

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.125 of 2004

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1. Dasrath Paswan, Son of Late Nunulal Paswan
 2. Chunni Paswan, Son of Late Chando Paswan
 3. Rambhajju Paswan, Son of Rambalak Paswan
 4. Ram Balak Paswan, Son of Late Lalit Paswan

All are resident of Village-Raipura, P.S.-Birpur (Barhiya), Distt-Lakhisarai

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Amit Kumar Jha, *Amicus Curiae*

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 20-12-2025

At the outset, it is pointed out by learned Amicus, Mr. Amit Kumar Jha that appellant no.2, namely, Ram Sabad Paswan, appellant no.4 namely, Rambhajju Paswan and appellant no.5 namely, Anuj Paswan @ Ramanuj Paswan died during the course of pending appeal.

2. Accordingly, present appeal against appellant Nos. 2, 4 and 5 stands abated. Now, this appeal survives against above-named four appellants only.

3. The present appeal has been preferred by the



appellants-convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') challenging the impugned judgment of conviction dated 19.02.2004 and order of sentence dated 20.02.2004 passed by learned Additional District and Sessions Judge, Fast Track Court III, Munger in Sessions Case No.58 of 1986 arising out of Barhiya P.S. Case No.161 of 1984, G.R. No.759 of 1984, whereby the trial court has convicted all above-named appellants under Sections 147, 148, 149, 307 of the Indian Penal Code (for short 'IPC') and Section 27 of the Arms Act. The appellants namely, Ram Sabad Paswan (since died), Rambhajju Paswan and Anuj Pawan @ Ramanuj Pawan (since died) have been sentenced to undergo rigorous imprisonment for seven years with a fine of Rs.3,000/- to each for the offence punishable under Section 307 of IPC, rigorous imprisonment for three years with fine of Rs.2,000/- each for the offence punishable under Section 27 of the Arms Act. Further, the appellant Ram Balak Paswan, Dasrath Paswan, Anuj @ Ramanuj Pawan (since died), Chunni Paswan and Bundi Ram further sentenced to undergo rigorous



imprisonment for seven years with fine of Rs.2,000/- each for the offence punishable under Section 149 of the IPC, whereas all the appellants have been further sentenced to undergo rigorous imprisonment for three years for the offence punishable under Section 148 of the IPC and rigorous imprisonment for two years for the offence punishable under Section 147 of the IPC and in default of payment of fine, to further undergo simple imprisonment for six months. All the sentences have been ordered to run concurrently.

4. The brief case of prosecution, as per *fardebayan* of informant namely, Ramprit Pawan (PW-4), recorded by Mr. Sohan Sah, Sub-Inspector of Police, Lakhisarai Police Station is that while informant was coming to his house after taking bath from the well of Thakurbari on 08.10.1984 at about 6.30 A.M., all the appellants-accused variously armed with *lathi*, *bhala*, *gada* and firearms were cutting the bamboos standing on the land which is situated towards east of the house of the informant. The informant Ramprit Pawan forbade them from cutting the same as proceeding under Section 145 of the CrPC was pending



between the parties with regard to the land on which bamboo clumps were grown. On objection, the appellants-accused became infuriated and appellant Dasrath Pawan ordered his associates to kill the informant, on which, the appellant-accused Ram Sabad Paswan (since died) fired from his country-made pistol, which hit to the informant in his back and front. The appellant Rambhajju Paswan also fired by his country-made pistol, which hit to his right hand and shoulder as a result of which, the informant became unconscious and fell down on the ground. After some time, when he regain to his self, found in hospital and he came to know that the accused jointly assaulted his brother Akshay Lal Paswan with *garasa* and *lathi*. The informant and his brother came to hospital for medical treatment at 10 A.M. on the same day.

5. On the basis of aforesaid *fardbeyan*, the Sub-Inspector of Police, Lakhisarai Police Station forwarded the *fardbeyan* to Barahiya Police Station for institution of a case. On the basis of aforesaid *fardbeyan*, the Officer-in-charge, Barahiya Police Station lodged a case as Barahiya P.S. Case No. 161 of 1984 for the offences punishable under Sections



147, 148, 149, 324, 307 of the IPC and Section 27 of the Arms Act against the appellants-accused. After completion of investigation, the Investigating Officer has submitted charge-sheet under Sections 147, 148, 149, 324, 307 of the IPC and Section 27 of the Arms Act against the appellants-accused.

