

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.667 of 2010

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Ramesh Singh S/O Late Harsing Narayan Singh R/O Village-Ratwara, Tole-Bishanpura, P.S-Bajpatti in the District of Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Mahendra Thakur, Advocate

Mr. Sanjay Kumar, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 20-01-2026

It is necessary to highlight certain correction required which has not been made at an earlier stage and the office has not taken pain at the time of admission to correct it and they have not made objection on the same point and during the course of dictation, it came to fore that in the impugned judgment of conviction, “Bajpatti P.S. Case No. 18 of 2002” has wrongly been mentioned as “Bajpatti P.S. Case No. 8 of 2002”. From the perusal of all the record, it is found that everywhere Bajpatti P.S. Case No. 18 of 2002 has been mentioned. Even in the FIR, charge-sheet mentions Bajpatti P.S. Case No. 18 of 2002. However, the facts as asserted in judgment are same as mentioned in the FIR. Hence, only it may be taken as typographical error which has been left out inadvertently



without having correction. So, no need to send the file for correction as the appeal is pending since 2002 and on 20.01.2026 the judgment has already been orally pronounced.

2. Heard learned counsel for the appellant and learned Additional Public Prosecutor for the State.

3. The name of the victim has not been disclosed in the present judgment to protect her privacy, prestige and dignity.

4. The present appeal is directed against the judgment of conviction and order of sentence dated 26.06.2010 passed by learned Additional Sessions Judge, Fast Track Court No.-III, Sitamarhi in Sessions Trial No. 298 of 2003/168 of 2005 whereby and whereunder the appellant has been convicted for the offence punishable under Section 354 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for two years.

5. On the basis of fardbeyan of informant/PW6 recorded at Bajpatti Police Station at 10:30 PM, the prosecution case is that the informant (PW6) who is resident of village Ratwara, tola Bishanpura and was doing business at Kolkata. On 21.03.2002 at 9:00 PM informant alongwith his daughter (PW5) was sitting on cot in *verandah* of the house and wife (PW4) and



daughter (PW1) of informant were sitting beside him on mat and they were warming themselves by the fire. Meantime, appellant along with other two persons came at the door of informant and fired on him by means of pistol which hit the wall. Upon which, while raising alarm wife (PW4) and daughter (PW1) of informant came out of the house and the accused/appellant caught hold the hand of victim (PW1) but on the alarm raised by the informant's wife and his daughter, villagers arrived at the spot, causing the appellant to flee along with his associates, leaving behind one slipper at the place of occurrence. It is disclosed by the informant that appellant used to visit the house of his cousin brother and the same was protested by him. So, the appellant had grudge against the informant and on account of the said annoyance, accused/appellant fired on him and caught hold the hand of daughter of informant and assaulted the wife of informant.

6. On the basis of written statement given by the informant/PW-6, Bajpatti P.S. Case No. 18 of 2002 was registered under Sections 307, 341, 323, 354 of the IPC and Section 27 of the Arms Act. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted



against the appellant under Sections 307, 341, 323, 354 of the IPC and Section 27 of the Arms Act. Thereafter, the learned trial court took cognizance. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the appellant under Sections 354, 307 of the IPC and Section 27 of the Arms Act. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

7. In order to bring home guilt of accused person/appellant, prosecution has examined altogether six witnesses. PW-1 daughter of informant/victim PW-2 Md. Juhi, PW-3 Md. Bashir, PW-4 wife of informant, PW-5 daughter of informant, PW-6 informant.

8. Prosecution has relied upon following documentary evidence on record:-

*Ext. 1- Signature of
informant on fardbeyan.*

9. Defence has examined Munir Alam Khan as D.W.1.

10. Defence has also produced following documentary evidences:-

*Ext. A- C.C. of formal FIR of Bajpatti P.S. Case
No. 60 of 2002*



Ext. B- C.C. of final form of Bajpatti P.S. Case No. 8 of 2002

Ext. C- C.C. of final form of Bajpatti P.S. Case No. 60 of 2002

Ext. D- C.C. of judgment dated 14.03.2007 passed by Sri Ravi Ranjan Mishra, J.M. in Tr. No. 129 of 2007.

