for a period of five years each. Furthermore, all four appellants were convicted under Section 342 of IPC and were sentenced to undergo rigorous imprisonment for a period of one year each.



2. Further, appellant No. 3/ Manoj Kumar Singh @ Guddu Singh and appellant No. 4/ Ajay Singh were convicted for the offence punishable under Section 27 of the Arms Act and were sentenced to undergo rigorous imprisonment for a period of three years each. However, appellant No. 4/ Ajay Singh was acquitted for the charge under Section 326 of IPC. The trial Court further directed that all the sentences imposed against the appellants shall run concurrently. Being aggrieved by the judgment of conviction and sentence, the appellants preferred this appeal.

3. As there was no representation for the appellants, this Court was constrained to appoint *Amicus Curiae*, Mr. Kushal, in order to proceed with the appeal. Since there was no information regarding the status of the appellants, this Court was also constrained to call for a report from the Superintendent of Police, Vaishali. In turn, this Court received the report from the Superintendent of Police Vaishali vide Letter No. 69 dated 11.02.2025, stating that appellant No. 1/ Surendra Prasad Singh @



Sonelal Singh, appellant No. 3 /Manoj Kumar Singh @ Guddu Singh and appellant No. 4/ Ajay Singh are alive. However, appellant No. 2/ Radha Kant Singh S/o Shobhit Singh died long ago. Considering the report of Superintendent of Police, Vaishali, this Court abated the case against the appellant No. 2. and the appeal has to proceed against appellant No. 1, 3 and 4.

4. The case of the prosecution as per the fardbeyan of Manoj Singh/ P.W. 7 was that on 08.08.1996 at about 08:30 A.M., P.W. 7 gave a statement to the Sub-Inspector of Lal Ganj, Police Station at his doorstep, contending that he is the nephew of Ranjeet Kumar (P.W. 6) On the said date P.W. 6 was going to the house of one Uma Shankar Singh (not examined) to fetch milk. When he reached near the electric pole in front of the house of the appellant No. 1/ Surendra Singh @ Sonelal Singh then appellant No. 1 along with appellant No. 3/ Manoj Kumar Singh @ Guddu Singh and one unknown person caught hold of P.W. 6. The said unknown person lifted and took him to Verandah of



the house of the first appellant, where Radha Kant Singh (appellant No. 2) caught P.W. 6's hair and dragged him. Meanwhile, appellant No. 1 armed with a Khukhri and appellant No. 3/ Manoj Kumar Singh @ Guddu Singh armed with a farsa inflicted multiple blows on P.W. 6, for which he sustained bleeding injuries. Upon hearing the commotion (*hulla*), the informant P.W. 7/ Manoj Kumar Singh along with his family members and co-villagers namely Hari Shankar Singh (P.W. 2) Basant Singh (P.W. 3), Nagina Paswan (not examined), Subodh Kumar Singh (P.W. 1) and many other rushed to the spot and asked the appellants to release P.W. 6. However, the appellants dragged P.W. 6 into their house and locked themselves inside. P.W. 6 while in an injured state went to the rooftop and jumped into the kitchen in an attempt to escape.

5. During this episode an unknown person fired gun shot and one bullet hit Ritesh Kumar @ Babloo(P.W. 4) in his left arm causing injures. Later, both the injured i.e. P.Ws. 4 and 6 were shifted to Lal Ganj for treatment. The motive behind the incident



was enmity arising from an old and pending land dispute. All the appellants in furtherance of intention conspiracy armed with weapons such as farsa, khukhri and a rifle, injured P.Ws. 4 and 6 with the intention to kill them.

6. Based on the fardbeyan, a Criminal Case was registered against all the appellants vide case No. 0089 of 1996 dated 08.08.1996 for the offences punishable under Section 341, 342, 324, 307 r/w 34 of IPC and Section 27 of Arms Act, on the file of Lal Ganj, Police Station. The FIR was registered at 01:00 P.M. on 08.08.1996.

7. It is pertinent to mention that the alleged incident took place at 06:30 A.M. on the same day. The fardbeyan of P.W. 7 was recorded by the Sub-Inspector of Lal Ganj, Police Station at the doorstep of P.W. 7 at 08:30 A.M. and case was subsequently registered at 01:00 P.M.

8. It is also relevant to mention that the Sub-Inspector registered a case against all the prosecution witnesses including the victim and the informant vide FIR No. 90 of 1996 on the file of Lal



Ganj, Police Station (Exhibit-B) was filed at the instance of the appellants for the same incident. The police after due investigation filed a detailed charge-sheet against the appellants for the offences punishable under Sections 341, 342, 324, 326 and 307 read with 34 of IPC. The Learned Magistrate took cognizance of the said offences on 07.05.1996 and subsequently, the case was committed to the Court of Sessions for trial on 20.03.1998.

9. The record reveals that the trial Court framed charges against all the appellants for the offence punishable under Section 307 and 342 of IPC. A charge was framed against appellant No. 4/ Ajay Singh for the offence punishable under Section 326 of IPC. Further against appellant No. 3 and 4 charge was framed for the offence punishable under Section 27 of the Arms Act. All the charges were read over and explained to the appellants in Hindi and all the appellants pleaded not guilty and claimed to be tried.



10. During the course of trial, the prosecution examined 10 witnesses and marked the following Exhibits which are as follows:-

Sl. No.	Name of Prosecution witness
P.W. 1	Subodh Kumar Singh
P.W. 2	Harishankar Singh (uncle of informant)
P.W. 3	Basant Prasad Singh
P.W. 4	Ritesh Kumar
P.W. 5	Prayag Rai
P.W. 6	Ranjeet Kumar (victim)
P.W. 7	Manoj Kumar Singh (informant)
P.W. 8	Bhola Prasad Singh (SHO)
P.W. 9	Dr. Siyaram Rai (Doctor)
P.W. 10	Umesh Kumar Singh

Sl. No.	List of Exhibits	Exhibits Details
1.	Exhibit- X	Seizure List
2.	Exhibit- 1	Fardbeyan
3.	Exhibit- 2	Signature of Manoj Kr. Singh
4.	Exhibit- 2/1	Signature of Raju Kr. Singh
5.	Exhibit- 3	Injury Report
6.	Exhibit- 3/1	Injury Report
7.	Exhibit- 3/2	Injury Report
8.	Exhibit- 4	Opinion of Doctor

11. However, on perusal of the exhibits, certain discrepancies are apparent in the marking of Exhibits. It is Exhibit-3 which was stated to be the seizure list. However, upon examining the seizure list



itself, it is clear that it was not properly marked as Exhibit-3. Similarly, Exhibits 2 and 2/1 are said to be the signatures of P.W. 7 and one Raju Kumar affixed on the first *fardbeyan* dated 08.08.1996. Exhibits 2/2 and 2/3 are the left-hand thumb impressions of one Uma Shankar and Nagina Paswan on the seizure list, in relation to bloodstained earth allegedly recovered by P.W. 8.

