

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.509 of 2024

Arising Out of PS. Case No.-147 Year-2005 Thana- BAKHTIYARPUR District- Patna

Mahendra Singh Son of Late Pokhi Singh Resident of Village- Manjhauli,
P.S- Bakhtiyarpur , Present P.S- Salimpur , Dist- Patna

... .. Appellant

Versus

1. The State of Bihar
2. Dilip Singh Son of Sone Lal Singh Resident of Village- Manjhauli, P.S-
Salimpura, Dist- Patna
3. Shailendra Singh Son of Sone Lal Singh Resident of Village- Manjhauli,
P.S- Salimpura, Dist- Patna
4. Satish Singh Son of Jugeshwar Singh Resident of Village- Manjhauli, P.S-
Salimpura, Dist- Patna
5. Rishi Singh Son of Jugeshwar Singh Resident of Village- Manjhauli, P.S-
Salimpura, Dist- Patna
6. Brijballabh Singh Son of Jugeshwar Singh Resident of Village- Manjhauli,
P.S- Salimpura, Dist- Patna
7. Sone Lal Singh Son of Late Siri Singh Resident of Village- Manjhauli, P.S-
Salimpura, Dist- Patna

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Rudal Prasad, Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP
For Resp. Nos. 2 to 7	:	Mr. Vijay Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 24-01-2025

This appeal has been filed against the judgment of acquittal dated 12.02.2024 passed by learned Additional District & Sessions Judge-V, Barh, District-Patna (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 297 of 2009, arising out of Bakhtiyarpur P.S. Case No. 147 of 2005 by which the



learned trial court has acquitted respondent nos. 2 to 7 of the charges under Sections 307 /149, 147, 148, 324/149 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act and convicted them for the offences punishable under Sections 148 and 323/149 IPC.

2. Earlier *vide* order dated 08.05.2024, this Court called for the trial court records which have been received and are available on the record.

3. From the report as contained in Memo No. 38 dated 06.01.2025 of the Superintendent of Police (Rural), Patna it appears that respondent no.7 namely Sone Lal Singh died during pendency of the appeal. Thus, this appeal against respondent no.7 stands abated.

Prosecution case

4. The prosecution story is based on the written report dated 09.06.2005 of Mahendra Singh submitted to the SHO, Bakhtiyarpur Police Station. In his written report, the informant has stated that west to his house, a barren land of Jugeshwar Singh is situated. The informant has stated that construction of western side wall was going on and for this purpose rods were erected. On 09.06.2005, in the morning at 8:00 AM, Jugeshwar Singh and Sone Lal Singh asked the informant why he was erecting balcony



(*chhazza*) on his land on which the informant asked them to get the land measured then it is alleged that Jugeshwar Singh and Sone Lal Singh started abusing him and brought gun from his house. The other accused persons also brought arms from their houses. It is alleged that Mundrika Singh and Dilip Singh, with an intention to kill, fired at the informant and his son as a result of which the informant received injury on his forehead, chest and leg and his son Rakesh Kumar sustained injury on his left shoulder. The nearby people have witnessed the occurrence and they can depose on asking.

5. On the basis of this written application, FIR being Bakhtiyarpur P.S. Case No. 147 of 2005 has been registered under Sections 147, 148, 149, 324 and 307 IPC and Section 27 of the Arms Act against accused persons, namely, (1) Jugeshwar Singh, (2) Sone Lal Singh, (3) Dilip Singh (4) Shailendra Singh, (5) Satish Singh, (6) Rishi Singh, (7) Brij Ballabh Singh and (8) Mundrika Singh. After completion of investigation, police submitted charge-sheet bearing number 193/05 dated 25.10.2005 against accused Dilip Singh, Shailendra Singh, Rishi Singh, Brij Ballabh Singh and Satish Singh. Upon submission of charge-sheet, the learned Magistrate took cognizance *vide* order dated 29.10.2005 of the offences under Sections 147, 148, 149, 324 and



307 IPC. The two accused namely Mundrika Singh and Yugeshwar Singh were not sent up for trial. Thereafter, a supplementary charge-sheet bearing No. 174 of 2006 dated 05.07.2006 was filed against Sone Lal Singh and the learned Magistrate took cognizance of the offence under Sections 147, 148, 149, 324 and 307 IPC. Finding that the offences of which cognizance was taken by the learned Magistrate are triable by the court of Sessions, the learned Magistrate committed the records to the court of Sessions *vide* order dated 22.08.2006. On receipt of the records, Sessions Trial No. 297 of 2009 was registered where charges were framed on 01.04.2015 under Section 307/149, 147, 148, 324/149 IPC and 27 of the Arms Act and explained to them to which they denied.