Ext. E- Writing and signature of Shiv Prakash on FIR of Bajpatti P.S. Case No. 18 of 2002.

11. However, defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

12. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the second paragraph of the judgment.

13. Following submissions have been made on behalf of learned counsel for the appellant:-

Learned counsel for the appellant submits that so far as the source of identification is concerned, torch has not been seized and the bangles were broken but there were no seizure of broken pieces of bangles. He further submits that the very assertion of informant as well as other prosecution witnesses and victim, have not been corroborated by any



material regarding the core aspect of the prosecution-story. Learned counsel for the appellant has submitted that out of six witnesses examined, one prosecution witness (PW3) has not supported the case of prosecution and has been declared hostile and remaining witnesses are informant (PW6), his wife (PW4), two daughters and his cousin brother. He further submits that the investigating officer of the present case has not been examined and no reason has been assigned by prosecution for withholding the evidence of Investigating Officer and the prosecution has been prejudiced thereby. He further submits that on same set of facts, the prosecution case has been disbelieved under Section 307 of IPC and Section 27 of the Arms Act holding that testimonies of prosecution witnesses are not reliable as witnesses had disclosed that large number of persons assembled at the place of occurrence but except the family members of informant, no independent witnesses came forward to support the case of prosecution. It has been submitted that prosecution has failed to prove the charges under Section 307 of IPC and Section 27 of the Arms Act. In this way, the very allegation of firing has not been proved on the same set of facts and there was no evidence of outraging the modesty available against the appellant and the very core points under Section 354 which was



required to be proved and the same has not been proved by any of the prosecution witnesses and the judgment of conviction and order of sentence passed by the concerned court is not justified and legal. He further submits that PW6 (informant) in para 1 of his examination-in-chief has deposed that he has instituted the case by submitting his written application in the police station but he further disclosed in his evidence that his statement was also recorded at police station by officer in-charge of police station but his written statement was deliberately suppressed by prosecution and the case was instituted on his statement alleged to have been recorded at the police station by the officer in-charge. Therefore, FIR on the basis of which this case was instituted is hit by Section 162 of Cr.P.C. It has been further submitted that PW-6 in para 7 of his deposition, has stated that he sent PW 2 to the police station after occurrence to inform and bring the police at the place of occurrence and PW 2 returned at about 11:00 PM along with sub inspector by vehicle and the said police officer stayed with informant for about 10 minutes. Thereafter, police had gone to the house of the accused with PW2 and the informant by the police vehicle and when appellant could not be traced at his residence, Police officer along with informant and PW 2 came straight to the police station by the



said vehicle at 1:00 AM where fardbeyan of the informant was recorded in the morning at about 6:00 AM on which informant put his signature and, surprisingly, the said FIR was sent to Sub Divisional Judicial Magistrate on 24.02.2002 after two days. It has been submitted that PW2, who is cousin brother of informant, has deposed in his evidence that after the occurrence, he reached at the place of occurrence and informant had informed him about firing being taken place without taking the name of any accused. Besides, there was no whispering in his evidence regarding so called outraging the modesty of the daughter of informant. Therefore, conviction of the appellant under Section 354 of IPC is neither sustainable nor tenable in the eye of law. It has been submitted that the learned trial court has committed error by holding that the allegation of outraging the modesty of the daughter of informant has not been corroborated by evidence of PW-2 wherein he has not disclosed that PW1 has narrated to him that accused caught hold her hand and started pulling her and therefore, the allegation of outraging the modesty of the informant's daughter (PW1) has not been corroborated by PW2. It has been submitted that informant (PW6) has narrated that appellant had opened fire upon him which did not hit the informant thereafter PW1 had flashed torch