6. The learned Jurisdictional Magistrate on the basis of materials collected during investigation, took cognizance of the offence and after compliance of Section 207 of the CrPC, committed the case to the court of sessions for trial and disposal in view of Section 209 of CrPC.

7. The learned Trial Court on the basis of materials as collected during the course of investigation explained charges to above-named appellants/accused for the offence punishable under Sections 147, 148, 149, 324, 307 of the IPC and Section 27 of the Arms Act, to which, they denied and pleaded '**not guilty**' and claimed for trial.

8. To substantiate its case, the prosecution has examined altogether seven witnesses, they are:- **PW-1 Ameerak Paswan, PW-2 Akshay Lal Paswan, PW-3 Rajendra Pawan, PW-4 Ramprit Pawan** (Informant of



case), **PW-5 Banarsi Prasad** (Tender witness), **PW-6 Sri Sohan Gope**, who recorded the *fardbeyan* of informant and **PW-7 Dr. Awadh Kishore Singh** (Medical Officer).

9. The prosecution has also relied upon following documents exhibited during the course of trial:-

Sl. No.	No. of Exhibits	Documents
1.	Exhibit-1	Affidavit of Barahiya P.S.Case No.161 of 1984.
2.	Exhibit-1/1	Affidavit of Rajendra Paswan.
3.	Exhibit-2	Affidavit of Ramprit Pawan.
4.	Exhibit-3	Protest petition.
5.	Exhibit-4	Signature of Ramprit Paswan on <i>fardbeyan</i> .
6.	Exhibit-5	Formal FIR.
7.	Exhibit-6	Injury memo of Ramprit Paswan.
8.	Exhibit-6/1	Injury memo of Akshay Paswan.
9.	Exhibit-7 to 7/1	Two injury reports.
10.	Exhibit-8	Certified copy of S.A. of Harinandan Paswan dated 25.8.1985.
11.	Exhibit-9	Certified copy of order dated 23.08.1984.
12.	Exhibit-10	Certified copy of judgment.

10. In support of their case, the defence has also



examined the following documents, which are:-

Sl. No.	No. of Exhibits	Documents
1.	Exhibit-A	Copy of injury report.
2.	Exhibit-A/1	Copy of injury report.

11. On the basis of materials surfaced during the trial, all above-named appellants/accused were examined under Section 313 of the CrPC by putting incriminating circumstances/evidences surfaced during trial against them separately, to which they denied and shows their complete innocence.

12. It is pertinent to mention that the learned trial court initially acquitted the appellants/accused but, the informant being aggrieved with aforesaid judgment, preferred Criminal Revision No.523 of 1989 before this Court and in exercise of power under Section 401(3) of the CrPC, the High Court has set aside the judgment and remanded back to the learned trial court for appreciation of evidences of PWs 2, 4 and 7 to its correct extent. After hearing both sides, the learned trial court has convicted above-named appellants/accused and sentenced them in the manner indicated above.



13. Being aggrieved with aforesaid judgment of conviction and order of sentence, the appellants/accused/convicts have preferred the present appeal.

14. Hence, the appeal.

Argument on behalf of the appellants:

15. It is submitted by Mr. Amit Kumar Jha, learned *Amicus Curiae* that the occurrence in issue was free fight in nature, which arises out of land dispute between the parties, for which a proceeding under Section 145 of the CrPC was pending. It is submitted that the alleged firing was made during the occurrence from both sides and the appellant also received gun-shot injury during the occurrence for which, the appellants' side lodged a case prior to the case of informant (PW-4), which lodged as Barahiya P.S. Case No.757 of 1984. It is pointed out that in said criminal trial of aforesaid case, the informant and other co-accused persons were acquitted under impression that the matter was compromised. It is pointed out that the injury of appellant was also exhibited during the course of trial as **Exhibit-A** and **Exhibit-A/1** but



same was not explained by the prosecution neither it was considered by the trial court. It is submitted that receiving injury was also stated by one of the appellants namely, Ram Balak Paswan (appellant no.7) while recording his statement under Section 313 of the CrPC.