6. During trial, the prosecution produced as many as nine witnesses and proved some documentary evidences. The full description of the witnesses and the documents proved on behalf of the prosecution are being provided hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Jayabind Kumar
PW-2	Mukesh Kumar
PW-3	Rakesh Kumar
PW-4	Mahendra Singh (informant)
PW-5	Dr. Vijai Kumar Verma (Medical Officer)
PW-6	Ravindra Nath Chaturvedi (Researcher)
PW-7	Raju Kumar
PW-8	Dr. Vinay Kumar (Associate Officer, P.M.C.H, Patna)



PW-9	Arvind Kumar Singh (Advocate Clerk)
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List of Exhibits produced on behalf of the Prosecution

Ext- 1	Sign. of information on <i>Fardbeyan</i>
Ext- 2	Injury Report of Rakesh Kr.
Ext- 2/1	Injury of Mahendra Singh
Ext- 3	Sign. of I/O R.N. Chaturvedy on formal F.I.R.
Ext- 4	Forwarding of BKP Case No. 147/05
Ext- 5	E.S.R No. 3069 of injured Mahendra Singh
Ext- 6	E.S.R. No. 3070 of Injured Rakesh Kumar
Ext-7	Attested Copy of Injury Report of Mahendra Singh
Ext- 8	Attested Copy of Injury Report of Rakesh Kumar
Ext- 5/1	Word “XPM 3836 Multiple Metallic foreign body” written on Ext. 5
Ext- 6/1	Word “XPM 3840 Multiple Matellic foreign body in left infra scapular” written on Ext. 6
Ext- 3/1	Formal F.I.R of Bakhtiyarpur P.S. No. 147/05

Findings of the Learned Trial Court

7. Learned trial court after analyzing the materials in the form of oral and documentary evidences available on the record found that both the sides indulged in dispute in regard to projection of balcony in which the informant was claiming that he had projected the iron rods for constructing balcony up to his land but the defence was claiming that the projection was in their land which was protested by the defence side. In the said dispute, informant was asking to get the land measured but the accused Sone Lal Singh and Jugeshwar Singh went to their house abusing and came with double-barrel gun and with them Mundrika and Dilip Singh also came with double-barrel gun. Shailendra Singh, Jugeshwar Singh with *bhala*, Satish, Rishi Singh and Brij Ballabh



having *lathi-danda* came. Mundrika and Dilip Singh fired on the informant Mahendra Singh and his son Rakesh Kumar on the order of Sone Lal and Jugeshwar which hit in the left shoulder of Rakesh Kumar and Mahendra Singh received six bullet injuries. From the evidence of first Doctor, Dr. Vijay Kumar Verma (PW-5) the learned trial court noticed the injury to be simple and he kept the opinion reserved and referred the injured Rakesh Kumar to PMCH and from the injury report of Mahendra Singh injury was shown to be lacerated and simple of which the opinion was also kept reserved and he was referred to PMCH also. Dr. Vinay Kumar (PW-8) who examined the injured in PMCH has proved the injury report of the informant which was marked as Exhibit '7' and further he proved the injury report of injured Rakesh Kumar which was marked as Exhibit '8'. The learned trial court found from the cross-examination of this witness that there was no mentioning of extraction of bullet from the injured in the injury report. Learned trial court opined that since no bullet was produced before the court so it was believed that no bullet was extracted from the body of injured.

8. Learned trial court after analysing the evidence came to the finding that the doctors have not supported the factum of firing shot upon the injured as no seizure list of bullet was



prepared as also the gun from which the firing is said to have been made has also not been seized.