12. However, this Court notes a serious procedural anomaly. If Exhibit-2 was already assigned to the signatures on the *fardbeyan*, the allocation of Exhibits 2/2 and 2/3 for signatures on the seizure list is not at all tenable in the eyes of law. It can be construed that the trial Court erroneously marked these exhibits.

13. Further, the seizure list of the bloodstained earth was not at all explained in the proceedings. Exhibit 3/1 is alleged to be the seizure list of the carbine rifle, *khukri*, and *farsa*, but, upon examining the seizure list, it is noted that it was rather marked as Exhibit-X. The trial Court assigned two different exhibit numbers (Exhibit-3/1 and



Exhibit-1) for the same document without providing any rationale or clarification.

14. Moreover,, Exhibits 2/4 and 2/5 are said to be the signatures of Shyam Babu Tiwari and the left thumb impression of Prayag Ram (P.W. 5) on the seizure list of the carbine rifle. P.W. 5 said to have proved Exhibit-X but there is no evidence that P.W. 5 proved Exhibit-2.

15. The evidence of P.W. 5, Prayag Ram (son of Sarjug Ram), disclose that the police conducted a search of the house of Radha Kant Singh four years prior to his examination-in-chief. During the search, a rifle, *farsa*, and *khukri* were allegedly recovered in his presence, and the seizure list was marked as Exhibit-X. However, in cross-examination, he specifically admitted that he belongs to Itwarpuri Pakri village, whereas the alleged seizure took place in Manikpuri Pakri two distinct villages. He further admitted that he had not seen the rifle at the time of seizure and he did not know what a carbine is. However, the seized weapon was not shown to him in Court.



16. P.W. 5 specifically stated that the police recovered a rifle measuring approximately about 2 to 2.5 arm's length. He also admitted that he did not enter the house during seizure. In light of these material contradictions and admissions, much importance need not be attached to the testimony of P.W. 5 for the purpose of proving the seizure list.

17. It is also relevant to mention that the *fardbeyan* of P.W. 7 was not marked as an Exhibit. However, the formal FIR, which is based on the said *fardbeyan* was marked as Exhibit-4. Exhibit-5 is the Examination Report of the seized carbine rifle dated 14.04.1996, bearing the signature of Munna Prasad Naleem (RSM), Police Line, Hajipur, which was marked through P.W. 8.

18. On perusal of said exhibit, it could be understood that a letter dated 06.09.1996 was addressed by Munna Prasad Naleem, to the Chief Judicial Magistrate, Hajipur requesting examination of seized arms. The contents of the letter disclose that one licenced rifle belonging to Radha Kant Singh, son of Late Ram Shobhit Singh of village



Manikupur was seized during the course of investigation. The Seized rifle described as US carbine CAL 30 m1/ No. 1338742 along with two live cartridges of 30 calibre and one empty cartridge. The letter requested for examination and a report from the RSM, Police Line, Hajipur, about the seized rifle on the following points:

(i). Whether firing from the seized rifle has been done or not?

(ii) Whether, the seized empty cartridge can be fixed in the seized rifle or not?

(iii) Whether, the two live cartridges can be fixed in the seized rifle or not ?

(iv) Whether, it can be dangerous to human live or not?

19. On the same letter, there was an endorsement as follows:-

(i) As far as query no 1 “today it is not possible to say.”

(ii) For query no 2- “Yes”

(iii) For query no 3- “Yes”



(iv) For query no 4, “May be dangerous to life.”

20. However, this Court finds the said endorsement on the letter cannot be considered as an examination report of the rifle. There is no separate ballistic or forensic report of the seized carbine rifle on record. Therefore, Exhibit-5 cannot be relied upon by the trial Court to establish that the rifle allegedly seized by the Investigating Officer was used in the offence.

21. It is pertinent to mention that the material objects were not marked during the trial, and there is no record to show that the material objects were produced before the trial court. None of the witnesses, including P.W. 5 and P.W. 8, were confronted with the material objects to confirm the seizure by the Investigating Officer on 08.08.1996 from the house of Sonelal Singh (appellant No. 1).

22. It is also important to point out that Exhibit-X, the seizure list, contains that the seizure of the three material objects—i.e. *khukri*, *farsa*, and rifle—from the house of Radha Kant Singh (appellant



No. 2). However, there is no material evidence before the trial Court to establish that the house of Sonelal Singh is the same as that of Radha Kant Singh. The evidence of P.W. 8 (Investigating Officer) and P.W. 5 clearly disclose that the alleged recovery and arrest were made at the house of appellant No. 1, Sonelal Singh. However, Exhibit-5 contradicts this and attributed that the seizure was made from the house of Radha Kant Singh. This exhibit (Exhibit-5) was marked through the Investigating Officer, but the prosecution has not explained how it was so marked through P.W. 8. Furthermore, Munna Prasad Naleem, the author of the said document, was not examined before the Court. The endorsement by the alleged expert—Regimental Surgeon Major (RSM)—was also not marked.

23. It is further pertinent to note that the nomenclature used in Exhibit-X describes the recovery of a “carbine rifle.” However, under the Arms Act a *carbine* and a *rifle* are two distinct categories of firearms with different specifications. Therefore, the burden lies on the prosecution to



prove that the weapon allegedly recovered from the house of Sonelal Singh was in fact a “rifle”, or a “carbine”. Moreover, the evidence of the Investigating Officer clearly reveals that Radha Kant Singh held a license for a *carbine*, and not for a *rifle*.

24. It is also relevant to mention that several prosecution witnesses specifically stated that firing was done with a country-made rifle. But, no such country-made rifle was recovered by the Investigating Officer.

25. Further, on behalf of the defence, Exhibits A to D were marked which are as follows:-

List of Defence Exhibits	Details of Defence Exhibits
Exhibit-A	Judgment of complaint petition No. 287/93
Exhibit-B	C.C. of FIR, Lalganj 90/1996
Exhibit-C	C.C. of Charge-sheet
Exhibit-D	C.C. of Khatiyani, Khata No. 116 Thana No. 130

26. The appellants were examined under Section 313 of Cr.P.C. with respect to the incriminating material found from the evidence by the prosecution. After considering the entire



evidence on record, the trial Court convicted all the appellants as aforesaid.

27. The point for determination in this appeal are as follows:-

(i) Whether the prosecution is able to prove the guilt of the appellants for the offence punishable under Section 307 r/w 34 of IPC, under Section 342 of IPC and u/s 27 of the Arms Act against appellant Nos. 3 and 4, beyond reasonable doubt?

(ii) Whether the trial Court has rightly convicted all the appellants for the aforesaid offences.

28. In order to determine the aforesaid points, it is necessary to reappreciate, the oral and documentary evidence on record. There is no need to reiterate the entire evidence- only the evidence relevant to the points raised in the appeal shall be discussed.

