

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.377 of 2003

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1. Kulbansh Singh S/O Ambika Singh R/O Vill.- Bahera, P.S.- Sonhan, Dist.- Kaimur
 2. Ramswarath Singh @ Arbind Singh S/O Ambika Singh R/O Vill.- Bahera, P.S.- Sonhan, Dist.- Kaimur

... .. Appellants.

Versus

The State of Bihar.

... .. Respondent.

Appearance :

For the Appellant/s : Ms. Surya Nilambari, Amicus Curiae
For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT

Date : 06-02-2026

The present appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') has been preferred against the judgment of conviction and order of sentence dated 30.07.2003 passed by the Court of learned 1st Additional Sessions Judge, Bhabua in Sessions Trial No.166/97 of 1987/1998, arising out of Bhabua (Sonhan) P.S. Case No.29/87, whereby and whereunder the appellants have been convicted under Section 307 of the Indian Penal Code (hereinafter referred to as the 'IPC') and sentenced to undergo rigorous imprisonment for five years. The appellants have been further sentenced to undergo rigorous imprisonment for three years for conviction under Section 27 of the Arms Act.



2. From a perusal of the order-sheets, it appears that the appeal with regard to convict (appellant) Ambika Singh has already been abated vide order dated 24.11.2025 and now this appeal survives only as against appellants Kulbansh Singh and Ramswarath Singh, appellants no. 1 and 2 respectively.

3. The short facts of the case as per the First Information Report based on the fardbeyan of Bairister Singh (P.W.6), which was recorded by A.S.I., R.S. Pandey (P.W.11) of Bhabua P.S. on 01.02.1987 at about 5:30 pm was that on the same day i.e. on 01.02.1987 at around 2 pm, the goats of his co-villager, Ambika Singh were grazing his field and upon seeing the same, his father Guptnath Singh (P.W.5) brought the goats to his sitting place. In the meantime, the villagers Ram Pravesh Singh, Ram Swarath Singh alias Arbind Singh and Kulbansh Singh, armed with guns, while Ambika Singh armed with a Bhala, came to the door of the house of the informant and indulged in hurling abuses while enquiring as to why his goats were brought to the house of the informant. On such issue, a verbal embroil ensued between the parties and in course of such verbal altercation, Ambika Singh exhorted his son to kill everyone, whereupon his son, Ram Swarath Singh alias Arbind Singh fired at the father of the informant, Guptnath Singh with



his country made gun on account of which he sustained pellet injuries on the neck, face, chest and other places and fell down with the said injuries. It has further been alleged that when informant and his uncle Suraj Nath Singh (P.W.4) tried to intervene in the matter, Kulbansh Singh fired with his country made gun at Suraj Nath Singh, uncle of the informant, causing injury near his left eye and other places, while Ambika Singh inflicted a Bhala blow upon the informant due to which he sustained injury on his right hand. Upon hearing the sound of alarm, Dinanath Singh (P.W.1), Ramjee Singh (P.W.9) and the informant's younger brother, Shyamdeo Singh (P.W.3) along with several other co-villagers arrived at the place of occurrence but they ran away to their houses upon hearing the fact that the father of the informant was shot at. The injured Guptnath Singh was brought to the hospital in an unconscious condition and he was not in a position to give his statement.

4. On the basis of the above-mentioned fardbeyan of Bairister Singh (P.W.6) Bhabua P.S. Case No.29 of 1987 was instituted under Sections 447, 324 and 307/34 of the I.P.C. and Section 27 of the Arms Act. After investigation, chargesheet was submitted on 03.04.1987 in the Court of learned Additional Chief Judicial Magistrate under Sections 326, 324 and 307/34 of



the I.P.C. and Section 27 of the Arms Act against the accused persons including the present appellants, whereupon cognizance was taken and the case was committed to the Court of Sessions being numbered as Sessions Trial No.166/97 of 1987/1998, whereafter the charges were framed by the learned Trial Court against the appellants under Sections 326 and 307 of the I.P.C. as also under Section 27 of the Arms Act on 10.05.1989.