9. Learned trial court reached to the conclusion that the prosecution has failed to prove charge of 307 IPC and 324 IPC against the accused rather the prosecution has been able to prove the charge under Section 148, 323/149 IPC against the accused and held them guilty accordingly.

Submissions on behalf of the Appellant

10. Learned counsel for the appellant has assailed the impugned judgment on various grounds. It is submitted that the informant of this case is Mahendra Singh who has deposed as PW-4 in course of trial. In his written application, he has stated that the occurrence took place at 8:00 AM when he was erecting the boundary wall and had done the centering work for *chhajja* (balcony) at the top of the boundary wall. The informant has stated that Jugeshwar Singh and Sone Lal Singh first objected to the said construction whereupon the informant asked them to get done the measurement but Jugeshwar Singh and Sone Lal started abusing him. He has stated that Sone Lal and Dileep Singh, son of Sone Lal Singh, came armed with double-barrel gun in their hand, Shailendra Singh, son of Sone Lal Singh came armed with spear and the other accused persons, namely, Satish Singh, Rishi Singh,



Brijballabh Singh were armed with *lathi*. According to the informant, Mundrika Singh and Dileep Singh, both sons of Sone Lal Singh fired from the double-barrel gun upon the informant and his son. The informant suffered the shot at his forehead, chest and leg whereas his son Rakesh Kumar had suffered pellet (*chharra*) on his left shoulder. It is submitted that in his examination-in-chief, the informant has supported the prosecution case. He has stated that Sone Lal Singh, Jugeshwar Singh, Dileep Singh and Mundrika Singh were armed with gun. Jugeshwar Singh and Sone Lal Singh asked the other accused persons to kill whereafter with an intention to kill, Dileep Singh and Mundrika Singh fired upon him. He has reiterated that he and his son had suffered firearm injuries. He has stated that both the accused persons, namely, Dileep Singh and Mundrika Singh had fired at the same time. He had fallen down after suffering the shot, his eldest son had taken him to his house. He has further stated that he was first taken to the police station then to the hospital. He has proved his signature on the written application which was written by Daroga Ji. He has proved his signature as (Exhibit '1'). He had remained in PMCH for five days.

11. Learned counsel submits that in his cross-examination, this witness has remained intact and has reiterated



that he and his sons had suffered firearm injury. He was suggested in course of his cross-examination by the defence that no occurrence had taken place and neither he nor his son had suffered any firearm shot. He was suggested that he has purchased the land of the accused which is situated in the western side of his house from Jugeshwar, however, this witness denied this suggestion.

12. Learned counsel submits that the another injured witness of this case is Rakesh Kumar (PW-3). He has supported the prosecution case in his examination-in-chief and has narrated the reason behind the occurrence and the manner of occurrence. He has stated that Dilip and Mundrika both had fired which hit him and his father Mahendra Singh. In his cross-examination, he has stated that in his statement made before police he had given the name of Mundrika Singh as the person who had fired and had also stated that in the said firing he had suffered injury at one place and his father had suffered injury at seven places on his body. This witness has stated that he reached the Bakhtiyarpur Primary Health Center at about 9:00 AM and thereafter PMCH Patna at 12/01 hours. He was admitted in PMCH for 4/5 days.

13. It is further submitted that Doctor (PW-5) had examined Rakesh Kumar, son of Mahendra Singh and had found lacerated wound of size 1/4" x 1/4" x 1/6" on the left clavicle near



lateral III. The Doctor opined that the nature of injury was simple and about the weapon by which the injury was caused, the opinion was reserved. PW-5 had also examined Mahendra Singh and had found as many as seven injuries on his body. Those injuries were simple in nature caused within six hours. Again about the nature of injury, PW-5 has opined that the injuries were simple in nature but the opinion with regard to the mode of production of injury was reserved until the report is made available from higher center. He has proved the injury reports of Rakesh Kumar and Mahendra Singh as Exhibit '2' and '2/1' respectively. PW-5 was suggested by the defence that the injury report was collusive which he denied.