29. Heard Shree Kushal the Learned *Amicus Curiae* for the appellants as well as Smt. Anita Kumari Singh the Learned Additional Public Prosecutor for the State.



30. It is contended by the Learned *Amicus Curiae* that there are two fardbeyans in the case, one of the informant i.e. P.W. 7 on 08.08.1996 and the other from P.W. 6/ Ranjit Kumar on 11.08.1996. He contended that there cannot be two fardbeyan in the same case, and that the second statement must be treated as a statement under Section 161 of the of Cr.P.C.

31. It is further contended by the Learned *Amicus Curiae* that the prosecution has miserably failed to establish the place and manner of occurrence, as the evidence of the prosecution witnesses contradicts each other. He further contends that no independent witnesses were examined, and all the prosecution witnesses were arrayed as accused in the counter case and therefore, there is every likelihood of then having deposed falsely against the appellants.

32. It is further contended that the Investigating Officer failed to conduct proper investigation as his evidence disclose that one Hardev Singh the Dafadar of the village had informed



the police about the incident and also admitted by the I.O. that the firing occurred due to rivalry between two groups in the village.

33. It is further contended by the Learned Amicus Curiae that the information was allegedly entered in the station diary, however the entry was not brought on record. In spite of having sufficient first-hand information, the police did not register an FIR.

34. It is also urged by the Learned *Amicus Curiae* that in the absence of ballistic report, the appellants were convicted for the offence punishable under Section 27 of the Arms Act, which is fatal to the prosecution's case. He further urged that Uma Shankar Singh, who is the brother of the appellant No. 1, helped the victim to escape from the hands of the appellants. The examination of this material witness is also detrimental to the case of the prosecution.

35. It is also contended by the Learned *Amicus Curiae* that based on the same set of facts, the trial Court disbelieved the evidence of the



prosecution and acquitted the appellant No. 4 for the offence punishable under Section 323 of IPC. While, convicting the other appellants for the offences punishable under Sections 307 r/w 34, and 342 of the IPC.

36. According to the learned *Amicus Curiae*, this selective conviction is erroneous. If the prosecution's story was found to be unreliable in part, the trial Court ought to have acquitted the appellants of the other charges as well.

37. The learned *Amicus Curiae* also relied on the judgments of the Hon'ble Supreme Court in ***Javed Saukat Ali Qureshi vs. State of Gujarat***, in **Criminal Appeal No. 1012 of 2022**, and ***Amrendra Singh vs. State of Bihar***, reported in **(2021) (4) PLJR 862**. These judgments will be discussed at the appropriate stage.

38. Lastly, the learned *Amicus Curiae* submitted that the Investigating Officer failed to secure any local inhabitants of the village at the time of seizure proceedings. Moreover, the evidence of P.W. 5, who was arrayed as seizure witness, clearly



disclose that he did not enter the house of appellant No. 2, Radha Kant Singh, at the time of the alleged recovery and prayed that. Therefore, the testimony of P.W. 5, along with the seizure of the material objects, to be discarded.

39. On the other hand, the learned Additional Public Prosecutor contended that the discrepancies in the prosecution's evidence are minor and do not go to the root of the case. As such, they are insufficient to discard the entire version of the prosecution. It is further contended that there is no error or irregularity in the judgment of the trial Court, and prayed to confirm the judgment and order of sentence of the trial Court.

40. It is necessary to deal with the second *fardbeyan* of the injured/victim/ Ranjit Kumar (P.W. 6), dated 08.08.1996, recorded at Patna Medical College and Hospital (PMCH) at about 09:00 P.M. by ASI R.P. Singh of Pirbahore Police Station, Patna. The 2nd *fardbeyan* disclose that on 08.08.1996, at about 06:30 A.M., while P.W. 6 (Ranjit Kumar) was going south of his house to fetch milk, and when he



reached near the electric pole in front of the house of appellant No. 1, Surendra Prasad Singh @ Sonelal Singh he was assaulted. At that time, appellant No. 1 was holding a *khukri* in his hand; appellant No. 3, Guddu Kumar Singh @ Manoj Kumar, and an unknown person caught hold of him, forcibly took him to the verandah. for which raised a commotion, but which appellant No. 2, Radha Kant Singh, caught hold of his hair, appellant No. 1, Surendra Prasad Singh, struck his left hand with the *khukri*, while appellant No. 3, Guddu Kumar Singh, hit him on the head with a *farsa*, causing a cut injury. The unknown person also struck him with a *farsa* on his right hand.

41. Furthermore, the *fardbeyan* states that, upon hearing the commotion, several villagers gathered at the place of occurrence, including Hari Shankar Singh (P.W. 2), Subodh Singh (P.W. 1), Basant Singh (P.W. 3), and Nagina Paswan (not examined). They requested the appellants to release him, but the appellants dragged him inside the house and bolted the doors. Inside the house, appellant Nos. 1 and 2 told others to kill P.W. 6. At that point,



appellant No. 3/ Guddu Kumar Singh pointed rifle at his chest. For which he kicked the rifle, causing it to fall, and tried to escape. When he reached the stairs, appellant No. 1 struck him from behind with a *lathi*, however, P.W. 6 went to the rooftop, jumped down, and climbed onto the kitchen wall, where P.W. 4 (Ritesh Kumar @ Babloo) and Uma Shankar Singh tried to rescue him. While he was attempting to escape, appellants Nos. 1 and 3, along with unknown persons, fired indiscriminately, from the rooftop in an attempt to kill him. Approximately ten rounds were fired. P.W. 6 eventually lost consciousness, and regained consciousness in the hospital. He could not give his statement earlier, due to his unconscious state. The motive behind the incident was an old pending land dispute between the parties.

42. As per the principles of criminal jurisprudence, there can be only one *fardebayan* which set the criminal law in motion, i.e., one recorded prior to the registration of the FIR. Once FIR was registered, all subsequent statements recorded by the Investigating Officer during the course of



investigation must be treated as statements under Section 161 of the Cr.P.C. The trial Court or the prosecution cannot re-classify Section 161 statement as that of a second *fardbeyan*.

43. Surprisingly, in this case, the trial Court erroneously noted two *fardbeyans*- one dated 08.08.1996, which is the statement of P.W. 7 (Manoj Kumar), and another dated 11.08.1996, which is the statement of P.W. 6 (Ranjit Kumar), the injured/victim. However, the second statement cannot be treated as a *fardbeyan* and must be considered as a Section 161 Cr.P.C. statement of P.W. 6. It is pertinent to note that the said statement of P.W. 6 also contains his signature.

44. Sections 161 and 162 of Cr.P.C. reads as follows:-

161. Examination of witnesses by police.- (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may



examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records:

[Provided that statement made under this sub-section may also be recorded by audio-video electronic means:]

[Provided further that the statement of a woman against whom an offence under section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 376, 3[section 376-A, section 376-AB, section 376-B, section 376-C, section 376-D, section



376-DA, section 376-DB], section 376-E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.]

