

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.800 of 2004

1. Bhim Singh @ Bhimsen Singh
2. Arjun Singh @ Dinanath Singh
Both sons of Radhey Shyam Singh, residents of village- Chakia, P.S.
Sikarhatta, District- Bhojpur at Ara.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ram Vinay Sharma, Advocate Mr. Amit Anand, Advocate
For the Respondent/s	:	Mr. A.M.P. Mehta, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 22-09-2025

By this appeal, appellants/convicted accused, Bhim Singh @ Bhimsen Singh and Arjun Singh @ Dinanath Singh, are challenging the judgment of conviction and order of sentence dated 05.11.2004 passed by Sri Avinash Kumar Sinha, Additional Sessions Judge (F.T.C.) No.II, Ara, Bhojpour, in Sessions Trial No.449 of 1990, arising out of Sikarhatta P.S. Case No.27 of 1989, thereby convicting them of the offence punishable under Section 323 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for one year.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:



(i). On 28.05.1989, at about 10:00 AM, while the informant, Ram Keshwar Singh, was keeping paddy straw on the open land adjacent north to his house, at that time Radhey Singh, Bhuneshwar Singh, Potan Singh @ Ram Ayodhya Singh and sons of Radhey Singh, whose name he does not know, came there and prevented him from keeping paddy straw on that land and also created obstruction in it. When he inquired, then accused Radhey Singh and Bhuneshwar Singh started abusing him. Thereafter, in return the informant also abused him then the matter aggravated and exchange of hot words started. Thereafter, two sons of Radhey Singh, whose name he does not know, involved with the informant. Thereafter, Radhey Singh, Bhuneshwar Singh and Potan Singh @ Ayodhya Singh Exhorted the two saying that they are also ready. All these three persons were armed with big and small gun. Accused Radhey Singh was armed with his licensee gun and two sons of Radhey Singh thrashed him on the ground and started beating him with lathi, then informant's son Jay Singh and Nau Singh went on the roof of their house and started pelting stones from the roof, but he could not notice who sustained injury by this brick batting. Thereafter, accused Bhuneshwar Singh and Radhey Singh opened fire and from their shots, sons of Radhey Singh received



injury and there was stampede. The informant received injury on his head, right shoulder and retina of the right eye. The witness Jay Bhagwan Singh, Prakash Singh, Ramadhar Singh and Vinod Singh carried him to Fatehpur and from there he went to the State dispensary Piro on a tractor and he was treated at Piro State Dispensary and his fardbeyan was recorded there at 3:40 PM.

(ii) On the basis of the fardbeyan of Ram Keshwar Singh (PW 5), Sikarhatta P.S. Case No.27 of 1989 was registered, on 29.05.1989, under Sections 147/148/149 /307 / 323/324/341/447/504 of the I.P.C and under Section 27 of the Arms Act against the accused persons including the present appellants.

3. The police, on completion of investigation, submitted charge sheet under Sections 307, 323, 324,447 and 504 of the Indian Penal Code against all the five accused persons. The learned Chief Judicial Magistrate by order dated 21.11.1989 took cognizance of the offence and the case was committed to the Court of Sessions on 01.12.1990.

4. At the Trial, charges, under Sections 307/149 and 449 of the Indian Penal Code were framed on 19.02.2001 against all five accused persons including the present appellants



and charge under Section 27 of the Arms Act was also framed against Radha Singh, Bhuneshwar Singh and Potan Singh @ Ayodhya Singh, on which they pleaded not guilty.

5. In support of their case, prosecution has examined altogether six witnesses. The accused persons, during their examination under Section 313(1)(b) of the Cr.P.C., denied the allegations and on their behalf examined one defence witness DW 1 Krishan Ballav, who has proved the formal FIR and fardbeyan of Sikarhatta P.S. Case No.27 of 1989, which have been marked as Exts-A and B respectively. This witness has further proved three injury reports of accused Radhey Shyam Singh, Arjun Singh and Bhim Sen Singh, which have been marked as Ext.-C series.

6. The Trial Court found the appellants Bhim Singh @ Bhimsen Singh and Arjun Singh @ Dinanath Singh guilty of the charge under Section 323 of the Indian Penal Code. Following their conviction, sentence has been passed against the convicted accused/appellants as mentioned above. However, giving benefit of doubt to co-accused Radhey Shyam Singh and Potan Singh @ Ayodhya Singh, the Trial Court had acquitted them from all the charges.

7. Being aggrieved and dissatisfied by his



judgment of conviction and order of sentence, the convicted accused/appellants have preferred this appeal.

8. Heard Mr. Ram Vinay Sharma, learned Counsel, appearing on behalf of the appellants and Mr. A.M. P. Mehta, learned Additional Public Prosecutor, appearing on behalf of the State.