14. Learned counsel submits that the I.O. (PW-6) has proved the written application (Exhibit '4'). He has stated that Mahendra Singh had submitted a written application which is the basis of the First Information Report. He has proved the endorsement made on the written application in his handwriting and has also proved his signature thereon as Exhibit '4'. The I.O. has stated that he had recorded the statement of the informant and the injured Rakesh Kumar whereafter he had sent the requisition for their treatment to the hospital. He had reached the place of occurrence and had recorded the statement of Mukesh Kumar and had inspected the place of occurrence as informed by him. He has



given the place of occurrence as the wall of the house of Mahendra Singh in the western side and thereafter there is a vacant land of the accused persons. He had seen the iron rod placed on the western wall of the house of the informant which was outside for purpose of construction of *chhajja*. I.O. has stated that to stop this construction, the quarrel had taken place. In the western side of the place of occurrence is the vacant land of Jugeshwar Singh and Sone Lal Singh. I.O. had received the injury reports from Bakhtiyarpur Hospital. In paragraph '2' of his cross-examination, he has stated that Mahendra Singh had made statement that Mundrika Singh and Dilip Singh had come armed with double-barrel gun and they had fired with an intention to kill him and his son. He had not stated about the firing by Mundrika Singh separately.

15. Learned counsel submits that another Doctor, namely, Dr. Vinay Kumar (PW-8) who was posted in Indira Gandhi Central Casualty, PMCH, Patna as SOD has deposed. He had examined the X-ray of the patient Mahendra Singh and the report given by Dr. Rajeev Kumar, Department of Radiology, PMCH. He has stated in his note that the details of injury, age of injury, cause of injury and nature of injury may be obtained from the Medical Officer, PHC Bakhtiyarpur who examined the patient



first vide Registration No. 3442 dated 09.06.2005 and referred the patient to PMCH, Patna. PW-8 had also examined the X-ray of Chest PA view of patient Rakesh Kumar and report given by Dr. Rajeev Kumar, Department of Radiology. In his note, PW-8 has once again stated the same thing with regard to the details of the injury, the age of injury, cause of injury and nature of injury. He has proved the injury report of Mahendra Singh and Rakesh Kumar which were in his handwriting as Exhibit '7' and Exhibit '8' respectively. He has stated that in Exhibit '5' the writing to the extent "XPM 3836 Multiple Metallic foreign body" is in his handwriting and in his signature. Similarly, in Exhibit '6' the writing "XPM 3840 Multiple Metallic foreign body in left infra scapular" are in his handwriting and signature. He has proved his writing and signature as Exhibit '6/1' on Exhibit '6'. In his cross-examination, PW-8 has stated that in the injury report there is no mention of extraction of any bullet or pellet.

16. Learned counsel submits that the ocular evidence of the injured witnesses in this case are consistent, the other prosecution witnesses, namely, Jaibind Kumar (PW-1) is an independent witness who has supported the prosecution case. The another witness Mukesh Kumar (PW-2) is another son of Mahendra Singh who has also supported the prosecution case and



the defence has failed to impeach their credibility. It is his submission that on the face of the evidences available on the record, the one and only finding which is liable to be reached and concluded is that the occurrence took place on 09.06.2005 at 8:00 AM when the informant was preparing to raise *chhajja* on the western wall of his house. An altercation took place when an objection was raised by Jugeshwar Singh and Sone Lal Singh who are the land owner of the land situated in the western side of the wall towards which the *chhajja* was being constructed. The accused, namely, Dilip Singh and Sone Lal Singh went to their house and came out with double-barrel gun. It was Dilip Singh, son of Sone Lal Singh, who fired from the double-barrel gun and caused injuries to the informant and his son. So far as other accused-respondents are concerned, they actively participated in the occurrence. They were part of unlawful assembly. The Doctor (PW-5) who was posted at the PHC has though noticed the kind of injuries suffered by both the injured but he purposely withheld his opinion as regards the mode of production of the injury. Exhibit '2' and '2/1' are the injury reports, however, it is important to note that PW-8 has proved the injury report Exhibit '7' and '8' respectively. He has also admitted his writing and signature on Exhibit '5' wherein he has recorded that multiple metallic foreign



body has been found. It is submitted that in the face of such consistent ocular and medical evidence, the learned trial court has completely erred in acquitting the accused persons.