162. Statements to police not to be signed: Use of statements in evidence. - (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the



permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

Explanation.- An omission to state a fact or circumstance in the statement referred to in subsection (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.



45. As per the above Sections, the statement recorded by the police, during the course of investigation are not to be signed by the witnesses and such statements can only be used for corroboration or contradiction under the Evidence Act, under Sections 145 and 154 of Indian Evidence Act which reads as follows:-

145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

154. Question by party to his own witness.- [(1)] The court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.



[(2)] Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness].

46. However, on perusal of the second fardbeyan of P.W. 6, it is evident that there is no mention of the fact that the informant P.W. 7/ Manoj Kumar had witnessed the incident. The statement of Ranjit Kumar/injured/ P.W. 6 does not disclose about the presence of P.W. 7 at the place of occurrence.

47. At this juncture, it is also relevant to note that the manner in which the police recorded the statement of P.W. 7. As per the evidence of the Investigating Officer, i.e., P.W. 8, the police came to know about the incident on 08.08.1996 at about 07:20 A.M., one *Dafadar*, Hardev Singh, at the Police Station which disclose about an exchange of firing between two parties. The Investigating Officer recorded this information in the Station Diary of Lalganj Police Station and then proceeded to Manikpur village.

48. If the information received by the Investigating Officer was about an exchange of firing



between both parties, the prosecution has failed to explain as to why the Investigating Officer went exclusively to the house of P.W. 7. This Court can only rely on the *fardbeyan* of the informant, P.W. 7, dated 08.08.1996, which formed the basis for registering the criminal case against the appellants.

49. The prosecution's case is that P.Ws. 1 to 4 arrived place of occurrence after the alleged attack, which was said to have been carried out by Manoj Kumar Singh and an unknown assailant (later identified as Ajay Singh appellant No. 4). However, their evidence disclose that they witnessed the occurrence. But in cross-examination, P.Ws. 1 to 3 unanimously admitted that they reached the place of occurrence, upon hearing commotion. The evidence of P.Ws. 1 to 3 regarding the manner of attack cannot be said to corroborate with the testimonies of the victim (P.W. 6) or the informant (P.W. 7).

50. The evidence of P.W. 1 disclose that on the date of incident P.W. 6 went to fetch milk and when he reached near the electric pole, all four appellants came running, caught hold of P.W. 6, and



forcibly took him to the Verandah of Sonelal. But, the *fardbeyan* of the informant disclose that one unknown person lifted P.W. 6 and took him to the verandah of Sonelal Singh. The contents of the *fardbeyan* contradict with the testimonies of P.Ws. 1 to 3, as well as that of P.W. 6 (the victim) himself.

51. P.W. 6 also testified that he was forcibly dragged by all the appellants to the verandah of appellant No. 1's house. Thus, the manner of the incident as described in the *fardbeyan* also contradicts with his evidence. Moreover, the alleged second *fardbeyan* of the victim does not disclose the presence of the informant/ P.W. 7 at the place of occurrence. Further, the incident alleged to have occurred within the four walls of the house of Sonelal Singh was narrated by P.Ws. 1 to 4 and 7—something they could not have witnessed. Such testimony could only be given by P.W. 6, who allegedly suffered the assault by the appellants Nos. 1 to 4, inside the house of the appellant No. 1. Therefore, this Court construes that there are substantial improvements and inconsistencies in the testimonies of P.Ws. 1 to



3. Utmost, they can only testify to having seen the victim being dragged into the house of appellant No. 1, and later witnessing the victim coming of the house, and being referred to the hospital.

52. In his cross-examination, P.W. 1 specifically admitted that he is a blood relative of P.W. 6 (the injured/victim). He also admitted that his statement was recorded by the police, on the date of the incident also and acknowledged the counter-case filed by the appellants against him and other prosecution witnesses.

53. According to the evidence of P.Ws. 1 to 4, the alleged incident occurred at the verandah of Sonelal Singh. P.W. 1 further testified in cross-examination that rifle shots were fired from a distance of 10 pole lengths, about 40-50 rounds were allegedly fired. He stated that P.W. 4 was wearing a lungi and vest, and that blood spilled on the clothes of P.Ws. 6 and 7, as well as on the earth. He also admitted that five bricks were thrown at the house of Sonelal Singh, during the incident.



54. The evidence of P.W. 2 is also in the same line as that of P.W. 1. He clearly stated that he reached the place of occurrence only after hearing the commotion. P.W. 2 claimed that appellants Nos. 1, 3, and 4 fired indiscriminately from the rooftop of Sonelal Singh's house, and that a bullet allegedly fired by Ajay Singh hit P.W. 4 in the left arm. He further testified that P.Ws. 4 and 7 were referred to Lalganj Sadar Hospital.

55. In his cross-examination, P.W. 2 admitted that he is uncle of P.W. 7 and confirmed that accused Sonelal Singh had filed a criminal case against him, the informant, and other witnesses, for the same incident. He stated that the bullets were fired from a distance of about ten yards, that the height of the rooftop was approximately 10 to 11 feet. The firing was directed at individuals standing on the earth. He also admitted that the bullet which hit P.W. 4 was fired by an unknown person. Significantly, P.W. 2 stated that when P.W. 6 was going to fetch milk, the appellants were present near the electric pole but were not carrying any weapons.



56. If at all, the evidence of P.W. 2 has to be taken into consideration, the appellants did not possessed any weapons when they allegedly obstructed, assaulted, or attacked P.W. 6 before dragging him to the house of Sonelal Singh. He also testified that 30-40 rounds were fired from the rooftop, during the incident and that the clothes of P.Ws. 4 and 6 were stained with blood..

57. P.W. 3 also claims that he was an eyewitness to the incident. However, the *fardbeyan* clearly states that he reached the place of occurrence only after the attack that too upon hearing the commotion. P.W. 3 testified that an unknown individual fired approximately 40 rounds, from the rooftop of Sonelal Singh's house. He further stated that appellant No. 3 took the rifle from the unknown person and fired shots, and that a bullet fired by the unknown person hit P.W. 4 in the arm, causing injury. Later, they came to know that the unknown person as "Ajay Singh."

58. During cross-examination, P.W. 3 admitted that there was a previous case against him



under Section 107 of Cr.P.C. He also acknowledged that, when P.W. 6 was dragged towards the house of Sonelal, none of the appellants were carrying weapons. Though he testified, as if he witnessed the incident, his version contradicts other prosecution witnesses. While P.Ws. 1 and 2 consistently stated that Uma Shankar helped P.W. 6 to bring down from the wall of Sonelal Singh's house, but P.W. 3 specifically denied the presence of Uma Shankar at the place of occurrence.

59. He further admitted that P.W. 4 is his neighbour and that he did not state to the police that the accused forcibly took P.W. 6 with them. He also stated that he did not see any shot barrel pistol, but saw a rifle, and confirmed that appellant No. 2 was a licenced holder of a carbine, which was allegedly used during the incident. He also admitted that he had a quarrel with the appellants prior to the incident, and that a criminal case was filed against him by the appellants.