5. The prosecution, in order to substantiate its case, has examined altogether 12 witnesses out of whom, P.W.1-Dinanath Singh is the uncle of the informant, P.W.2-Jang Bahadur Singh is the son of P.W.9-Ramjee Singh, P.W.3-Syamdeo Singh younger brother of the informant, P.W.4-Suryanath Singh uncle of the informant, P.W.5-Guptnath Singh, father of the informant and P.W.6-Bairister Singh is the informant himself. All these witnesses have claimed themselves to be eye witnesses, while P.Ws.4, 5 and 6 are even said to be injured eye witnesses. P.W.7-Dr. R.N. Saran is the medical expert who examined the injuries of all the three injured persons i.e. P.Ws.4, 5 and 6, while P.W.8-Rup Narain Singh is a formal witness who has identified the handwriting on the formal F.I.R. and P.W.9-Ramjee Singh has been tendered for cross-examination. Gauri Shankar Singh, the Investigating Officer of



the case, has been examined as P.W.10, P.W.11-Ram Sideshwar Pandey recorded the fardbeyan of P.W.6 while P.W.12-Gauri Shankar Pandey another formal witness who identified the signature on the discharge slips marked as Exts.5 to 5/1 and prescriptions as Exts.6 and 6/1 respectively.

6. On behalf of the defence, three witnesses have been examined and they are all formal in nature and have proved certain documents with regard to indicate litigation between the parties.

7. After closing the prosecution witnesses, the learned Trial Court proceeded to record the statement of the appellants under Section 313 Cr.P.C. on 28.07.1998, enabling them to personally explain the circumstances appearing in the evidence against them, however they denied the said charges and circumstances.

8. The learned Trial Judge, upon appreciation, analysis and scrutiny of the evidence adduced during the trial, has found the appellants guilty of the offences under Section 307 of the I.P.C. and Section 27 of the Arms Act, while acquitting the appellants under Section 326 of the I.P.C. and has sentenced them to imprisonment by the impugned judgment of conviction and order of sentence as narrated in the foregoing paragraph.



9. I have heard the arguments of Ms. Surya Nilambari, learned Amicus Curiae for the appellants and Ms. Anita Kumari Singh, learned APP for the State at length.

10. It has been argued on behalf of the appellants that the prosecution has failed to establish its case beyond all reasonable doubts and despite witnesses having been examined on behalf of the prosecution, who have even been shown to be injured witnesses, their evidence are worth discarding on account of the fact that they have not come up with the true picture of the case and have left several questions unanswered leading to several loopholes in the prosecution case. Learned amicus has argued that the present case rests on the evidence of very closely related witnesses and the sheet-anchor of the entire prosecution is the medical evidence, which has been adduced in the form of the evidence of P.W.7, Dr. R.N. Saran, who has indicated the presence of several injuries on the person of the injured witness, Guptnath Singh. The doctor (P.W.-7) has noted the injuries numbering to several lacerated wounds, making it a total of as many as 19 lacerated injuries and he has opined that all the injuries mentioned in the said report were grievous and caused by firearms. In this regard, it has been argued that the said injury report is not worth believing and the medical expert



seems to have gone overboard in his enthusiasm, by indicating so many injuries and this has to be viewed in the background of the fact that although the injuries are said to have been caused by pellets, the X-ray plate showing that 13 pellets have been found in the skull and 17 pellets in the chest but, as a matter of fact, not a single pellet has been recovered from the body of the injured and produced before the Court.

11. Ms. Surya Nilambari has further argued that it is not the case of the prosecution that the pellets or traces of firearm shots were recovered at the place of occurrence in order to substantiate the fact that the injured persons have received such firearm injuries. The next glaring factor that has been submitted with regard to the genuineness of the injury report, which seriously questions the very existence of injury upon the injured person is the fact that neither any X-ray plate nor any X-ray report has been brought on record in order to lend any credence to the finding of the injury by the concerned doctor. The entire story of getting injured and the treatment undergone by the injured persons further gets shrouded in mystery on account of the fact that both P.Ws.4 and 5 have made clear statements in their depositions during trial that they had been taken to the Banaras Hindu University Hospital (B.H.U.) for



treatment. However, the statement of the injured witness, Guptnath Singh (P.W.5) was recorded at the Bhabua hospital on the third day of the occurrence while P.W.4-Suryanath Singh, uncle of the informant also an injured witness, has stated in his evidence that they were taken to B.H.U. at 8 pm on the date of occurrence and came back to Bhabua on the 2nd morning from Banaras. It has been argued that there is no document whatsoever, indicating any such reference to Banaras or any treatment undertaken by the injured persons on record and the doctor has also negated the fact that he had referred the injured to any higher center for treatment by deposing that he does not remember that he had referred the patient to any higher center for treatment. The medical evidence further becomes doubtful in view of the fact that as to how the injured persons, after having received the number and kind of injury as indicated in the injury report, would have been in a position to travel to Banaras and come back to Bhabua in a day and if Banaras was a higher center, what could be the justifiable reason to come back to Bhabua hospital.