and tried to apprehend the accused but the accused caught hand of PW 1 and when she raised alarm, her mother rushed there but the appellant also slapped her mother and fled away. Therefore, from evidence of PW6, it is clear that no offence under Section 354 of IPC has been made out as there is nothing in his evidence to show that the accused ever tried to outrage the modesty of informant's daughter/victim rather the evidence is that when his daughter/victim flashed torch and tried to apprehend the accused/appellant, the accused/appellant had caught her hand in order to prevent himself from being apprehended by the informant's daughter/victim. Therefore, conviction of the appellant under Section 354 of IPC is neither sustainable nor tenable in the eye of law. It has been submitted that PW1 has deposed that when she flashed torch after firing, the accused has caught her hand and pulled her and there is nothing in her evidence to suggest that appellant had ever tried to outrage the modesty of informant's daughter in any way and outraging the modesty of informant's daughter (PW1) is not corroborated by even any of the prosecution witnesses (PW-4 and PW-5). There is no evidence on record to prove the offence under Section 354 of the IPC even allegation as alleged by the witnesses are considered to be true for the sake of evidence, no offence is



made out against the appellant under Section 354 of IPC and appellant has been prejudiced as the investigation officer has not be examined by the prosecution as a result of which relevant contradiction in evidence of witnesses could not be taken. The learned trial court has acquitted the appellant of charges under Section 307 of IPC and Section 27 of the Arms Act although a large number of independent witnesses are present at the place of occurrence but none of the them has been examined as prosecution witnesses. Therefore, evidence of family members held to be not reliable. He further submits that on the same set of facts, there cannot be two opinion. If, on the one hand, the firing and seizure list has not been proved, then, on the same set of facts, the allegation of Section 354 is inconceivable. Learned counsel for the appellant submits that even after the whole prosecution story is assumed to be true, can it be come under the purview of Section 354 of IPC. He further submits that in absence of *mens rea*, it is inconceivable that the prosecution has proved the case beyond reasonable doubt under the aforesaid sections. He further submits that there are vital contradictions in the evidences of prosecution witnesses and there is no material exhibit, seizure list of slipper as well as seizure of torch, broken bangles and non-examination of investigating officer and non-



examination of any independent witnesses.

14. Learned counsel for the State submits that judgment of conviction and order of sentence passed by the concerned court is on the basis of material available on record and the prosecution has proved the case under Section 354 of the IPC and the court has analysed and appreciated the evidence of all the prosecution witnesses in detail and there is no reason to differ from the finding of concerned court. Accordingly, the judgment of conviction and order of sentence passed by the concerned court is justified and legal and no interference is needed.

15. The question which arises for consideration is:-

"Whether the appellant has committed the offence punishable under Section 354 of the IPC in the light of given facts and circumstances of the case or not ?"

16. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

17. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.



18. PW1 :- She is the victim of the case and has stated that the occurrence took place at 09:00 PM in night and she was sitting at gate of her house and again she has stated that she was sitting at *verandah*. She further stated that she was sitting alongwith her mother (PW4) and her father (PW6) was sitting on cot and her younger sister (PW5) was also in the lap of her father. She has further stated that appellant came at her door and fired upon her father (PW6) by means of pistol. She further stated that she flashed torch as a result of which the appellant caught hold her hand and started dragging her as a result of which her bangles had broken. She further stated that when her mother came for rescuing her, the appellant fled away after slapping her mother. She further stated that she did not identify others except appellant. In para 5, she has stated that the reason behind the occurrence that the appellant used to come to the adjacent house of the victim and the same was protested by victim's father and on account of said reason, the present occurrence took place. During the course of cross-examination, she has stated that that wife of *Zamir* to whom she knew, who is her aunt and the said woman has filed the case against her (PW1) and her mother (PW4) prior to the said case and the said occurrence was related with *marpit* and in the said case