60. From the evidence of P.Ws. 1 to 3, it could be understood that there are major



discrepancies regarding the manner of attack and the place of occurrence. The prosecution has miserably failed to establish whether the place of occurrence was near the electricity pole or at Verandah of Sonelal Singh. Admittedly, no independent witnesses were examined. Each of the prosecution witnesses has given different versions regarding the number of rounds fired from the roof top of Sonelal Singh and the identification of the person who fired the weapon.

61. Notably, the prosecution has not alleged that a single rifle was used by all three appellants during the course of firing. Moreover, no rifle was seized in this case. Only a *carbine* was alleged to have been recovered which was licenced in the name of to Radha Kant Singh (appellant No. 2). The carbine was not produced before the trial Court for identification to prove ownership. As such, the prosecution has failed to establish that the rifle or other weapons allegedly used during the offence belonged to the appellants. Furthermore, no Test Identification Parade (TIP) was conducted with



respect to the unknown person, in accordance with Rule 34 of the Criminal Rules of Practice, similarly material objects—*farsa*, *khukhri*, or rifle—as required under Rule 35 of the Criminal Rules of Practice.

62. For better appreciation Rule 34 and 35 of Criminal Rules of Practice, which lay down the procedures for Test Identification of Persons and Property, have been extracted hereinabove:

34. Identification Parades:-

In conducting identification parades of suspects, the Magistrate shall observe the following Rules.

(1). Wherever possible privacy shall be secured for the parade away from Public View and all unauthorized persons should be strictly excluded from the place:

(b) If Jail Officials are presented at Parade, they shall be Kept in the view of the Magistrate all the time and they shall not be allowed access either to the witnesses who have to be summoned for identification or to the persons assembled at the parade.



(2). (a). As for as possible, non suspects selected for the parades shall be of the same age, height, general appearance and position in life as that of the accused. Where a suspect wears any conspicuous garment, the Magistrate conducting the parade shall, if possible, either arrange for similar wear to other or induce the suspected person to remove suspected person to remove such granted.

(b) The accused shall be allowed to select his own position and should be expressly asked if he has any objection to the persons present with him or the arrangements made. It is desirable to change the order in which the suspects have been placed at the parade during the interval between the departure of one witness and the arrival of another.

(3) (a)The witnesses who have been summoned for the parade shall be kept out of the view of the parade shall be kept out of the view of the parade and shall be prevented from seeing the prisoner before he is paraded with others.

(b) Before a witness is called upon to identify the suspect, he should be asked whether he admits



prior acquaintance with any suspect whom he proposes to identify. He shall be also asked to state the marks of identification by which he can identify the suspects.

(c) Each witness shall be fetched by separately. The witness shall be introduced one by one and on leaving shall not be allowed to communicate with witness still waiting see the persons paraded.

(4) Every circumstance connected with the identification including the act if any attributes to the persons who is identified shall be carefully recorded by the officer conducting it, whether the accused or any other person is identified or not, particularly any objection by any suspect to any in the proceeding shall be recorded.

35. Identification of property:-

(1) Identification parades of properties shall be held in the Court the Magistrate where the properties are lodged;



(2) Each item of property shall be put up separately for the parade. It shall be mixed up with four or similar objects.

(3) Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one after the other and on leaving shall not allowed to communicate with the witness not yet called.

63. The evidence of P.W. 4 (Ritesh Kumar) is that he witnessed the incident and, while accompanying P.W. 6 from the kitchen wall of appellant Sonelal Singh's house, he was also injured by a firearm/allegedly fired by an unknown person, later identified as appellant No. 4/Ajay Kumar. However, the trial Court discarded the evidence of P.W. 4 and acquitted Ajay Kumar for the charge under Section 326 of the IPC. Hence, the evidence of P.W. 4 is not discussed at length.

64. P.W. 6 is the injured/victim. His evidence disclose that on 08.08.1996 at about 06:30 A.M., while he was on his way to fetch milk and had



reached the electric pole, appellant Nos. 1 and 3, along with an unknown person, caught hold of him and forcibly took him to the verandah of the appellant No. 1. Further, Appellant No. 2 then caught hold of his hair and threw him down to earth. Thereafter, appellant No. 1 allegedly inflicted a cut his left wrist, and appellant No. 3 struck him with farsa causing a cut near his right eye, extending from his forehead to his cheek, and later he was indiscriminately assaulted.

65. On hearing the commotion, several people gathered, upon which all four assailants forcibly dragged PW6 into the house and locked the door from inside. Sonelal Singh and Radha Kant Singh allegedly ordered that PW6 be killed. Appellant No. 3 pointed the barrel of a gun at his chest, but P.W. 6 managed to kick it away with his leg and tried to escape toward the rooftop from the stairs. He attempted to climb the kitchen wall, but was unable to do so due to his injuries.

66. His evidence further reveals that Uma Shankar Singh helped him get down. Subsequently,



the unknown person and Guddu Singh/Appellant No. 3 fired from the rooftop, one after the other, causing him to lose consciousness. P.W. 6 further stated that he regained consciousness in the TB Ward of Patna Medical College and Hospital (PMCH), Patna, where his statement was recorded which is Exhibit-1. However, it cannot be treated as a fardbeyan; and must be considered as a statement under Section 161 of the Cr.P.C.

67. The record reveals that an objection was raised by the defence regarding the marking of this document. In spite of it, the statement was marked as Exhibit-1, which is not in accordance with law.

68. The Learned Amicus Curiae relied on the judgment passed by this Court in the case of **Noor Hassan Ansari & Ors. v. The State of Bihar** passed in **Cr. Appeal (SJ) No. 68 of 2004**, which deals with the criteria for marking a document and it reads as follows:-

15. *It is pertinent to mention that followings are criteria for marking a document:-*



In order to have a documents marked by the Court as an Exhibit, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that:-

“It is evident that in order to have the documents marked by the Court as Exhibits, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that :

(a) The "contents" of the document are proved (i.e. the document exists).

(b) The signature or handwriting on the document, if any, are proved (i.e. the document is genuine).

(c) In some cases, the witness who seeks to tender the document in evidence has personal knowledge of the document (i.e. that the witness is in a position to prove the accuracy or truth of the contents of the document);

(d) The document is not inherently or ab initio inadmissible on some other legal ground (e.g. irrelevance, privilege, non-registration) and



(e) The document has been appropriately stamped, if so required by law.

16. *(i). In order to prove contents of a document, the witness through whom the document is sought to be tendered must produce the document in court. The Evidence Act provides, in essence, that the "contents" of documents must ordinarily be proved by "primary" evidence.*

(ii). As the second step in getting a document marked, the witness who introduces the document must identify the signature or handwriting on the document, if there is any. 19 The mere production of a document is not sufficient for the document to be marked as an exhibit.