16. Arguing further, it is submitted that the allegation *qua* causing physical assault against appellant nos. 1 and 2 is appearing very general and omnibus out of injured witness and also from the testimony of other witnesses, who supported the case of the prosecution. It is submitted that the injury as alleged to be caused by Ram Balak Paswan (Appellant No.7) not appears corroborated in terms of testimony of doctor. It is further pointed out that the allegation as to cause firearm injury against appellant no.4 Rambhajju Paswan is also not appears convincing for the reason that while authoring FIR, PW-4/informant categorically stated that the firing as alleged to be caused by this appellant hit to his back and the firing caused by co-accused Ram Sabadh Paswan (against whom appeal stands abated), hit on his chest and hands but during course of trial,



PW-4 deposed in very general and omnibus manner that firing as alleged to be caused by co-accused Ram Sabad Paswan and Rambhajju Paswan hit to him and caused firearm injury on his different part of body without specifying body part, as it was authored through FIR (Exhibit-5).

17. It is submitted that this allegation also appears doubtful for the reason that PW-2 who is also one of the injured testified that the country-made pistols were carrying by three co-accused persons namely, Ram Sabadh Paswan, Rambhajju Paswan and Anuj Paswan, whereas PW-4, who in actual received gunshot injury, nothing stated about Anuj Paswan that whether he was carrying any country-made pistol or not. In view of same, the injuries as alleged to be caused by appellant Rambhajju Paswan (appellant no.4) through FIR appears doubtful and this doubt not appears answered properly by the prosecution during the trial as to establish its case beyond all reasonable doubt as to secure the conviction as recorded by the learned trial court for the offence under Section 307 of the IPC.

18. It is also submitted that as the occurrence was



free fight in nature, it can be safely said that the appellants were not under intention to cause death of injured. In support of his submission, learned *amicus curiae* has relied upon the legal report of Hon'ble Supreme Court as available through **State of Himachal Pradesh vs. Shamsheer Singh [2025 INSC 503]**.

19. It is also submitted that the all witnesses are relatives and they were present while informant/PW-4 was recording his statement in Lakhisarai Sadar Hospital and, therefore, they appears interested witnesses to secure conviction. In support of his submission, learned counsel has relied upon legal report of Hon'ble Supreme Court as available through **Nandlal vs. State of Chattisgarh [(2023) 10 SCC 470]**.

20. Closing his argument, it is submitted by learned amicus that the case of appellants was lodged prior to the case lodged by informant/PW-4, which suggest that present case was lodged as an afterthought just to counter the occurrence.

21. It is also submitted that the Investigating



Officer of this case was not examined during trial, which highly prejudiced the appellants as to contradict or to corroborate the statement of prosecution witnesses, who appears supported the case of prosecution during the trial. It is submitted that non-examination of I.O. in such a case appears fatal to the case of prosecution. In support of his submission, learned *amicus* has relied upon a legal report of Hon'ble Supreme Court as available through **Munna Lal v. State of Uttar Pradesh [(2023) SCC Online SC 80]**.

Argument on behalf of State:

22. Mrs. Anita Kumari Singh, learned APP while opposing the appeal submitted that the allegation of firing is specifically available against appellant no.4 Rambhajju Paswan, which also appears corroborated in terms of testimony of PW-7, who is a doctor and examined injured/PW-4. However, she conceded that the testimony of witnesses suggest on its face that the occurrence was free fight in nature, where both parties received injuries. She also conceded that the Exhibit-A and Exhibit A/1 are the injuries reports of appellant, which suggest gunshot injuries and the



FIR of the counter case was lodged by appellants' side prior to lodging this FIR. It is submitted that the motive behind the occurrence is established i.e. the land dispute in view of the testimony of injured witness PW-2 and PW-4, which also appears in corroboration with testimony of PW-7, accordingly, the judgment of conviction as recorded by learned trial court cannot be viewed with doubt and, therefore, the same not requires any interference by this Court at appellate stage.

23. I have considered the rival submissions canvassed by the learned counsel appearing for the parties and also perused the deposition of the witnesses examined during trial before learned trial court.

24. **PW-1** is **Ameerak Pawan**, who stated in his examination-in-chief that the incident occurred two years and nine months ago at about 6 a.m. He further stated that he was going to Thakurbari well to have a bath and while on way, he reached near bamboo groves, which belongs to Harinandan Paswan, he saw Balak Paswan, Rambhajju Paswan, Ram Sabad Paswan, Aunj Paswan, Dasrath Paswan, Chunni Paswan, Bundi Ram near bamboo grove. Amongst these,