appellant was witness. During the course of cross-examination, in para 8, she is unable to point out the extent of boundary of *verandah* in the terms of length and breadth. She further stated that she is unable to point whether there was cot in south side. She further stated that she has pointed out that on hearing the sound of firing, several persons gathered in *verandah*. During the course of cross-examination, in para 12 she has stated no one came on *verandah* and no one entered inside the *verandah*. She has stated that daroga came at 11 PM to 11:30 PM at night. She got her statement recorded before *Daroga*. She further stated that the date on which *daroga* came at her house, she did not give her statement. She has stated in para 14 that she had shown torch to *Daroga* by which she identified the appellant. She has further stated that she has shown the torch on the date of occurrence. She has shown the torch to Daroga ji at 11:00 PM to 11:30 PM on the date of occurrence and daroga ji returned the torch after seeing the same. In para 15, she has deposed that she has stated before the police that in the light of the torch she identified the appellant. She has further stated that in para 16 that she had worn bangles which was broken and the bangles were made up of glass (kanch) and she suffered scratch on her hand due to broken bangles and daroga ji has not taken any step



for her medical examination. She has stated before police that appellant came to the house of her uncle always which was protested by her father. She has further stated that the house of her uncle is at some distance from her house. She further stated that wife of the this *Zamir* had filed the case against her. She further stated that the accused used to visit the house of *Zamir*. On that point, no quarrel had taken place between her and *Zamir*. She further stated that co-villagers used to visit her house and the Md. *Zamir* had never protested the same. She further stated that the house of the *Ramesh Singh* (appellant) was situated in the southern direction of victim's house, after two plots. She had never visited the house of *Ramesh Singh* (appellant).

18.1. From the perusal of evidence adduced by PW1 (victim), it is crystal clear that she has shown the torch to Daroga ji and the torch is source of identification and torch has not been produced and no seizure list was made which is available on record. The bangles of the victim was broken but the same was not seized and no seizure list was available on record. Even, on the point of firing, PW1 (victim) has stated that the pellet hit her father, which is totally inconsistent with the statements of PW 4 and 6 (informant) as their statements on the



point of hitting the pellet are quite divergent from the statement of PW-1 and, for the purpose of said contradiction, Investigating Officer has also not been examined. So, no opportunity was available to the defence either to draw attention or to contradict the statement of PW1(victim). From the perusal of record, it is clear that no material was available to support the allegation of broken bangles, torch as well as pellet and her statement on the point of sitting at a particular place is quite divergent. During the course of examination-in-chief, at one time she has stated that she was sitting at gate and again she has stated that she sitting at *verandah* which is quite inconsistent. In this way, the statement of victim suffers from infirmities, inconsistencies and no reliance can be placed upon the statements of PW1 who is victim of the present case.

19. PW-2 :- He is the cousin of the informant. During the course of examination-in-chief, he has not stated regarding the occurrence which has taken place with regard to Section 354 of IPC. The very statement of victim (PW1) who has stated in her deposition that her hand was caught hold by appellant, is not spoken by the PW2 during the course of examination-in-chief. He has only stated that he was working for the purpose of Tazia and on hearing sound of pellet, he went



towards south and he met the appellant in the way. He further stated that when he asked the informant (PW6) and his wife (PW4), thereafter they disclosed that Ramesh Singh (appellant) tried to kill the informant by firing upon him. He further stated that he saw the slipper of the appellant at the place of occurrence.

19.1. From the perusal of examination-in-chief, it is crystal clear that he has not seen the occurrence rather he heard from the informant (PW6) and his wife (PW4) that appellant fired with intention to kill and slipper of appellant was left at the place of occurrence which was seen by this witness. But so far as catching the hand of the victim is concerned, the same was not witnessed by this witness. In this way, his evidence is of no significance in the light of the allegation as alleged by victim under Section 354 of IPC.

20. PW-3 :- He has not supported the case of prosecution and has been declared hostile.

21. PW-4 :- She is the wife of informant and she has stated that she was sitting alongwith her family members and appellant came and fired upon his husband (PW6) and the pellet hit the wall. In para 2, she has stated that on hearing the sound of firing, PW-1/victim flashed torch due to which



appellant caught hold the hand of her daughter/victim and pulled her. Upon which PW1/victim raised alarm, after hearing the alarm of victim, she came in a running condition and the appellant slapped this witness and after slapping, the appellant fled towards east from north. In para 3, she has not stated the reason as to why the appellant has committed the said occurrence.