(iii). Thirdly, in order to lay a foundation for marking a document, if the document contains any statement(s) of fact, and the party propounding the document relies on the truth or accuracy of those statements, then the witness. who tenders the document must demonstrate personal knowledge and the familiarity of the document.



(iv). Fourthly, in some cases, irrespective of a party's ability to satisfy the criteria set out above, a law might prohibit some documents from being considered admissible in evidence. Such documents cannot be marked in evidence. Once a document is marked, it becomes the part of the record but has to be considered by the Court about its admissibility and relevancy of the such document. Marking of document alone will not give any right to read the contents of the documents or about the admissibility of the documents.”

17. Furthermore, Rule 58 of the Criminal Rules Of Practice and Circular Orders, 1990 envisages about marking of exhibits which reads as follows:-

“58 Marking of exhibits:-

(1) Exhibits admitted in evidence shall be marked as follows:-

(i) if filed by the prosecution with the capital letter ‘P’ followed by a numeral, P1, P2,P3 and the like;



(ii) if filed by defence with the capital letter 'D' followed by a numeral, D1, D2, D3 and the like;

(iii) in case of Court exhibits with the capital letter 'C' followed by a numeral C1, C2, C3 and the like;

(2) All the exhibits filed by the several accused shall be marked consecutively.

All material objects shall be marked in Arabic numbers in continuous series as M.O. 1, M.O.2 and M.O.3 and the like, whether exhibited by the prosecution or the defence or the Court."

69. This Court is unable to understand as to why the trial Court has not followed the procedure, while marking the Exhibits as per Rule 58 of Criminal Rules of Practice. Admittedly, the document was said to have been marked as Exhibit-1 through P.W. 6.

70. In his cross-examination, P.W. 6 admitted that he did not state to the police that appellant No. 1 hit him with a lathi from behind. He also did not mention that the motive behind the incident was an old land dispute. He further admitted that appellant



No. 1 and the unknown person, were not carrying any weapons. He has no idea about the unknown person, who was later identified as Ajay Singh.

71. His evidence further disclose that he was hit with a farsa and khukri only once, though all the accused assaulted and manhandled him inside the house and that he could not say how many injuries he had sustained, on which parts of the body. He also stated that no stones were pelted during the incident, and only seven to eight rounds of bullets were fired. He specifically deposed that he was not beaten near the electric pole and that no person had witnessed the incident. He further admitted that a counter-case was filed by the appellants and further acknowledged that there were ongoing disputes between appellant No. 1 (Sonelal Singh) and others, even prior to the incident.

72. The evidence of P.W. 7 (the informant) disclose that he claimed to have witnessed the incident from his house. His fardbeyan, as well as his testimony, states that an unknown person lifted P.W. 6 and took him to the verandah. His evidence



contradicts the testimony of P.W. 6, the injured, who clearly stated that none of the witnesses were present at the time of the incident. Furthermore, the narration by P.W. 7 includes the sequence of events that allegedly occurred within the four walls of Sonelal Singh's house, rendering his version hearsay. As such, he cannot be treated as an eyewitness.

73. P.W. 7 also testified that Uma Shankar is the brother of Sonelal Singh and was acting in connivance with the appellants. However, Uma Shankar was not examined as a witness before the Court. It is not the case of the prosecution that there were disputes between Uma Shankar Singh and Sonelal Singh, nor that Uma Shankar had any reason to help the victim. On the other hand, P.W. 3 testified in Court that he had not seen Uma Shankar Singh at the place of occurrence. In his cross-examination, P.W. 7 also admitted that appellant No. 1 had filed a counter-case against him.

74. Further, P.W. 7 admitted that he could not confirm whether P.W. 6 was carrying any utensils such as mugs or pots to fetch milk. He also stated



that he did not personally report the incident to the police station and that Har Dev Singh, a Dafadar and co-villager, was the first person to report the matter. He testified that bullets were fired from a distance of 10 to 15 feet and also acknowledged that a counter-case was filed by the appellants against him and others. As stated earlier, there are major discrepancies in the testimonies of the prosecution witnesses.

75. Upon perusal of the entire evidence on record, it is evident that the Investigating Officer/P.W. 8, despite registering both the case and the counter-case, did not conduct the investigation in a fair and balanced perspective. The first and foremost person who was alleged to have reported the incident was Har Dev Singh, but his statement under Section 161 Cr.P.C. was never recorded. Admittedly there is an entry in the station diary, regarding the information provided by Har Dev Singh but the same was not brought on record.

76. Furthermore, there is no ballistic report on record in relation to the alleged carbine. The



prosecution has miserably failed either to establish any nexus between the recovered weapon and the accused or to establish that the firearm was used as crime weapon. The weapon was allegedly recovered from the house of Sonelal Singh, after four hours of the incident. No bloodstains were found on the farsa or khukri that were said to have been used to attack P.W. 6. It is not the case of the prosecution that the appellants have tried to screen away the evidence. Further, there is no evidence that these weapons were sent for forensic examination to determine the presence of the victim's blood.

77. P.W. 9/Dr. Siya Ram testified that he examined P.Ws. 4 and 6 on 08.08.1996 at about 07:30 A.M., whereas the alleged incident took place at 06:30 A.M. He examined Ranjeet Kumar (P.W. 6), s/o Sri Ganesh Singh, resident of village Manikpakri, P.S. Lalganj, District Vaishali, on 08.08.1996 at 7:00 A.M. at the referral hospital and found following injuries:-

(i) Sharp cut injury lateral side of right eye extending above upto the forehead and below in the



right cheek size approximately, "5 long X 1 wide" and deep upto the bone. This injury caused by sharp cutting instrument, there is bleeding.

(ii) Sharp cut injury on the medial side of left wrist size "2 in X 1" deep upto the bone: whether there is bone-injury or not- it is not clear. This is caused by sharp cutting instrument. The patient was referred to PMCH for needful. Nature of injury-opinion reserved. Age of injury-within six hours. Identification Mark-black mole on right thigh. Exhibit-3 is the Injury Report of P.W. 6. He further examined Shri Babloo (Ritesh Kumar)/P.W. 4 20 years old, s/o Upendra Singh of village-Manikpur, Pakri, PS-Lalganj, District-Vaishali on 08.08.1996 at 7.00 AM in referral hospital, Lalganj and found following injuries on his body.

(i) One wound on the left elbow-anterior of 2" diameter (in circular fashion)- post of about 2 1/2" diameter-circular-continuous from anterior to posterior. The Ganji which the patient wears has multiple perforation and the anterior abdominal wall



has multiple burnt spots corresponding to perforation of Ganji. This injury is caused by firearm.

Nature of Injury- Opinion reserved, as patient referred to PMCH. Age of Injury-within six hours. Identification Mark-Scar marks on right knee. EX 3/1 - is the injury Report of P.W. 4.