12. It has also been argued that the doctor (P.W.7) has failed to state anything about the treatment given to the injured by his hands for such grievous injury having been



suffered by them and has merely indicated the presence of the injuries and their nature and has completely abstained from disclosing the nature of the treatment given by him. In the background of such facts, it has been submitted that reasonable doubts arise with regard to the genuineness of the injury report with regard to the allegations of firing made by the appellants on account of which P.Ws.4 and 5 were said to have sustained grievous injury. A reference has been made in this regard to the case of **State of Haryana vs Bhagirathi** reported in **1995 (5) SCC 96** to contend that even the medical opinion can be tested on the ground of logic or objectivity whether it is consistent with the probability.

13. Learned amicus has posed serious challenge to the credibility of the prosecution witnesses in view of their statements with regard to the injuries received by them, which do not get adequately supported by the suspicious nature of the injury report and also in the background of the fact that they are inimically disposed towards the appellants as it is an admitted fact that there was animosity between the parties and also litigation pending between them and in support of the same the defence witnesses have also been examined who have led evidence, oral and documentary, to prove the strained relations



(Ext. A to G). Further, no independent witness has been examined on behalf of the prosecution although the occurrence is said to have taken place in an open place. In this context, it has also been argued that the place of occurrence has also not been established by the prosecution, as at some places, the witnesses have talked about the act of firing having been indulged from the roof of the house whereas the Investigating Officer, while describing it, has said that it was one storied house and did not mention of any terrace. Further, no other incriminating articles have been recovered from the place of occurrence in order to establish and fix the place of occurrence. It has further been argued that the very initiation of the case in the form of lodging of the First Information Report does not clarify as to what was the source of information to the police with regard to the said occurrence as neither the Investigating Officer nor the person who has lodged the fardbeyan has made any indication as to how the police came to know about the commission of the offence and as to how the injured person came to Bhabua hospital. It is further submitted that the entire case has been framed upon a very petty issue of goats of the appellants having grazed the fields of the informant, due to which the informant had brought the goats to his house. While



pointing towards all these factors coupled with the several inconsistencies and contradictions in the submissions of the prosecution witnesses, it has been argued that since the testimony of the witnesses are not credit worthy, their evidence ought not have been relied upon for reaching the finding of guilt. In this regard reference has been made to the case of **Vadivelu Thevar vs State of Madras** reported in **AIR 1957 SC 614** wherein the three categories of witnesses have been discussed and it has been held that in case of witnesses falling in the third category, who are neither wholly reliable nor wholly unreliable, the Court has to be circumspect and look for corroboration in material particulars by reliable testimony. In absence of reliable testimony, it has been argued that the impugned judgment of conviction and order of sentence is fit to be set aside.

14. *Per contra*, Ms. Anita Kumari Singh, learned APP for the State has submitted that the First Information Report has been lodged with all promptness and, as such, there does not seem to be any reason to doubt the initiation of the case in the form of the First Information Report. Moreover, the prosecution witnesses have supported their case not only as eye-witnesses but also being the injured eye-witnesses whose



testimonies cannot be discarded unless very strong or compelling reasons exist for the same. She has also argued that only by virtue of the witnesses being related to each other would not take away the authenticity of their statements and the medical evidence is also corroborative of the oral testimony. As such, the prosecution through its witnesses, has been able to establish its case beyond all reasonable doubts and the impugned judgment of conviction and order of sentence does not warrant any interference.

ANALYSIS AND CONSIDERATION

15. I have minutely perused both the oral and documentary evidence, besides hearing the learned counsel for the parties. Before proceeding further, it would be necessary to cursorily discuss and analyze the relevant evidence on record.