Rambhajju, Anuj and Ramsabad were carrying pistols in their hands Rambalak was carrying a digging bar, the rest were carrying sticks. He further deposed that all these persons were cutting bamboo. While Ramprit Paswan prohibited them from cutting the bamboo, then Dasrath Paswan ordered to kill. Upon this, Rambhajju Paswan and Ramsabad Paswan fired with pistol on Ramprit Paswan, which hit them as a result of which, Ramprit Paswan fell down to the ground and when PW-2 Akshay Lal ran to save him, co-accused Ram Balak Paswan attacked Akshay Lal Paswan with the digging rod but, as he stepped aside, therefore, he did not received assault. All three persons carrying sticks, hit Akshay Lal Paswan. He further deposed that Rajendra Paswan, Raja Ram Paswan, Banarsi Prasad and many people arrived there and saw the incident. In cross-examination, he deposed that he got information about the case from Ramprit Paswan. It was deposed that he stated in the affidavit voluntarily and not at the behest of Ramprit Paswan. He deposed that it is not true that Ramprit Paswan has prepared his affidavit and on that he just put his thumb impression. He further deposed that he did



not know whether Daroga has recorded his statement or not. He further deposed in cross-examination that he did not see any bleeding from the body of Ramprit Paswan. He denied the suggestion that he has deposed falsely in this case due to the counter case.

25. **PW-2 is Akshay Lal Paswan**, who testified in his examination-in-chief that the incident took place on 08.10.1984 in the morning at 6-6.30 a.m. He stated that some public cry surfaced in the east of his house and when he reached at the place of occurrence, he saw that there was fighting between Ramprit Paswan and Rambalak Paswan near to bamboo grove. He stated that Ramprit Paswan is his brother. He claims that he reached at the spot on hearing noise. He further stated that there was a fight between Ramprit Paswan (injured) and Rambalak Paswan over cutting of bamboo. On objection, Ramprit Paswan ordered to kill. Upon which, the accused Ramsabad, Rambhajju, Ramanuj, Dasrath, Chunni Paswan, Bundi Ram, who were there with Rambalak started to assault. Ram Balak Paswan was carrying *garasa*, Ramsabad, Rambhajju and Ramanuj were carrying



pistols, accused Dasrath Paswan, Chunni Paswan and Bundi Ram were carrying sticks. The accused Dasrath Paswan said to kill him. On this, Ramsabad Paswan and Rambhajju Paswan shot fire at Ramprit Paswan which hit in his hand, arm and shoulder, as a result of which, Ramprit fell down on ground. He further stated that Ramprit Paswan was also hit by the stick. He further stated that he did not saw who hit him. He further deposed that Rambalak Paswan attacked on his chest with *Garasa* but, it did not hit him. He further deposed that accused Dasrath Paswan, Bundi Ram and Chunni Paswan hit him with stick. Thereafter, all accused persons ran away from the place of occurrence. He further stated that at the time of incident, the witness Rajendra Paswan, Rajaram Paswan, Ameerak Paswan, Banarasi Prasad came and saw the incident. He further stated that he has brought his brother to Lakhisarai Sadar Hospital for treatment, where he was treated. He further stated that the statement of his brother was recorded in hospital. He further deposed that his statement was recorded at the home.

25.1. During cross-examination, he deposed that he



is not aware about the I.O. of this case. He further deposed that he does not remember whether the statement was recorded or not before the D.S.P. He further deposed that it is not correct that since he was absconding in Case No.159 of 1984, his statement was not recorded before any police office. He also deposed that accused are agnates. During cross-examination, he deposed that he has no knowledge about khata, khesra no. of disputed plot. He further deposed that Ramprit got injuries in his hands and legs. He further deposed that Dasrath, Bundi and Chunni had beated with sticks. He further deposed that witnesses had seen the incident. He further deposed that whatever he had stated in court, the same statement he had also stated before the Daroga.

26. **PW-3** is **Rajendra Paswan**, who is an independent witness, stated in his examination-in-chief that the incident occurred three years ago. It was 6.30 in the morning. At that time, he was going to attend natural call and so when he arrived near thakurbari, he saw crowd at bambo grove of Harinandan Paswan. He further stated that