78. During cross-examination, P.W. 9 testified that a farsa is a curved weapon, and if an injury is caused by a farsa, it would not produce irregular margins. He further stated that a khukhri is a straight weapon. Injury No. 2 of P.W. 6 was caused by a straight weapon. However, it is noted that the prosecution did not examine the doctor who treated Ranjeet Kumar at PMCH, Patna. Instead, the injury report prepared by Dr. Rajendra Singh, the then Medical Officer of PMCH, Patna, was submitted. Therefore, the evidence of P.W. 9, who has not treated Ranjeet Kumar (P.W. 4), is not helpful to the prosecution. The injury report has been marked through Umesh Kumar Singh (P.W. 10), who is an advocate's clerk.



79. At this juncture, it is relevant to rely on the judgment of Hon'ble Division Bench of this Court in the case of **Sukhi Yadav v. The State of Bihar** reported in **2014 SCC OnLine Pat 5721** wherein their Lordships have held as follows:-

"9. We fail to appreciate as to which law permits such a thing and how a Judge of standing of Additional Sessions Judge could do such a thing. First thing we must notice that P.W.9 is an Assistant to an Advocate Clerk, who has nothing to do with the case, yet the Court permits him to step in as a prosecution witness. Moreover we have coined such witness as "Sankat Mochan witness". What more scandalized us is the trial court, which permits a person, who was nobody, to pick up the entire case diary from paragraphs 1 to 121 and prove it and make it a part of evidence. The court then proceeds further to mark it as Ext. 3 and then the court sits down to read entire case-diary in order to appreciate evidence. Nothing can be more scandalous. No such step is permissible in law. The trial court forgot the true import of section 172(2) of the Code of Criminal Procedure (for short 'Cr.P.C.'), which



clearly states that any criminal Court may use such diaries, not as evidence in the case, but to aid it in such enquiry or trial. What the trial court has done is using it as evidence, making it as evidence and appreciating it as evidence, which is wholly impermissible in law. The diary can never be proved in a Court, for it cannot be used as evidence. No part of diary can be proved because if any one is proving it for the purposes of making it an evidence, such act is prohibited by law. The law contemplates a reference to the diary only for the purposes of refreshing memory or contradicting the statements of witnesses in the Court with the statements made during the course of investigation. Only when it is used for refreshing memory, the procedure as envisaged under section 145 of the Evidence Act is to apply but that does not mean that diary can become evidence. Law prohibits such thing. We have found in cases after cases that in the State of Bihar, the Sessions Courts do not know or understand this distinction in law and in cases after cases the statements of witnesses recorded under section 161 of the Cr.P.C. are proved as evidences or



other materials in the case-diary are proved as evidence and marked as exhibits. This is a practice that should end, the sooner the better. The other thing is that as to who is permitted to prove a document. It appears that in this State every Tom, Dick and Harry, the expression we have formed now "Sankat Mochan Witness", could come and prove any official document. In this case, an Assistant to Clerk of an Advocate, who has nothing to do in the case, has been permitted by the trial court to prove the entire case-diary and mark it as exhibit. This practice is deprecated and it must come to an end. A person, who is author of a document or in absence of author, which absence has to be explained, a person familiar with the handwriting of the author can only prove the document. The procedure adopted by the trial court is unknown to law. No sooner this practice ends than better it would be."

80. The above citation squarely applies to the facts of the present case. Their Lordships have held that a person who is author of the document, or in absence of the author, (whose absence has to be



explained), a person familiar with the hand-writing of author can prove the documents. Their Lordships have further held that the procedures adopted by the trial Court are unknown to law, and such practices have to be ended.

81. Admittedly, P.W. 10 has no knowledge about the facts of the incident or of the treatment allegedly provided by the Dr. Rajendra Kumar Singh, the then Medical Officer of PMCH, Patna. Therefore, the evidence of P.W. 10 is nowhere helpful to the prosecution.

82. In this context, it is necessary to rely upon the judgment of **Ashok Alias Dangra Jaiswal Vs. State of Madhya Pradesh** reported in **(2011) 5 SCC 123** wherein their Lordships in Para 15 have held as follows:-

“15. At this stage, it may be noted that though the other two accused, namely, Kanki alias Vishnu and Guddu Maharaj are not before us, we see no reason why the benefit of this judgment may not be extended to them as well. From the possession of Kanki alias Vishnu, the recovered



quantity was 100 gm and from Guddu Maharaj 35 gm. All the three accused including the appellant were tried together and the other two accused Kanki alias Vishnu and Guddu Maharaj have also been given the same sentence as the appellant. The lapses in the prosecution and the facts and circumstances that have been noted above and that have weighed with us for setting aside the conviction of the appellant apply equally to the case of Kanki alias Vishnu and Guddu Maharaj. It will be unjust, therefore, to let them rot in jail even while allowing the appeal preferred by the appellant. (See Raja Ram v. State of M.P. [(1994) 2 SCC 568 : 1994 SCC (Cri) 573] , Dandu Lakshmi Reddy v. State of A.P. [(1999) 7 SCC 69 : 1999 SCC (Cri) 1176] , State of Haryana v. Sumitra Devi [(2004) 12 SCC 322 : 2005 SCC (L&S) 346] , Mangoo v. State of M.P. [(2008) 8 SCC 283 : (2008) 3 SCC (Cri) 487] , Bachan Singh v. State of Bihar [(2008) 12 SCC 23 : (2009) 1 SCC (Cri) 307] .) We, accordingly, direct that their conviction and sentence be also set aside and they too along with the appellant be



released forthwith unless anyone of them is required in connection with any other case.”

83. In the case of **Deepak Rajak Vs. State of West Bengal** reported in **(2007) 15 SCC 305** wherein their Lordships at Para Nos. 5 and 6 have held as follows:-

5. The position in law as to what happens in case of acquittal of similarly placed co-accused on the same set of facts and on similar accusations has been considered by this Court in several cases.

6. A departure may be made in cases where the accused had not surrendered after the conviction in addition to not filing an appeal against the conviction. But as in the present case, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be extended.

84. In the case of **Khusboo Kumari and Others vs. State of Bihar** reported in **2023 SCC**



OnLine Pat 3726 their Lordships have held at Para Nos. 24 and 28 which reads as follows:-

24. *With reference to issue no. IV, it is relevant to note that the PW 9 has deposed in para no. 2 of his examination-in-chief that he had seized blood from the alleged place of occurrence and a seizure list (Exhibit 2/1) had been prepared. However, upon minute examination of the entire material available on the record, it is found that the prosecution has not brought on record any FSL report in relation to the seized blood so as to prove the missing causative link. In the case of A. Shankar v. State of Karnataka, (2011) 6 SCC 279 wherein it has been held that the non-production of the FSL report by the prosecution is fatal, as in the absence of such report, it was difficult for the court to reach to a definite conclusion.*

28. *In light of the discussions made above, we are of the considered opinion that the recovery of two country made pistols and two 315 bore live cartridges is not sufficient to prove the guilt of the appellants regarding the commission of the alleged offence.*



Moreover, there was no attempt made by the prosecution to obtain the opinion of a ballistic expert to ascertain whether the bullet could have been fired from the recovered weapon. It would be relevant to take note of the case of Gurucharan Singh v. State of Punjab, 1962 SCC OnLine SC 42, wherein three judge bench of the Hon'ble Supreme Court has observed:

"...Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused with a gun and they prima facie appear to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. In what cases the examination of a ballistic expert is essential for the proof of the prosecution case, must naturally depend upon the circumstances of each case.