16. P.W.-1, Dinanath Singh, the uncle of the informant has stated before the police that he saw the occurrence but it remains an admitted position that he reached the place of occurrence after the alleged incident had already occurred. From his evidence, it can also be inferred that he did not disclose the names of the persons, who allegedly fired at the informant and other victim and he also did not state before the police as to on which body part both the P.W.-4 and P.W.-5 had sustained



injuries. This witness has also admitted that he was not present when the police was taking the statement of the informant (P.W.-6) at the hospital. P.W.2, Jang Bahadur Singh is the son of another prosecution witness PW-9 and although he has tried to portray himself as an eye-witness, his evidence would also indicate that when he reached the place of occurrence, he found Suryanath Singh (P.W.4) and Guptanath Singh (P.W.5) in standing condition but, in the same breath, it has been stated that it was they who disclosed the names of the assailants to the witnesses. If it is taken to understand that several gun shots had been fired on these witnesses P.W.-4 and P.W.-5 in the presence of P.W.-2, then it does not stand to reason as to how he has made such statement that he found both P.W.-4 and P.W.-5 in standing position and without any bleeding. However, the presence of this witness at the time when the occurrence took place is rendered doubtful, in view of the evidence of P.W.-1, Dinanath Singh, who claims to have reached the place of occurrence first and states that P.W.-2 and P.W.-3 both had reached after him and at the time when he had reached, the occurrence had already taken place. In view of the statement of P.W.-1, Dinanath Singh, the evidence of P.W.-2, Jung Bahadur Singh and P.W.-3, Shyamdeo Singh, who are claiming themselves to be eye-witnesses,



becomes doubtful.

17. It now becomes important to deal with the evidence of P.W.-4, Suryanath Singh, P.W.-5, Guptanath Singh and P.W.-6, Bairister Singh, who are all claiming to be injured witnesses. So far as the evidence of P.W.-4, Suryanath Singh is concerned, he also stated that at the instigation of appellant Ambika Singh, the appellants went on the roof and fired which proposition itself appears to be absurd as when the persons are armed with firearms there could have been nothing deterring them from opening fire had there been any intention to kill or cause serious injuries and there would be no reason for persons going up on the roof for the said purpose. He has made specific allegations on appellant, Kulbansh Singh of having fired at him and upon Ambika Singh of having assaulted the informant with spade on his hand. However, his evidence also discloses that after treatment from Bhabua hospital they went to B.H.U. and returned the next morning i.e. on 02.02.1987, but he has not disclosed any manner as to what was the treatment that was given to the injured persons at Banaras and what was the occasion of the injured persons out of whom one PW-5 had allegedly suffered several pellet injuries of being taken to Banaras and being brought back to Bhabhua.



18. So far as the evidence of PW-5, the injured Guptanath Singh is concerned, he has claimed that he became unconscious upon the firing being made at him and he gained consciousness at the Banaras Hospital on the next day. After gaining consciousness, he disclosed the names of the assailants to Shyamdeo Singh (P.W.3) and Suryanath Singh (P.W.4) and has further stated that he had no knowledge about the injury report and that he also did not show the medical documents of the Banaras hospital or of Bhabhua hospital and he also did not have any idea whether anyone has shown such documents or not. This witness has also denied his awareness about the land dispute existing between the parties.

19. P.W.-6, Bairister Singh is the informant of this case as also the injured eye-witness, who has also reiterated the story of the appellants going on the roof for the purposes of firing, which stands contradicted from the evidence of the Investigating Officer (PW-10) as he has denied the fact that any such story had been stated before him. There are several statements made with regard to the X-ray plate etc. being given to the doctor, but the fact remains that there is no X-ray plate or X-ray report on record, which would lend credence to his statement that there was actually an X-ray report and an X-ray



plate based upon which the doctor had given his opinion with regard to the injuries. His further statement with regard to finding of pellets by the Investigating Officer at the place of occurrence also gets no support from the evidence of the Investigating Officer as he himself stated that he does not remember as to how many pellets were found and whether any document with regard to recovery of such pellet or blood found at the place of occurrence was prepared or not.

20. The thrust of the argument on behalf of the defence relates to extremely doubtful nature of medical evidence that has been brought on record by means of the injury reports and the evidence of the doctor (P.W.-7). Before analyzing the evidence of the doctor (P.W.-7), it would be imperative to note as to what were the injuries that the doctor found on the person of Guptanath Singh (P.W.-5), as such, the injuries are being noted hereunder:

I. Five lacerated wounds 1/4" x 1/4" muscle deep on the front aspect of neck.

II. Four lacerated wounds 1/4" x 1/4" muscle deep on the upper part of the front of chest.

III. Five lacerated wounds 1/4" x 1/4" muscle deep on the forehead.

IV. One lacerated wound 1/4" x 1/4" muscle deep on the left side of face below left eye.

V. Three lacerated wounds 1/4" x 1/4" muscle deep on the right side of face.

VI. One lacerated wound 1/4" x 1/4" muscle



deep on the chest.