Rambalak Paswan was cutting bamboo. Ramsabad Paswan, Rambhajju Paswan, Anuj Paswan, Chunni Paswan, Dasrath Paswan, Bundi Ram were there. He saw Rambalak Paswan was carrying Garasa, Ramsabad Paswan, Rambhajju Paswan and Anuj were carrying pistols and rest were carrying sticks. He further stated that all accused were cutting bamboo. He further deposed that while Ramprit Paswan prohibited them from cutting bamboo, on instigation of Dasrath Paswan to kill, Ramsabad Paswan and Rambhajju shot with pistols as a result of which, Ramprit got injured. When Akshay Lal Paswan came in rescue, Rambalak Paswan attacked him with *gada* but, it did not hit him. He stated that accused persons assaulted Akshay Lal also with sticks. He further stated that Banarsi Mahto, Rajaram Paswan, Ameerak Paswan, Akshay Lal Paswan were also there, who have witnessed the incident. He identified his signature on affidavit, which was marked as **Exhibit-1/1**. He further deposed that Daroga had interrogated him and recorded his statement. He had identified the accused Rambalak and Dasrath present in court. During cross-examination, he deposed that he did not



remember the date of incident. He further deposed that when he went to the place of occurrence, he did not see any accused injured there. He further deposed that he reached at the spot before the arrival of crowd. He further deposed that pelting of bricks took place between both the sides for one-two minutes. He was standing at the distance of 5-6 bamboos. He further deposed that his statement was recorded in front of D.S.P. 10-15 days after the incident. He did not remember that after how many months of the incident, he came to Munger to record his statement. He further deposed that it is not true that he has falsely testifying at the behest of Ramprit.

27. **PW-4** is **Ramprit Paswan**, who is informant of this case, has stated in his examination-in-chief that the occurrence took place on 08.12.1984 at 6:30 A.M. He was going to home after having a bath at thakurbari well. He further deposed that when he arrived near the bamboo grove, saw that 5-6 persons were cutting his bamboo. He further stated that Ramsabad Paswan, Rambhajju Paswan, Rambalak Paswan, Ramanuj alias Anuj Paswan, Dasrath Paswan,



Chunni Paswan and Bundi Ram were present there. Ramsabad and Rambhajju were carrying country-made pistols, Rambalak was carrying gadasa, Ramanuj were carrying stick and rest were also carrying sticks. He further deposed that when he prohibited them from doing so, Dasrath Paswan ordered to kill him. Upon this, Rambhajju and Ramsabad Paswan shot him with his country-made pistol due to which, he got injured. One bullet hit his left chest, one in the upper part of the left chest and another in the right hand. He also received injuries at two places in the right hand. He further stated that he went unconscious and fell down after receiving gun shot and when he returned to his self, he came to know that Akshay Lal had came to rescue him. He further stated that accused were also chased him and hit him with *garasa*. He also received stick injuries. He further stated that he returned to his self in Lakhisarai Hospital. He further stated that bullet was also removed from his body. He further stated that he got his statement recorded in Lakhisarai hospital. His statement was recorded by Daroga, Sohan Gope. He signed on *fardbeyan*. He further stated that he has



identified his signature on *fardebayan*, which upon identification, was exhibited as **Exhibit No. 2**. He further stated that police has not investigated his case properly in collusion with the father of accused, who is chowkidar. He further stated that he filed a protest petition in court. On his protest petition he has put his signature, which upon identification, exhibited as **Exhibit No.3**. He identified the accused Rambalak Paswan in court and claimed that he would identify the rest of the accused on seeing them.

27.1. During cross-examination, he deposed that accused are his relatives. They are sons and grandsons of Lalit Paswan. Lalit Paswan is his uncle. He deposed that no fight took place with accused. He further deposed that vest and lungi neither got opened nor got torn during the occurrence. He further deposed that he did not disclose the names of these witnesses in his *fardebayan* to the police because all the witnesses were present there and they told the police that they had seen the incident. He further deposed that at the time of recording his *fardebayan* all witnesses were present there. He further deposed that Daroga came at the



time of recording of *fardbeyan*. He further deposed that he did not see whether daroga had recorded the statements of those witnesses or not. He further deposed that his statement was again recorded in front of A.S.I. Devpati Mishra, 4-5 days after the *fardbeyan*. During cross-examination, he deposed that it is not true that Rambalak and Ramsabad were injured before this incident and Ramsabad had got gun shot. He further deposed that it is not true that Ramsabad had caught him, Akshay Lal Paswan tried to free him. It was further deposed that it is true that his statement was never recorded before the police except the *fardbeyan*. He further deposed that he was accused in the counter case filed by Ramsabad but, he was acquitted. He further deposed that two bullets are still present in his arm. He further deposed that he did not remember whether he said to see garasa in the hand of Rambalak in the *fardbeyan*. He denied to have deposed falsely. He denied to have filed false case to dilute the counter case.