85. During the course of arguments, the Learned Amicus Curiae relied on the judgment of



Javed Shaukat Ali Qureshi Vs. State of Gujarat

reported in ***Criminal Appeal No. 1012 of 2022***

wherein their Lordships at Para No. 7 have held as follows:-

7. In a given case, the conviction can be based on the testimony of only one eyewitness. The law has been laid down on this behalf by a Bench of three Hon'ble Judges of this Court in the case of Vadivelu Thevar & Anr. v. State of Madras. In paragraphs 10,11 and 12 of the said decision, this Court held thus:

"10.....

On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts



should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact". The legislature determined, as long ago as



1872. presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence 9th Edn.. at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. **If**



the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. 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.** There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will



be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only



reliable evidence in support of the prosecution."

(emphasis added)

86. In the case of **Amrendra Singh Vs. State of Bihar** passed in **2021 SCC OnLine Pat 2635** wherein their Lordships have held at Para No. 38 which reads as follows:-

38. *We find force in the contention raised by the learned senior advocate for the appellant. If the prosecution witness has not been relied upon for convicting the other accused persons of the same occurrence then this evidence cannot be relied upon for convicting the appellant.*

87. The above judgments squarely apply to the present facts and circumstances of the case. The evidence of the witnesses falls under the third category i.e. wholly unreliable, as there were major discrepancies regarding the manner of the incident, the nature of the attack, and the place of occurrence. Although P.W. 6 himself is the injured victim, his sole



testimony cannot be relied upon, as he admitted that a counter-case was filed against him and the other prosecution witnesses, with respect to the same incident.

88. At this juncture, it is necessary to reiterate that the procedure to be followed by the Courts in disposing of the case and counter case has been dealt in the case of ***Bhola Yadav Vs. the State of Bihar*** passed in ***Cr. Appeal No. 29 of 2004 in*** wherein, their Lordships at Paras 49 and 50 have held as follows:-

“49. In Criminal Appeal No. 135 of 2001 in Sudhi Ors Vs. State of M.P. along with Criminal Appeal No. 136 of 2001 Vs. State of M.P. Vs. Lavkush And Ors. Wherein their Lordships have held as follows:-

7.The above two orders passed by the High Court are being challenged now in separate appeals by special leave, and both these appeals were heard together and they can be disposed of together by a common judgment now.

8. It is the salutary practice, where two criminal cases relate to



same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases or compendiously called "case and counter case" by some High Courts and "cross-cases" by some other High Courts. Way back in the nineteen hundred and twenties a Division Bench of the Madras High Court (Waller and Cornish, JJ.) made a suggestion (Goriparthi Krishtamma, In re) that "a case and counter-case arising out of the same affair should always, if practicable, be tried by the same court; and each party would represent themselves as having been the innocent victims of the aggression of the other".

50. *The Hon'ble Apex Court while disposing of the aforementioned two criminal appeal also relied upon the judgment in Nathi Lal and Ors. vs. State of UP reported in 1990(Supp) SCC 145 on the principle of case and counter case. Their Lordships have held as follows:-*



2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in the particular case. The evidence recorded in the cross case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments



must be pronounced by the same learned Judge one after the other.”

89. Admittedly, in the present case also, there is a case and counter case arising out of the same incident. The record further reveals that two FIRs were lodged concerning the same occurrence—FIR No. 0089 of 1996, filed by the informant (P.W. 7) based on the fardbeyan, and FIR No. 0090 of 1996 (Exhibit B), which was filed by Sonelal Singh in the counter-case, both registered at Lalganj Police Station. As per the principles enunciated, a case and a counter case has to be dealt with by the same judge through separate trial and the judgment have to be pronounced on the same date. However, in the present matter, the trial court failed to adhere to this procedure.

90. It is important to note that the prosecution has miserably failed to establish that all the appellants conspired together and intended to murder the injured P.W. 6 on 08.08.1996 at approximately 6:30 A.M. None of the witnesses deposed that the attack was a premeditated



arrangement or that the appellants intended to cause the death of P.W. 6. In the absence of such evidence, it would be improper to convict the appellants for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code (IPC).

91. Section 342 of the IPC deals with the punishment for wrongful confinement. However, it is not the case of the prosecution that P.W. 6 was confined in the house of the first appellant. Rather, the prosecution alleges that the appellants dragged P.W. 6 into the house of the first appellant and attempted to assault him, for which P.W. 6 managed to escape. Section 340 of the IPC defines wrongful confinement for restraining a person in such a manner as to prevent them from proceeding beyond certain limits. There is no evidence on record to prove that P.W. 6 was so restrained. Accordingly, the conviction and sentence under Sections 307 and 342 IPC are not tenable in law and are liable to be set aside.



92. As far as the conviction and sentence imposed against appellant Nos. 3 and 4 are concerned with respect to under Section 27 of the Arms Act, the prosecution has miserably failed to prove that P.W. 6 and P.W. 4 were attacked with a rifle allegedly seized from the house of the first appellant. This is the case of the prosecution that a carbine was seized from the house of the first appellant, Sonelal Singh. However, the seizure report (Exhibit-X) disclose that it was alleged to have been seized from the house of Radha Kant Singh who possess a license.

93. Furthermore, witness testimony indicates that the firing was allegedly done using country-made rifles. No firearm was produced before the Court to corroborate the version that P.W. 6 sustained gunshot injuries. As per the testimony of P.W. 7, P.W. 6 suffered three injuries; however, the medical evidence provided by P.W. 9/the doctor confirms only two injuries, both caused by a sharp-edged weapons and not by a firearm. Therefore, to sustain a conviction under the Arms Act against



Appellant Nos. 3 and 4, the prosecution must conclusively establish the use of a firearm and the nature of the injuries sustained by the injured. In the absence of such evidence, this Court has no hesitation in concluding that the prosecution has failed to prove the guilt of the appellants beyond a reasonable doubt. The trial Court erred in convicting the appellants for the aforesaid offences.

94. In result the appeal is allowed setting aside the judgment of the trial Court in Sessions Trial No No. 92 of 1998, on the file of Additional Court No. 1 (Fast Track Court), Vaishali at Hajipur and the appellants are hereby acquitted for the aforesaid offences.

95. Further, the record reveals that the appellant Nos. 1, 3 and 4 were released on bail by this Court on 25.04.2003, therefore, the bail bonds of the appellants shall stand cancelled.

(G. Anupama Chakravarthy, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	N/A
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