21. Upon looking at the injuries that have been noted in the injury report as also in the evidence of the doctor, it appears that as many as 15-19 pellets injuries have been reported to be present and all the injuries have been mentioned to be grievous in nature, but it seems strange as to how after sustaining the kind of injuries, as has been stated, the injured persons were in a position to go to Banaras and come back from there to the Bhabhua hospital. It also remains a fact that there is no document whatsoever with regard to any treatment having been done at Banaras and yet the prosecution has brought the case of going to Banaras by means of definite oral evidence, thereby rendering the circumstances suspicious.

22. So far as the injury report issued by the doctor (P.W.-7) is concerned, the same is based upon a view of the X-ray plate showing thirteen pellets to be found in the skull and eleven pellets to be found in chest as admitted by the doctor. In such a situation, it was extremely imperative to bring the X-ray plate/report on record as the entire narration of injuries and the opinion of the doctor is based upon the same. The failure of the prosecution to bring the X-ray plate on record has a devastating effect on the case of the prosecution with regard to actual injuries sustained and it goes to the very core question, as to



whether these witnesses were injured at all and whether injury report has been prepared on the basis of some fake and manufactured X-ray plates or completely manufactured injury report has been brought on record totally in absence of any X-ray report being in existence. This Court also finds that the medical evidence indicates only the existence of injuries, their basis and the nature of these injuries. The evidence is totally silent upon the nature of treatment, having been given to the patients, who are the eye witnesses and, thus, it raises a considerable amount of doubt in the mind of this Court, as to whether these witnesses were actually treated by the doctor as in case if the present doctor would have been the treating doctor of these witnesses, he would have thrown some light on the treatment having been given to the witnesses.

23. The other factor which further enhances the doubt on the existence of the injuries as alleged is that not a single pellet is said to have been recovered from the body of the injured, as admitted by the doctor, and the basis of his findings is only the X-ray plate, which is nowhere to be found. The defence giving a direct suggestion to the doctor that the injury reports have been prepared in collusion with the victims can not be said to be without any basis. At this stage, it would be apt to



refer to the case of ***Ram Singh Vs. State of Uttar Pradesh*** reported in **(2024) 4 SCC 208**, the relevant paragraph is being quoted hereunder:

“25 There is no explanation of the prosecution regarding the 55 pellets retrieved from the body of the deceased during post-mortem; whether those could be linked to to the 12 bore cartridge and the tikli. Importantly, the country-made pistol was never recovered. The prosecution has not said anything in this regard. ...”.

24. Further, In the case of ***Rajvir Singh Vs. State of Punjab*** neutral citation **2023:PHHC:080882-DB**, the relevant paragraph is being quoted hereunder:

“17. In the absence of examination of the doctor who had conducted radiological examination of the victim and further in the absence of specific X-ray reports and X-ray films, no conclusion could obviously be drawn that the injuries which were opined to be grievous were in fact so in nature....”

25. Also, in the case of ***Ishtiyag Ahmed Vs. State of Rajasthan, Through PP and others*** reported in **2025 SCC OnLine Raj 7118**, wherein the importance of the X-ray plate and the X-ray report has been noticed for giving a finding and



an opinion upon the existence and of nature of injuries. For ready reference, para-18 of the said judgment is being quoted hereunder:

“18. it is clear that for the purpose of determining the nature of injury, examination of the medical jurist, simplicitor would not be sufficient and the Radiologist, based upon whose X-ray report, the medical jurist has given his evidence, will be required to be examined and the X-rays will be required to be exhibited for determining the actual nature of injury. Thus, the examination of Radiologist is essential when the offence alleged is under Sections 326 and 307 IPC as it is only post his examination that the details of the X-ray and the nature of injury, based upon the X-ray can be brought on record.”

26. Upon discussing the entire medical evidence, this Court finds that the defence has succeeded in raising substantial doubt with regard to the genuineness and authenticity of the entire injury report as well as the medical evidence adduced in support of the same.