28. **PW-5** is **Banarsi Prasad**, who is tendered witness.



29. **PW-6** is **Sohan Gope**, who was Sub-Inspector of Police has stated in his chief that on 08.12.1984 he was posted there. On the same day, he has received O.D. slip of injured Ramprit Paswan in the police station from Sub-Divisional Hospital, Lakhisarai and thereafter, proceeded to hospital for recording the *fardbeyan* of injured Ramprit Paswan. He identified his handwriting on *fardbeyan* upon which, he has taken the signature of Ramprit Pawan, which upon identification, exhibited as **Exhibit No.-4**. He further stated that he has forwarded the *fardbeyan* to Barahiya Police Station since the incident took place in its jurisdiction. He identified the handwriting of Md. Samse Alam, S.I. on formal FIR, which upon identification, exhibited as **Exhibit No.5/1**. He deposed that he recorded *fardbeyan* in Lakhisarai hospital. The signature of Ramprit Paswan is in Hindi. He further deposed that wherever he saw the injury and bandage, he prepared its injury report. He received injury report at 17.30 O' clock just after recording the *fardbeyan*. He further deposed that he sent the *fardbeyan* directly to Barhiya Police Station. He received the injury report of injured after



recording *fardbeyan* and this is the same injury report which bears his handwriting and signature, which upon identification, was exhibited as **Exhibit No.6**. He also prepared the injury report of one Akshay Lal Paswan, which is in his handwriting, which upon identification was exhibited as **Exhibit No.6/1**.

29.1. Upon cross-examination, he stated that he found five wounds on the body of Ramprit Paswan. He further deposed that he had not written in memo that whether any wound was bleeding. He found wounds with blood on the body of Akshay Lal. He denied to have prepared a fake injury report.

30. **PW.-7** is **Dr. Awadh Kishore Singh**, who is Medical Officer was posted at Sub-Divisional Hospital, Lakhisarai. He stated that on that date, he prepared injury report of injured Ramprit Paswan after recording of *fardbeyan* and also prepared the injury report of Akshay Lal Paswan and found the following injuries on his body:-

- “(i) Linear scratch 5” on the back of left shoulder caused by hard and blunt substance.
- (ii) Linear scratch 3” on the top of left shoulder caused by hard and blunt substance.



(iii) Abrasion 1/4" x 1/6" irregular margin on the forehead just above and lateral to the left eyebrow caused by hard and blunt substance.

(iv) Swelling 2 1/2 " x 1/2" on the lateral side of left buttock caused by hard and blunt substance".

He has proved his writing and signature on the injury report which is marked as **Exhibit 7 and 7/1.**

He further examined injured Ramprit Paswan and found the following injuries on his body:-

"(i) One circular abrasion with charring having 1/4 cm diameter on the upper part of right forearm anterior placed. Nature of injury caused by fire-arm.

(ii) One circular abrasion with charring having 1/4" cm diameter on the upper arm middle portion anteriorly left side caused by fire-arm.

(iii) One circular abrasion with charring having 1/4" diameter on the middle portion of the clavical left side caused by fire-arm.

(iv) One circular abrasion with charring having 1/4" diameter on the back and middle portion in scapular region right side caused by fire-arm.

(v) One circular abrasion with charring and also lodged with a pellet which was removed under local anesthesia on the top and back of the left shoulder caused by fire-arm.

(vi) Abrasion 1 1/2" x 1/2" with irregular margin on the forearm right side anteriorly adjacent to the elbow joint caused by hard and blunt substance.

(vii) Liner scratch 1" length on the top of the left



shoulder caused by hard and blunt substance”.

31. It appears that the statement under Section 313 of the CrPC of accused/appellants has been recorded by learned trial court in very cryptic and mechanical manner and same is not acceptable under law in view of legal ratio as settled through **Sukhjot Singh vs. State of Punjab [(2014) 10 SCC 270]**, 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."

32. From perusal of record, it appears that the Investigating Officer of this case has not been examined during the trial. In this context, it would be apt to reproduce relevant paragraph of the legal report of Hon'ble Supreme Court as available through **Munna Lal v. State of Uttar Pradesh (supra)**, which are as under:-.