Submissions on behalf of the Respondents

17. The appeal has been contested by learned counsel for the respondent nos. 2 to 6. Learned counsel submits that the learned trial court has examined all the facts and circumstances as appearing from the records. The dispute in this case arose on account of construction of balcony. The stand of the defence is that the prosecution side was constructing balcony outside the area on their land and they were encroaching into the area of the defence side.

18. It is submitted that the occurrence which took place was all of a sudden in course of construction of the balcony and the accused persons were not armed with any weapon at the time of occurrence. The prosecution case is that after the initial quarrel Mundrika and Dilip Singh both came outside their house armed with double-barrel gun and on the order of Sone Lal and Jugeshwar, they had fired on the informant and his son Rakesh Kumar. The learned trial court has found that the Doctor had not noted presence of any bullet or pellet in the injury report of Mahendra Singh and Rakesh Kumar. The X-ray report given by



Dr. Rajeev Kumar has not been brought in evidence, therefore, the learned trial court has rightly concluded that no bullet was extracted from the body of the injured persons. Mundrika Singh and Jugeshwar Singh, against whom there were allegations of hurling abuses, were not sent up for trial because at the time of occurrence, they were posted in the Union Bank as members of the Home Guard for security. Thus, neither Mundrika Singh nor Jugeshwar Singh faced trial.

19. Learned counsel further submits that regarding the injury on the body of the son of the informant, the Doctor has not supported his case. The Doctor had not extracted any bullet from the body of the injured, neither any seizure list of the bullet has been prepared nor the same has been produced as material exhibit. The gun which is weapon of crime has also not been seized. The trial court has further found that from the evidence on the record, it appears that the injuries were simple in nature and no final opinion has been given on the nature of injury showing that the injuries were grievous, therefore, the learned trial court has rightly concluded that the prosecution had failed to establish a case under Section 307 IPC beyond all reasonable doubts and the charge under Section 27 of the Arms Act has also not been proved. It is submitted that the learned trial court has rightly concluded that



because the injury is of simple nature, the charge under Section 324 IPC is also not proved.

20. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State has endorsed the submissions of learned counsel for the private respondent nos. 2 to 6 and has defended the impugned judgment and order.

Consideration

21. We have heard learned counsel for the appellant, learned counsel for the respondent nos. 2 to 6 and learned Additional Public Prosecutor for the State as also perused the trial court records.

22. We find from the evidence on the record that the prosecution case is based on the written application of Mahendra Singh (PW-4). He has stated that the occurrence took place at 8:00 AM when he was raising a balcony on the western wall of his house on his land. Initially, a quarrel took place when Jugeshwar Singh and Sone Lal Singh raised objection. Thereafter, it is stated that Sone Lal Singh and Dilip Singh both came outside their house armed with a double-barrel gun, though regarding other accused persons namely Shailendra Singh, Satish Singh, Rishi Singh and Brij Ballabh Singh, it is stated that they were also armed with various weapons but the prosecution witnesses have consistently



stated in their deposition that it was Dilip Singh and Mundrika Singh who had fired. The informant who has been examined as PW-4 has stated about the presence of Shailendra, Rishi, Satish and Brij Ballabh with spear and *lathi* but nothing has been stated about their participation in the occurrence. The specific allegation of firing has been made against Dilip Singh and Mundrika Singh but as recorded above, Mundrika Singh has not been sent up for trial. About Sone Lal Singh (since deceased), PW-4 has stated that he and Jugeshwar had ordered to kill. Jugeshwar has not been sent up for trial. In his examination-in-chief, PW-4 has stated that both had fired at the same time. In his cross-examination, PW-4 has stated that shots fired by both of them hit him and his son had received the shot fired by Mundrika. He has stated that he was treated in the PMCH and had remained admitted there for five days. It has come in evidence that the vacant land of Sone Lal and Jugeshwar is situated west to the boundary of the house of the informant. From the pattern of cross-examination, it appears that the defence suggested to this witness that no such occurrence as stated by PW-4 has taken place and neither he nor his son had suffered any shot. This suggestion has been denied by the informant (PW-4).