9. Learned Counsel for the appellants submits that the said judgment and order is not sustainable in the eye of law due to the reason that the learned Trial Court has reached on a definite finding that on the categorical finding as mentioned in paragraph-15 of the Trial Court's Judgment that "On careful examination of the entire evidence, I find that the prosecution witnesses have made several developments and have not come with the clean hand and time to time came out with a case soothing to them." Learned Counsel for the appellants in support of the findings of the Trial Court has relied on a judgment of Hon'ble Supreme Court in the case of **State of Bihar Vs. Bishwanath Rai and Others with Ramesh Prasad Thakur and Another Vs. Ram Chandra Singh and Another** reported in **AIR 1997 SC 3818**, in which at paragraph 5, it has been held that once it has been found that the eyewitness had not given the correct account of the manner in which incident



had taken place, then the High Court was justified in discarding their evidence even though it was otherwise consistent. On the basis of the said finding given by Hon'ble Apex Court, he submits that when the Trial Court reached on the finding that the witnesses of the prosecution case in the present matter have not come with clean hands, therefore, on that basis no punishment could be given. In addition to that learned Counsel for the appellants further submits that in the present case neither investigating officer nor medical officer have been examined and due to the non-examination of the I.O. and the Medical Officer, the prosecution failed to prove the place of occurrence as well as injury and, therefore, he submits that the present conviction and sentence is not sustainable in the eye of law.

10. Learned Additional Public Prosecution, on the other hand, submits that in the present case from the FIR itself, it becomes crystal clear that there is a case and counter case. He submits that the present conviction is under Section 323 of the Indian Penal Code and for that injury report is not required and there is an ocular evidence, who supported the story of FIR. He, therefore, submits that there is no need of any interference.

11. After hearing the parties and upon perusal of



the lower court records, it transpires that there are in total 6 prosecution witnesses in the present case. PW 1 Jai Prakash Singh and PW 3 Birendra Singh are the hearsay witness, PW 2 Jai Bhagwan Singh and PW 4 Gidik Singh are the eyewitness of this case, PW 5 Ram Keshwar Singh is the informant of this case and PW 6 Krishna Ballav Sahay. Krishna Ballav Sahay has also been examined as a formal witness, who has proved the formal FIR and fardbeyan of Sikarhatta P.S. Case No.26 of 1989 which has been marked as Exhibits- A and B respectively. He has also proved three injury reports of accused Radhey Shyam Singh, accused Arjun Singh and accused Bhim Sen Singh, which have been marked as Exhibit- C series.

12. Out of these witnesses, PW 6 is a formal witness, who has proved injury report Ext-2 and his evidence needs no further discussion. PWs. 1 and 3 are not the eyewitnesses to the occurrence; rather hearsay witness and they claimed to have arrived at the place of occurrence and learnt about the occurrence from the informant and the evidence of PWs. 1 and 3 are based on the information of PW 5 the informant.

13. PW 1 Jay Prakash Singh deposed that the occurrence took place 12 years ago at about 10:00 AM. At the



relevant time he was in his cattle shed and he learnt that some quarrel took place in his village and when he went to the place of occurrence, he saw that his brother Keshwar is lying in a drain in injured condition. He further deposed that his brother (Keshwar Singh) said him that Bhim and Arjun has thrashed him in the drain and assaulted him. He further said that Bhim and Arjun sustained fire arm injury and firing made by Bhuneshwar Singh one of the co-accused (since dead). Similarly, PW 3 Birendra Singh also deposed that on the relevant date of occurrence while he was at his Dalan he heard halla of Jai Bhagwan his uncle and went there and saw that his uncle Ram Keshwar was in injured condition. He further deposed that he did not see the actual occurrence and he took his uncle to the hospital for treatment.

14. PW 2 Jai Bhagwan Singh is the eyewitness to the occurrence. He deposed that at the relevant time of occurrence he was going to flour mill to bring flour. At the relevant time, he heard halla and went near the house of Ram Keshwar Singh and saw that accused Arjun Singh was holding the arm of Keshwar Singh (PW 5 informant) and thrashed him in the drain and thereafter accused Arjun Singh gave a farsha blow on his head and accused Bhim Singh assaulted informant



Keshwar Singh with lathi on his right shulder while he was in fallen condition. He further deposed that on alarm his two nephew, namely, Jai Singh and Nau Singh, came running. They went on the roof of his uncle and started brick batting. In this brick batting accused Radhey Shyam and Bhin Singh received injury. He further deposed that Radhey Shyam Singh opened fire with his rifle aiming towards the roof of his uncle but it hit to the wall. When the informant Keshwar Singh attempted to escape, the accused Bhuneshwar Singh (since dead) opened fire with a country-made gun at Keshwar Singh, which hit to Arjun Singh in stead of Ram Keshwar Singh and thereafter stampede took place. He took Keshwar Singh to hospital with the help of his family members.