"38. First, statement of PW-3 under section 161, Cr. P.C. was recorded nearly 24 days after the incident. Since the Investigating Officer did not enter the witness box, the appellants did not have the occasion to cross-examine him and thereby elicit the reason for such delay. Consequently, the delay in recording the statement of PW-3 in course of investigation, is not referred to and, therefore, remains unjustified. The possibility of PW-3, being fixed up as an eye-witness later during the process



of investigation, cannot be totally ruled out”.

39. *Secondly*, though PW 4 is said to have reached the place of occurrence at 1.30 p.m. on 5-9-1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eyewitnesses i.e. PW 2 and PW 3, not being found by this Court to be wholly reliable. The missing links could have been provided by the investigating officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the investigating officer could not depose as a witness, as told by PW 4, is that he had been sent for training. It was not shown that the investigating officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the investigating officer.

40. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the



evidence of PW 2 and PW 3 not being wholly reliable, this Court holds the present case as one where examination of the investigating officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case”.

33. It appears that the witness examined during trial are interested and related witnesses. In this context, it would be apt to reproduce paragraph No. 32 and 33 of the legal report of Hon’ble Supreme Court as available through **Nandlal vs. State of Chattisgarh** (supra), which are as under:-

“32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in *Vadivelu Thevar v. State of Madras* [1957 SCC OnLine SC 13], has observed thus:

“11. ... 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.”

33. It could thus be seen that in the category of “wholly reliable” witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of “wholly unreliable” witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a “wholly unreliable” witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial”.

34. It would be apposite to reproduce paragraph



no. 4 and 5 of the legal report of Hon'ble Supreme Court as available through **State of Himachal Pradesh vs. Shamsher Singh** (supra), which are as under:-

“4. On an appeal preferred by the accused-respondent, the aforesaid conviction has been set aside and he has been acquitted for the offence under Section 307 IPC and Section 27 of the Arms Act, 1959 but has been convicted for the offence under Section 326 IPC and sentenced with imprisonment already undergone.

5. The High Court in acquitting the accused-respondent held that for an offence under Section 307 IPC, the court was obliged to see if the act was done with the intention or knowledge so as to cause death and since the facts do not prove such intention or knowledge on part of the accused-respondent, there cannot be an offence for attempt to murder under Section 307 IPC. It also observed that the intention has to be gathered from the entire circumstances of the case such as nature of the weapon used, the manner in which it was used, severity of the blow or hurt, the part of the body where the injury was inflicted and so on and not merely from the end result”.

35. Taking note of aforesaid available evidence as surfaced during trial, it is an admitted position that occurrence was free fight in nature, where both parties



received injuries. The case of appellant for same set of occurrence lodged by appellant side prior to this case. Police upon investigation submitted final form against appellants. Injuries of appellants, which was also of gunshot could not explain by prosecutions. I.O. of this case could not examined during trial, which also appears fatal for prosecution. PW-1, PW-2 and PW-3 deposed to arrived after actual occurrence. Allegation of firing appears general and omnibus out of testimony of PW-4, whereas same was stated in specified manner in FIR. PW-4 deposed that only two accused persons were carrying country-made pistol, whereas he was silent about Anuj Paswan (since died). All such unanswered events creates a doubt *qua* occurrence, which creates a serious doubts, the benefit of which must be extended to accused/appellants.

36. In view of aforesaid testimony of witnesses, who are related to informant (PW-4) cannot be wholly reliable as they appears interested witnesses in view of **Nandlal's case** (supra).

37. Statement of appellants/accused also appears



recorded in very cryptic and mechanical manner in view of Section 313 of the CrPC, as discussed aforesaid.

38. The impugned judgment of conviction dated 19.02.2004 and order of sentence dated 20.02.2004 passed by learned Additional District and Sessions Judge, Fast Track Court III, Munger in Sessions Case No.58 of 1986 arising out of Barhiya P.S. Case No.161 of 1984, G.R. No.759 of 1984 is, hereby, set aside.

39. Accordingly, the appeal stands allowed. Appellants are acquitted by giving benefit of doubt. Since all above-named appellants/accused are on bail, they are discharged from their liabilities of bail bonds. Sureties stand discharged.

40. Fine, if any, paid be returned to the appellants/accused henceforth.

41. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.5,000/- (Rupees Five Thousand) to Mr. Amit Kumar Jha, learned *Amicus Curiae* as consolidated fee for rendering his valuable professional service for the disposal of present appeal.



42. Office is directed to send back the lower court records along with a copy of the judgment to the court below.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24-12-2025
Transmission Date	24-12-2025