27. After having gone through the entire evidence both oral and documentary, this Court is convinced that there exists compelling reasons to doubt the evidence of the prosecution witnesses, who have even claimed to be injured in



the alleged incident. Their evidence is replete with inconsistencies with regard to the very basic fact of treatment of their injuries and the entire story of going to Banaras and coming back to Bhabhua hospital. Prosecution witnesses have given varied statements and from the evidence of so called injured witness P.W.-4, it is gathered that from the Bhabua Hospital the injured were taken to Banaras at 8:00 p.m. on the date of occurrence and he has stated that only he and P.W. 5 had been admitted in the hospital for treatment, whereas P.W. 6 had been discharged on the same day. P.W.5, Guptnath Singh also admits to have gained consciousness only in Banaras, on the next day of occurrence, and his statement was recorded on the third day of the occurrence at Bhabua Hospital. It thus appears that both the witnesses P.W. 4 and P.W. 5 have supported the fact that they were taken to hospital in Banaras for treatment on 01.02.1987 and brought back on 02.02.1987. However, there is complete dearth of any documentary evidence in order to prove that they received treatment at either of the two hospitals at Bhabua or at Banaras. The injury report of the Bhabua hospital, as stated earlier, merely refers to the existence of injuries and its nature. No evidence has been adduced to shed any light on the treatment that was given to the injured person. There is no iota



of doubt on the proposition that the evidence of injured witnesses are accorded special status and have to be kept at a much higher pedestal as they have a greater evidentiary value. It is also true that their testimony cannot be brushed aside or discarded unless some very cogent or compelling circumstances exist for doing so. This proposition has been clearly laid down in the case of *Abdul Sayed Vs. State of Madhya Pradesh* reported in (2010) 10 SCC 259. However, it has been held in the case of *Zainul Vs. State of Bihar* reported in (2025) 6 BLJ 130 SC, that before court accepts testimony of an injured witness, it has to be satisfied that he is a truthful witness and had no reason to falsely implicate accused persons. Reasonable doubt may also arise on the truthfulness of such witnesses in cases where the parties are at logger heads or are inimically disposed towards each other and further gets aggravated in a situation when the case stands supported only by related witnesses, being the family members and no independent witness comes in support thereof. However, the present case, strictly speaking, could be taken out of the preview of considering the prosecution witnesses on a high pedestal of being injured witnesses since the very existence of injuries on the person of the prosecution witnesses is under serious challenge and remains extremely shrouded in doubt.



28. It is also to be considered that there are glaring laches in investigation inasmuch as the Investigating Officer of this case has not cared to collect any incriminating materials, the pellets or trail of blood or blood stained clothes etc. which would have been extremely essential to prove the prosecution case. The absence of such incriminating materials, especially in the background of the fact when the prosecution has tried to put-forth a case of indiscriminate firing and several injuries being caused to the injured persons with blood oozing out, would definitely deal a fatal blow to the case of the prosecution. The failure on the part of the Investigating Officer to collect any objective evidence from the place of occurrence leads to the further situation that the place of occurrence itself not being proved. In the case of *Munuwa vs State of U.P.* reported in **(2023) 1 SCC 714 : 2022 SCC OnLine SC 1097**, the significance of collection of incriminating materials from the place of occurrence, especially in a situation when several rounds of firing have been made has been reiterated. For ready reference, paras-24 and 25 of the said judgment is being quoted hereunder:

“24. It is unnatural that not even single drop of blood could be traced or recovered from the chair or the floor where



the deceased and PW 6 were sitting, casting a serious doubt about the veracity of the prosecution's story regarding the place of the incident. It is common knowledge that a place where a severe bodily injury occurs, it naturally leaves a trail of the incident [In Meharaj Singh v. State of U.P., (1994) 5 SCC 188 : 1994 SCC (Cri) 1391, this Court held : (SCC p. 197, para 13)“13. ... The absence of any blood in the field of Kirpal Singh as also the absence of blood trail from the field of Kirpal Singh to the place where the dead body was found, as admitted by PW 8, also suggests that the occurrence did not take place in the manner suggested by the prosecution and that the genesis of the fight has been suppressed from the court.”A similar view was taken in Ramsewak v. State of M.P., (2004) 11 SCC 259, wherein it was held : (SCC pp. 265-66, para 14)“14. ... We also notice that there is considerable doubt in regard to the place of incident also. From the medical evidence we notice that the deceased suffered 3 major incised wounds leading to the severance of the blood vessels and amputation of his hand near the wrist and the body in question was lying at the spot till the police came which was nearly 4 to



5 hours later but still the investigating agency was unable to find any blood on the spot. Of course, the prosecution has given an explanation that after the incident in question it had rained but even then it is difficult to believe that even traces of blood could not have been found on the soil in spite of the rain. The absence of any such material also supports the prosecution case that the incident in question might not have happened at the place of incident.”(emphasis supplied)] . It is also common for the prosecution to collect proof of bloodstained earth, clothes, or other materials, from where the incident would have occurred.