23. The another prosecution witness is Rakesh Kumar (PW-3) who is the son of the informant and an injured of this case. He has supported the prosecution case. According to him, Sone Lal and Jugeshwar had ordered to kill on which Dilip and Mundrika had fired, the shot hit Mahendra Singh and this witness. He has stated that Mahendra Singh had suffered pellet at seven places on his body. In his cross-examination, he has stated that in course of investigation he had stated before police that he had suffered pellet at one place on his body and his father had suffered the same at seven places. He has stated that his clothes were soaked with blood and his father was also bleeding and his clothes were soaked in blood. Blood has also fallen on the earth. His father was lifted by Mukesh Kumar and Ajay Singh, clothes were, however, not seized by Police. In his cross-examination, he has stated that he had reached Bakhtiyarpur Primary Health Centre at 9:00 AM, PMCH at 12/01 hours and was admitted in PMCH for 4/5 days. He denied the suggestion that neither he nor his father had suffered any assault nor any blood had fallen on their clothes and he had lodged the case with an intention to usurp the land. PW-3 denied the suggestion.

24. This Court finds that PW-3 and PW-4 both are injured witnesses of this case, they have supported the prosecution



case, their statements are consistent and the defence is unable to extract any material inconsistency or contradiction in the statement of PW-3 and PW-4.

25. Jaibind Kumar (PW-1) is an independent witness. He has also supported the prosecution case and he denied the suggestion of the defence that in his statement before police he had stated that he had not seen the occurrence and had reached there on *hulla* and had heard about the occurrence. In his cross-examination, he has stated that the injured were treated at Bakhtiyarpur. He had seen that blood had fallen at the place of occurrence and the clothes of both the injured were blood-soaked.

26. Mukesh Kumar (PW-2) is the eldest son of the informant (PW-4) who has also supported the prosecution case. All these witnesses are consistent in their depositions.

27. Ravindra Nath Chaturvedi (PW-6) is the Sub-Inspector of Police who was posted in Bakhtiyarpur Police Station on 09.06.2005. He had received the written application from the informant and had lodged the FIR on that basis. He has proved the endorsement made on the written application in his writing and signature as Exhibit '4'. He had sent the injured for treatment to hospital with his requisitions and had inspected the place of occurrence. He had also received the injury report from



Bakhtiyarpur Hospital. In his cross-examination, I.O. has stated that Mahendra Singh (PW-4) had stated in his statement that Mundrika Singh and Dilip Singh had come armed with double-barrel gun and it was Dilip Singh who had fired from his double-barrel gun with an intention to kill him and his son. The I.O. has stated in the same paragraph of his deposition that Mahendra Singh had not stated that Mundrika Singh had separately fired. We find that Mundrika Singh has already been discharged at the stage of submission of charge-sheet itself as he was not sent up for trial. From the evidence of the I.O. (PW-6), it appears that initially in course of investigation, informant (PW-4) had stated that it was Dilip Singh who had fired upon him and his son by his double-barrel gun.

28. This Court finds that the prosecution has proved the certified copy of the injury report of the injured through Raju Kumar (PW-7) who was a Clerk in the Surgery Record Room of PMCH, Patna. He had also brought SOD Book and has proved that on page no. 27, the recorded patient Mahendra Singh had come after being referred by PHC Bakhtiyarpur and his ESR No. is 3069. On page no. 28, the second patient namely Rakesh Kumar is mentioned who had also been referred by PHC Bakhtiyarpur. His



ESR number is 3070. Prosecution has exhibited ESR No. 3069 and ESR No. 3070 as Exhibit '5' and '6' respectively.

