

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.215 of 2004

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Parma Chauhan @ Parma Nonia, son of Sheo Bihari Chauhan @ Sheo Bihari
Nonia, resident of village – Sadalpur, P.S.- Asaw, District – Siwan.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Ms. Priya, *Amicus Curiae*

For the Respondent/s : Mr.Satyendra Narayan Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-12-2025

From perusal of the order dated 20.02.2025, it appears that Mr. Saroj Kumar Tiwary, was appointed as *Amicus Curiae*, but could not appeared in Court today.

2. Therefore, out of present advocates in open Court, Ms. Priya, learned counsel shows her willingness to assist this Court as ***Amicus Curiae***.

3. In view of the aforesaid, Ms. Priya, learned counsel is appointed as *Amicus Curiae* for the present appeal.

4. From perusal of record, it appears that appellant was granted bail by one of the learned coordinate Bench of this Court vide its order dated 11.01.2005.

5. This memo of appeal has been filed on behalf of the sole appellant under section 374(2) of the Code of



Criminal Procedure (in short the, 'Cr.P.C.') against the judgment of conviction and sentence dated 25.03.2004 passed in Sessions Trial No. 642/96/122/03 arising out of Asaw P.S. Case No. 14 of 1991 by learned Adhoc District and Sessions Judge-cum-Presiding Officer of First Additional Fast Track Court, Siwan, whereby and whereunder the appellant has been convicted under section 25(a), 26, 27(2) of the Arms Act and section 323 of the Indian Penal Code, and awarded sentence of seven years rigorous imprisonment and fine of Rs. One thousand. In case of default in payment of fine, the trial court sentenced the appellant for further period of six months R.I.

6. The brief facts of prosecution is that the informant namely, Lallan Chauhan alleged that on 09.03.1991 at about 9:00 A.M., while the appellant namely, Parma Chauhan alongwith all the accused persons were uprooting 'Masuri' crops from his field, they were objected to do so, then, the appellant namely, Parma Chauhan fired at him from his desi katta which did not take fire, thereafter, he terrorized him by showing desi katta (country made pistol).



The informant alleged that on hearing hulla, villagers gathered there and tried to stop the accused persons from doing so, on which the appellant terrorized them also by pointing desi katta, on which scuffling took place between the parties and thereafter Parma Chauhan (the appellant) was caught and brought by villagers to police station alongwith country made pistol. On the basis of the fard-e-beyan of the informant (PW-4), Asaw P.S. Case No. 14 of 1991 was instituted for the offences punishable under sections 447, 323, 307/34 of the Indian Penal Code and 25(a) and 26 of the Arms Act.

7. After conclusion of investigation, police submitted charge-sheet, thereafter cognizance was taken and the case was committed to the court of session where the charges were framed under sections 447, 323, 307/34 of the Indian Penal Code and 25(a) and 26 of the Arms Act against the appellant.

8. Learned trial court explained the aforesaid charges to appellant/accused, which he pleaded “not guilty” and claimed to be tried.



9. To establish its case before the learned trial court, the prosecution altogether examined total of eight (8) prosecution witnesses, which are PW-1 namely, Ram Naumi Rajbhar; PW-2 Chandrika Sah; PW-3 Banwari Bhar Chaukidar; PW-4 Lallan Chauhan (informant); PW-5 Vidya Sagar Chauhan; PW-6 Rama Shankar Rajbhar; PW-7 Panchdeo Chauhan and PW-8 Serajul Haque.

10. The prosecution has also produced certain documents viz. Injury report – 1 & '1/2' ; FIR – Exhibit '2'; Sanction order from the D.M. - Exhibit '3'; Production list of desi katta – Exhibit '4'; Injury report relating to Parma Chauhan – Exhibit 'F' and Inspection report of Sergeant Major – Exhibit '5' respectively.

11. After examination of prosecution witnesses and by taking note of evidence as surfaced during trial, statement of accused/appellant was recorded under Section 313 of the Cr.P.C., which was denied by the appellant in totality by claiming his complete innocence and false implication.

12. On the basis of evidences as surfaced during the trial, the learned trial court convicted and sentenced the



appellant/convict, in aforesaid terms. Being aggrieved of which present appeal was preferred.

13. Hence, the present appeal.

14. Learned *amicus curiae* submitted that earlier the appellant had filed one case which numbered as 199C/99, against the informant of this case and only to avoid the consequences of that case, the present case has been filed. In this context, learned Amicus Curiae drawn attention of this Court to the judgment rendered by Additional Judge-IV, Siwan on 29.05.99, in T.S. No. 95/92 (marked as Exhibit 'B'), of which decree is marked as Exhibit 'A' in favour of Shiv Bihari Noniya. The appellant/accused alleged that he was entitled to harvest the crops, which was planted on it.

15. Ms. Priya, learned *Amicus Curiae* submitted that neither the Investigating Officer nor the medical officer, who had examined the injury report, were examined in this case and without their examination judgment of conviction as recorded by trial court appears questionable. In this context, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Munna Lal v. State of***



Uttar Pradesh (2023) SCC Online SC 80.

16. Ms. Priya, learned *amicus curiae* further submitted that fire-arm, which was seized by the police was not produced in the learned trial court. Admittedly, the informant has not received any injury which may suggest that same was caused by the fire-arm.

17. It transpires from the statement of **PW-1 namely, Ramnavmi Rajbhar** that appellant/accused also received injury during the occurrence. He was apprehended by several persons with fire-arm. He alleged that the appellant fired gunshot from his country made pistol, but was not hit to anybody. He also supported the enmities arising out of land dispute between the parties. In cross-examination, it was said that fight occurred with lathi and stick and no firing was made from pistol and this appellant was apprehended by six persons altogether and was brought by them to police station alongwith pistol.