21.1. From the perusal of evidence of PW4, it is clear that in para 3 of her examination-in-chief, she has not stated anything regarding the motive behind the occurrence though motive behind the occurrence has been stated by the victim (PW1). On the point of motive of occurrence, statement of witnesses are quite contradictory. In para 1, PW 4 has stated that she was alongwith her family members but in para 2 she has stated that she came after hearing the alarm of victim. If PW-4 was already sitting along with family members including the victim as claimed, the question of hearing the victim's alarm does not arise, since she herself has stated that she was sitting with all the family members at the time of the occurrence. Further, PW 1 (victim) has stated that firing caused injury to her father and PW 4 has stated that firing hit the wall. In this way, on the point of firing, the statement of PW4 is quite



contradictory with the statement of PW 1 (victim). On the point of motive behind the occurrence, she has stated that there is no motive behind the occurrence though PW1 has stated that there is motive behind the occurrence as victim's father protested the arrival of appellant in the house of his cousin brother. In this way, evidence of PW 4 is of no significance in the light of the allegation as alleged by victim under Section 354 of IPC.

22. PW-5:- She is the younger sister of the victim and she is 10 years old and under Section 118 of the Evidence Act, it is the primary duty of the court to testify the competency of evidence while asking relevant questions but here no relevant questions were asked to testify whether PW-5 is competent to answer rational questions and here the evidence has been recorded without taking the precautions which had been mandatory requirements under Section 118 of the Evidence Act which reads as under:-

118. who may testify- All

persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to



those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

22.1. PW5 is also claiming that she was on cot. She has stated that she was in the lap of her father and the appellant came from North side and fired upon her father which hit the wall and she has also stated on the hearing of alarm of victim, her mother came. On the point of raising alarm, the statement of PW-4 has been identically corroborated but the question arose if persons are sitting at the same place, the raising of alarm is not required if the occurrence occurred at the particular point where all are present then, the raising of alarm is exaggeration of fact which is not existing as truth stands alone. She has also stated that motive behind the occurrence is that appellant used to come at the house of Zamir which was protested by her father and she has stated that Zamir belongs to a particular community. So, the question was raised as to how he used to come always. During the course of cross-examination, she has admitted that at the time of occurrence she was studying in Standard V and she has not pointed out the age. She has stated that hand of victim was pulled by the person and when alarm was raised then, her mother came to save the victim and she has



stated that her sister/victim (PW4) disclosed the name of accused who escaped.

22.2. From the perusal of evidence of PW5, it is clear that on the point of raising alarm, the statement of PW-4 has been identically corroborated but the question arose if persons are sitting at the same place, the raising of alarm is not required if the occurrence occurred at the particular point where all are present then, the raising of alarm is exaggeration of fact which is not existing as truth stands alone. On the point of firing, statement of PW5 has not been testified and on the point of firing, she has stated that firing hit the wall, is totally inconsistent with the statement of PW1 who is the victim and being a minor child, her evidence is necessary to be testified upon the touchstone of Section 118 of Evidence Act which court has not bothered in light of the aforesaid facts and circumstances of the case and the child witnesses is succumbed to tutoring and no reliance can be placed in the light of the facts and circumstances of the case.

23. PW6 :- He is the informant of the case and he has stated that he has given written statement in police station. He further stated that his statement was recorded by SHO and he put signature after reading the contents which is marked as Ext.



1. During the course of examination-in-chief, he has stated that appellant fired upon him which hit on the wall just because he knelt down. He further stated that the torch was flashed by the victim (PW1) who tried to grab the appellant but appellant had caught hold the victim upon which the victim raised alarm and after hearing the said alarm her mother came in running condition and appellant also assaulted upon the cheek of wife of informant (PW4) by means of slap and when villagers came and appellant fled away. He has also stated that the motive behind the occurrence. He has stated that the house of cousin brother of informant was situated beside the house of informant where Ramesh Singh (appellant) used to visit there and the same was protested by the informant due to which the alleged occurrence took place.