29. At this stage, this Court finds that Dr Vijay Kumar Verma (PW-5) who was posted as Medical Officer in the Primary Health Centre, Bakhtiyarpur had examined PW-3 and PW-4. His deposition contains the kind of injuries present on the body of PW-3 and PW-4 respectively. Therefore, this Court would reproduce the deposition of PW-5 as under:-

“On dated 09.06.2005 I was posted at Primary Health Center, Bakhtiyarpur as Medical Officer on that day I examined Rakesh Kumar aged about 22 years S/o Shri Mahendra Singh, Vill-Manjhauli, P.S. Bakhtiyarpur, Patna at 11:55 AM and found following injury on his person:-

1. Lacerated wound of size 1/4” x 1/4” x 1/6” on the left clavicle near lateral III

Time of injury within six hours.

Mark of identification- A mole on side of neck.

Nature of injury – simple caused by opinion reserved patient was referred to PMCH, Patna for opinion.

2. On that very day at 11:00 AM I examined Sri Mahendra Singh aged about 48 years, S/o Late Pokhi Singh at Vill-Manjhauli, P.S.-Bakhtiyarpur, District-Patna and found following injuries on his person:-

1. Laceration of 1/4” x 1/4” x 1/6” on the right side of forehead.

2. Laceration of 1/4” x 1/4” x 1/6” two in number on the left upper arm.

3. Laceration of 1/4” x 1/4” x 1/6” above right nipple



4. Laceration of 1/4" x 1/4" x 1/6" on the right upper abdomen.

5. Laceration of 1/4" x 1/4" x 1/6" on the inter Phalangeal joint of right middle finger.

6. Laceration on 1/4" x 1/4" x 1/6" on the right knee.

7. Laceration on 1/4" x 1/4" x 1/6" on the mid right leg.

Time of injury – within six hours.

Mark of identification – mole on the right cheek above angle of mouth.

Nature of injury – The above injuries are simple in nature. Mode of production of injury opinion is reserved until the report is available from higher centre.

These both injuries report are in my pen and it bears my signature marked it Ext. 2 and 2/1.

In the injury report of Rakesh Kumar it has not been written that patient was referred to higher hospital.

It is not correct to say that injury report is collusive.”

30. From the evidence of the Doctor (PW-5) it is evident that the informant (PW-4) had suffered injuries at as many as seven places on his body. Those injuries were caused within six hours and they were simple in nature but the conduct of PW-5 as a Medical Officer seems highly doubtful in not recording his opinion as to mode of production of injury. He simply recorded that “mode of production of injury opinion is reserved until the report is available from higher centre”.



31. The another Doctor namely Vinay Kumar (PW-8) has been examined who has stated that the patient Rakesh Kumar had come after having been referred by PHC Bakhtiyarpur on 09.06.2005 and he was discharged from PMCH on 13.06.2005. He had examined the X-ray of the patient and report given by Dr. Rajiv Kumar, Department of Radiology. The X-ray report shows as follows:-

X-ray report of Rakesh Kumar

“X-ray chest no abnormality detected, except a radio opaque pellet like metallic shadow in shoft tissue area of left scapular region.

The patient was treated conservatively and was discharged from PMCH o 13.06.2005.”

32. In his note, the Doctor has stated that the details of injury, age of injury, cause of injury and nature of injury may kindly be obtained from Medical Officer, PHC, Bakhtiyarpur who examined the patient first *vide* Registration No. 3442 dated 09.06.2005.

33. PW-8 had also examined the X-ray of chest PA view of patient Mahendra Singh who had been referred by PHC Bakhtiyarpur on 09.06.2005. He was also discharged from PMCH on 13.06.2005 and his X-ray of chest shows no abnormality detected except a radio opaque pellet like metallic shadow in shoft tissue area of left scapular region. PW-8 has proved his writing on



Exhibit '5' and Exhibit '6' wherein it is recorded "XPM 3836 Multiple Metallic foreign body (Exhibit '5/1') and "XPM 3840 Multiple Metallic foreign body in left infra scapular (Exhibit '6/1')"