15. PW 4 Gidik Singh is also an eyewitness to the occurrence. He deposed in his evidence that he arrived at the place of occurrence on hearing halla and saw Keshwar Singh lying in the drain. He deposed that accused Radhey Singh was armed with lathi and Bhuneshwar was armed with country made gun. He deposed that Jai Singh and Nau Singh were brickbatting from the room which hit to accused Radhey Singh and he became angry and opened fire, which hit on the wall of the house of Keshwar Singh. He further deposed that when



Keshwar Singh was attempting to escape from the place of occurrence, accused Bhuneshwar Singh fired at him which did not hit to Keshwar Singh.

16. PW 5 Ram Keshwar Singh is the informant of this case. He deposed that while he was keeping paddy straw on the disputed land of accused Radhey Singh, accused Bhuneshwar Singh, Arjun Singh and Bhimsen Singh came there. He further deposed that accused Radhey was armed with rifle, accused Bhuneshwar Singh (since dead) was armed with country-made gun, accused Arjun was armed with farsha, accused Bhim was armed with lathi and they threw the paddy straw. On protest made by the informant, all the accused persons abused the informant. He further deposed that when he (informant) left the place and proceeded 4-5 hand ahead, the accused Arjun Singh and Bhim Singh caught hold him and thrashed him in a drain. He deposed that Arjun assaulted with farsha on his head and Bhim assaulted him with lathi on his left shoulder joint and right wrist. He further deposed that when he raised alarm for safety, his nephew Nau and Jai went on the roof and they started brick batting. One of the brick hit to Radhey Shyam Singh and Radhey Shyam Singh opened fire which hit to accused Arjun and stampede took place and the accused fled



away. He was brought to hospital where his fardbeyan was recorded. He proved his signature on his fardbeyan as Ext-1.

17. After hearing the parties and going through the documents placed on record, it transpires to this Court that the Trial Court in paragraph Nos.15, 16 and 17 have discussed the prosecution case and reached on the finding that the prosecution witnesses were not consistent and they have tried to develop their case at subsequent level and have not come with clean hands. But the utmost point, in the opinion of this Court, is that for the purpose of proving a case, according to criminal jurisprudence, the said proof must be beyond all reasonable doubts. Here in the present case, admittedly, neither the Investigating Officer nor the Medical Officer has been examined.

18. This Court is of the firm view that story of FIR and the evidence must have to be supported with other materials. Here in the present case, due to non-examination of the I.O. the place of occurrence has not been ascertained. Similarly, the injury has also not been ascertained. The learned Counsel for the appellant has relied on the judgment of **State of Bihar Vs. Bishwanath Rai and Others with Ramesh Prasad Thakur and Another Vs. Ram Chandra Singh and Another**



(supra), whose paragraph-5 reads as under:

“The High Court after taking into consideration all these aspects found it unsafe to rely upon the evidence of eye-witnesses. Once it found that the eyewitnesses had not given the correct account of the manner in which the incident had taken place, then the High Court was justified in discarding their evidence even though it was otherwise consistent. The learned counsel for the appellants could not point out any infirmity in the other findings recorded by the High Court.”

19. From perusal of the record, it transpires that the said two appellants have received injury. Similarly, the other persons to whom they have alleged to have been assaulted have also received injury, but none of the injury has been ascertained on the record of the case legally, due to the reason that the Medical Officer has not been examined.

20. In view of the above situation, when neither I.O. nor medical officer has been examined, due to which neither place of occurrence nor injury has been ascertained. Hence, this Court has no option but to hold that the ingredient of Section 323 of the Indian Penal Code is not attracted in the present case against the present appellants.



21. Considering the facts and circumstances of the case, this Court is of the firm view that the prosecution has failed to prove the charge under Section 323 of the Indian Penal Code against the appellants. Hence, the appeal is allowed. The impugned judgment of conviction and order of sentence dated 05.11.2004 passed by Sri Avinash Kumar Sinha, Additional Sessions Judge (F.T.C.) No.II, Ara, Bhojpour, in Sessions Trial No.449 of 1990, arising out of Sikarhatta P.S. Case No.27 of 1989, is quashed and set aside. The appellants are acquitted of the offence held to be proved against them. The appellants are on bail. Their bail bonds are ordered to be cancelled.

22. Let the Lower Court Records be sent back to the learned Trial Court with a copy of this judgment and order.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
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