18. **PW-2 namely, Chandrika Sah** also supported the occurrence and the factum of land dispute. It was stated by him that Parma Chauhan fired on him with pistol but same



was misfired. In cross-examination, he stated that appellant filed a criminal case against him. It was deposed that appellant was not caught by him rather the chowkidar had caught him.

19. **PW-3 namely, Banwari Bhar** is also an eye witness of the occurrence, but failed to depose that any firing was made by the appellant, whereas he deposed that appellant was holding the country made pistol. This witness deposed to brought appellant to the police station and the fire-arm which was handed over/produced to the sub-inspector in police station. He also supported the factum of land dispute.

20. **PW-4 namely, Lallan Chauhan** also supported the occurrence. He deposed that firing was made by this appellant, but it did not hit anyone. It was deposed that appellant/accused had also received head injury during the occurrence and his body got bruise mark. It was deposed by him that it was the Chowkidar who took the appellant/accused to the police station. It was also deposed that he defeated civil suit and preferred appeal against the



disputed piece of land.

21. **PW-5 namely, vidyasagar Chauhan** also deposed that appellant/accused fired from a country made pistol which missed the target but failed to depose that who was the target. The appellant/accused was apprehended by villagers.

22. **PW-6 namely, Ramashankar Rajbhar** also supported the occurrence. It was deposed that appellant/accused fired the shot on him, but it was missed. It was also deposed that appellant/accused was apprehended by co-villagers with pistol in his hand. In cross-examination, he deposed that the appellant/accused lodged a criminal case against him where he got bail.

23. **PW-7 namely, Panchdeo Chauhan** also supported the occurrence and deposed that Parma Chauhan fired at Lallan Chauhan with pistol who examined as PW-4. He also received injury during the occurrence and received his treatment after returning from police station. In cross-examination, he deposed that it was the chowkidar who handed over the snatched weapon to the Sub-Inspector in the



police station. He also stated in cross-examination that appellant/accused filed a case where he was accused but released on bail.

24. **PW-8 namely, Serajul Haque.** He is Assistant Resident Doctor and identified the signature and handwriting of Dr. H.I. Haideri, posted at Govt. Hospital, Asawn, at the time of occurrence, who examined injured namely, Panchdeo Noniya (PW-7) and Shivpujan Noniya. Upon cross-examination, he stated that he was not present at the time of issuing the injury report.

25. From perusal of testimony of witnesses, it transpires that PW-2 and PW-6 categorically deposed that appellant/accused fired upon them, but it was misfired, whereas PW-7 categorically deposed that firing was made by appellant/accused on PW-4 Lallan Chauhan. PW-7 received injury during the occurrence and, therefore, his testimony appears more convincing, but in view of the different depositions particularly when all witnesses are consistent on the issue that a single firing was made by appellant/accused which missed the target, the testimony qua targeting the



three different persons i.e. PW-2, PW-4 and PW-6 are appearing non-convincing and, therefore, creates a serious doubt qua allegation of firing.

26. It is an admitted position that appellant/accused was apprehended by accused persons including the chowkidar and was brought to the nearby police station whereby the fire-arm was produced by the **chowkidar (PW-3)**. The Investigating Officer was not examined during the trial, therefore, seizure list was also not proved during the trial. The occurrence appears to be a free-fight. The witnesses are appears to related to each other and they are interested to outcome of trial in form of conviction for the reasons that they appears to be implicated by appellant/accused in another criminal case and, therefore, being interested witnesses their testimony cannot be said wholly reliable.

27. Appellant himself received injury during the occurrence, which was not explained by prosecution. The land dispute is admitted position, where the prosecution witnesses deposed that title was declared in favour of appellant/accused against which the appeal was preferred and, if so, then,



certainly the informant and other prosecution witnesses were aggressor to the property of the appellant/accused.

28. In view of aforesaid, it also appears to this Court that non-examination of I.O. proves fatal to the case of prosecution as the appellant/accused was deprived from his valuable legal right of defence as he could not contradict the statement of the prosecution witnesses who appears supported the occurrence and allegation during the trial.

29. The statement of accused/appellant also appears recorded in very cryptic and mechanical manner which not appears convincing in view of **Sukhjit Singh v. State of Punjab** reported in **(2014) 10 SCC 270**.

30. It would be apposite to reproduce **para 10 to 13** from **Sukhjit Singh case (supra)**, which are as under:

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



law.

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

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



Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

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

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

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

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and



proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

31. In view of aforesaid, it appears that certain important doubts could not answered by the prosecution during the trial, the benefit of which must be extended to the appellant/accused.

32. Hence, the judgment of conviction dated 25.03.2004 passed in Sessions Trial No. 642/96/122/03 arising out of Asaw P.S. Case No. 14 of 1991 by learned Adhoc District and Sessions Judge-cum-Presiding Officer of First Additional Fast Track Court, Siwan, is hereby set-aside.

33. Accordingly, this appeal stands allowed.

34. In view of the aforesaid, above-named appellant/accused is acquitted from the charges leveled against him. Since, the appellant/accused is on bail, he is discharged from his liabilities of respective bail bonds.



Sureties stands discharged. Fine, if any, paid, be returned to the appellant henceforth.

35. Office is directed to send the LCR of this appeal to the court concerned/learned trial court alongwith a copy of this judgment forthwith.

37. The Patna High Court Legal Services Committee is, hereby, directed to pay Rs. 5,000/- (Rupees Five Thousand Only) to Ms. Priya, learned *Amicus Curiae* in Criminal Appeal (SJ) No. 215 of 2004, as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.12.2025
Transmission Date	11.12.2025