34. The learned trial court seems to have committed gross error in appreciating the evidence of the Medical Officer, PHC, Bakhtiyarpur and Dr. Vinay Kumar of PMCH who have been examined as PW-5 and PW-8 respectively. The view taken by the learned trial court that the Doctor has not supported the prosecution case of firing shot upon the informant and his son Rakesh Kumar seems to be perverted. The learned trial court rejected the prosecution case only on the ground that no pellet has been taken out from the body of the injured and no seizure list of the pellet has been made. To this Court, it is evident that PW-5 had noted seven injuries on the body of the informant (PW-4) and one injury on the body of his son (PW-3). PW-8 who had proved the writing on the injury report as Exhibit '5/1' and Exhibit '6/1' respectively clearly shows that multiple metallic foreign body were noticed in the X-ray of PW-3 and PW-4. The defence could not muster enough courage to cross-examine the Doctors as to the nature of multiple metallic foreign body which were shown in the X-ray of the two injured.



35. This Court is conscious of the judicial pronouncement on the scope of interference with a judgment of acquittal. From the entire materials by way of evidences on the record the one and only conclusion which may be reached upon reappreciation of the entire evidence by this Court is that on account of the dispute which arose while raising balcony by the informant (PW-4), Dilip Singh, son of Sone Lal Singh had come armed with a double-barrel gun and had fired upon the informant, however, only one firing was done and it was done from some distance as a result whereof, the pellets spread and injured the informant and his son on different parts of their bodies. The injuries were simple in nature and the X-ray report shows pellet like metallic shadow in the X-ray of skull, chest, right leg including knee of the informant. X-ray report of the son of the informant was showing a radio opaque pellet like metallic shadow in soft tissue area of left scapular region. The fact that the patients were treated conservatively in the hospital shows that there was no injury on vital part of the body which in ordinary course were likely to cause death.

36. In overall analysis of the evidences on the record, this Court is of the opinion that so far as respondent no.2 Dilip Singh is concerned, the prosecution has been able to prove his



guilt under Section 324 IPC. Presence of respondent nos. 3 to 6 along with Dilip Singh (Respondent No.2) at the place of occurrence have also been proved, they are also convicted under Section 148 and 324/149 IPC.

37. To this court, it appears that the prosecution has been able to prove its case beyond all reasonable doubts. Dilip Singh (Respondent No. 2) was holding the double-barrel gun and had fired upon the informant, however, only one firing was done from some distance. The learned trial court has held the accused-respondents guilty of the offences punishable under Sections 148 and 323/149 IPC. Learned counsel for the respondent nos. 2 to 6 has informed this Court that respondent nos. 2 to 6 have not preferred any appeal against their conviction and sentence under Sections 148 and 323/149 IPC. It is, therefore, crystal clear that the trial court's findings as regards the charge under Sections 148 and 149 IPC have not been assailed. Section 148 and 149 IPC reads as under:-

“148. Rioting, armed with deadly weapon.

Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to



be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

38. In case of Yunis @ Kariya vs. State of Madhya

Pradesh reported in **AIR 2003 SC 539**, the Supreme Court has held that even if no overt act is imputed to a particular person, when the charge is under Section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction. It is well settled that once a membership of an unlawful assembly is established, it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused.

39. We have noticed that in this case, Dilip Singh was armed with deadly weapon, which was a firearm and had fired from the same causing injuries to the appellant and his son. The learned trial court has acquitted respondent nos. 2 to 6 of the charges under Sections 307/149, 147, 148, 324/149 but we are of the view that in this case, the ingredients of Section 324 IPC are available and respondent nos. 2 to 6 would be liable to be held guilty for commission of offence under Section 324 IPC with the aid of Section 149 IPC. Section 324 IPC reads as under.

“324. Voluntarily causing hurt by dangerous weapons or means

Whoever, except in the case provided for by section 334 voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which,



used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

40. We, therefore, convict respondent no. 2, namely, Dilip Singh, who fired from his double-barrel gun for the offence under Section 324 IPC. So far as respondent nos. 3, 4, 5 and 6 are concerned, they are convicted under Section 324/149 IPC. Since they are present in Court, they are taken into custody.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Rishi/-

AFR/NAFR	
CAV DATE	17.01.2025
Uploading Date	24.01.2025
Transmission Date	24.01.2025