25. On this aspect there is only a tangential observation in evidence of PW 6, who stated that the deceased's “injured body part had been wrapped with tehmand”. This statement fails to explain the lack of any bloodstains at the crime scene. This does not explain why the said cloth, tehmand, was not produced by the prosecution. Accordingly, we find that the prosecution's failure to explain recovery of blood on the chair or the place where the deceased was sitting when he was fired at seven times is fatal. The non-production of bloodstained clothes is equally fatal.”



29. The glaring inconsistencies in the prosecution version have thus been magnified in the absence of material evidence in the form of weapons of crime, pellets and blood trail etc.

30. The genesis of the case also does not get proved as the prosecution's case of entire incident having taken place on the petty issue of the goats of the appellants being taken by the informant to his house as they were grazing his field remains unsubstantiated as the Investigating Officer has not investigated this aspect and in absence of any investigation with regard to the same, genesis of the occurrence also does not get established. The prosecution has thus failed to offer any explanation regarding the fact as to non-production and non-seizure of a single pellet either retrieved from the body of the deceased during the course of treatment or from the place of occurrence. It has been held in several cases that even in a situation when the pellets are said to have been retrieved from the body the non-production of the chemical examination report or non-examination of the maker of such report has also been held to have adverse impact on the case of the prosecution. However, in the case at hand, there is no question whatsoever of any chemical examination being done as the pellets simply seem



to have vanished and the prosecution has not been able to render any explanation with regard to the same. In a case where there are such serious lapses in investigation, the courts would have to be circumspect in considering the other evidence available on record. It is true that the defective investigation would not form the basis to reject the prosecution evidence but in a case where the evidence put forth by the prosecution is already of a weak nature, investigational lapses become a vital consideration for establishing the guilt of the accused as also establishing the place and manner of occurrence. The point that is to be driven home is that there can be no moral conviction on the basis of the allegations made by the prosecution party if the same remains unsupported by legally admissible evidence.

31. In the background of such facts and circumstances, a reasonable doubt is raised in the mind of this Court with respect to the genuineness of the entire prosecution as against the appellants. It is the bounden duty of the Court to ensure that the facts and evidence adduced by the prosecution prove its case beyond all reasonable doubts. As submitted by the learned amicus, the witnesses of the prosecution fall in the third category of witnesses as carved out in the case of *Vadivelu Thevar (supra)* being neither wholly reliable nor wholly



unreliable and as such, Court has to be extremely circumspect to look for corroboration in material particulars by reliable testimony. Moreover, there is a long mental distance which needs to be traversed between the theory 'may be true' and 'must be true,' which is to be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution before condemning an accused as a convict. In the present case, the said path has not been treaded by way of clear and cogent evidence.

32. Thus, taking into account the gaping loopholes in the prosecution case, which cannot be overlooked and in the background of infirmities of the prosecution case, the appellants are entitled to benefit of doubt. Taking an overall perspective of the entire case emerging out of the totality of facts and circumstances, I find that the prosecution has failed to prove the charges against the appellants beyond all reasonable doubts. Hence, it is a fit case for extending the benefit of doubt to the appellants. Accordingly, the finding of conviction recorded by the learned Trial Court is found not sustainable and requires interference. Therefore, the judgment of conviction and order of sentence dated 30.07.2003 passed by the Court of learned 1st Additional Sessions Judge, Bhabua in Sessions Trial



No.166/97 of 1987/1998, arising out of Bhabua (Sonhan) P.S. Case No.29/87 is hereby set aside. As the appellants are already on bail, hence they would be free from the liabilities of their bail bonds.

33. Accordingly, the present appeal is allowed.

34. Before parting with the judgment, this Court records its words of appreciation for Ms. Surya Nilambari for ably assisting this Court as Amicus Curiae and the Patna High Court Legal Services Committee is directed to pay remuneration of Rs.12,000/- (Rupees Twelve Thousand) to her for her efforts and the able assistance that she has provided for the proper adjudication of the case.

(Soni Shrivastava, J)

Trivedi/-

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