23.1. From the perusal of evidence of PW6, it is clear that the statement of informant is quite divergent on the point of lodging FIR. On one hand, he has stated that written statement was given by him and on the other hand, he has stated that his fardbeyan was recorded which is evident from Ext. 1 itself and the firing materials were not available on record, torch was source of identification but the same was not available on record and bangles were broken and seizure list was not found



on record. In this way, the statement of PW 6 is quite contradictory, inconsistent and full of infirmities.

24. Apart from that, the Investigating Officer of this case has not been examined who is the material witness on the point of identifying the place of occurrence.

25. In ***Behari Prasad Vs. State of Bihar*** reported in ***(1996) 2 SCC 317***, the Hon'ble Supreme Court held that though non-examination of the Investigating Officer may not always be fatal where it causes prejudiced to the accused, it becomes a significant infirmity, as observed in the judgment which reads as under:-

"We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the



sentence."

26. Applying this principle to the present matter, this Court finds that the omission to examine the Investigating Officer has, in fact, caused serious prejudice to the defence. The prosecution version suffers from contradictions and omissions in the statements of the witnesses and the only person who could have clarified or explained such contradictions was the Investigating Officer.

27. The failure to examine the Investigating Officer also means that the place of occurrence has not been duly established. At this point, it would be relevant to take note of the decision passed by the Hon'ble Supreme Court in the case of *Syed Ibrahim versus State of Andhra Pradesh*, reported in *(2008) 10 SCC 601*, wherein it has been held that "when place of occurrence itself has not been established, it would not be proper to accept the prosecution side.

28. In the present case, the concerned court has convicted and sentenced the appellant under Section 354 of IPC and it is necessary to quote the core aspect of the offence by denoting the Section 354 of IPC assault or criminal force with intent to outrage the modesty of women:

354. Assault or criminal force to



*woman with intent to outrage her modesty. -
Whoever assaults or uses criminal force to any
woman, intending to outrage or knowing it to be
likely that he will there by outrage her modesty,
(shall be punished with imprisonment of either
description for a term which shall not be less than
one year but which may extend to five years, and
shall also be liable to fine).*

29. In the present case, from the perusal of FIR, it is clear that the occurrence took place in the night of 21.03.2002 at 9 PM. While narrating the story of prosecution, informant(PW6) has stated that informant along with his daughter (PW5), PW4 (informant's wife) and PW 1 (victim) were sitting and they were warming themselves by fire and the appellant alongwith with other persons came at the door and fired upon the informant (PW6) by means of pistol which hit the wall. Upon which, while raising alarm informant's wife (PW4) and his daughter (PW1) came out of the house and the appellant caught hold the hand of victim (PW1) and on alarm raised by informant's wife and victim, villagers arrived at the spot, causing the appellant to flee away along with his associates leaving behind one slipper at the place of occurrence. In initial



version of prosecution story, the informant has not mentioned regarding the source of identification but while adducing evidence before the Court, victim (PW1) has improved her statement which has no spontaneity with the initial version of prosecution story as victim (PW1) has stated that she flashed torch as a result of which appellant caught hold her hand and started dragging her as a result of which her bangles had broken. The version of informant (PW6) is quite inconsistent on the point of firing as informant has stated that firing hit the wall whereas victim (PW1) has stated that firing hit her father. On the point of firing, the statement of both the witnesses are quite divergent and the defence has drawn attention that PW1 has shown torch to Darogaji and on the said point, the examination of Investigating Officer is needed. Further, broken pieces of bangles were also not seized as claimed by PW1 and she suffered scratch on her hand due to broken bangles and Darogaji has not taken any step for her medical examination. In the light of the aforesaid fact, the examination of Investigating Officer is required and the Investigating Officer in the present case has not been examined. So, no opportunity was available to the defence to draw attention or to contradict the statement of PW1(victim). From the perusal of record, it is clear that no



material was available to support the allegation of broken bangles, torch as well as pellet and her statement on the point of sitting at a particular place is quite divergent. During the course of examination-in-chief, at one time victim (PW1) has stated that she was sitting at gate and again she has stated that she was sitting at *verandah* which is quite inconsistent. In this way, the statement of victim suffers from infirmities, inconsistencies and no reliance can be placed upon the statements of PW1/victim. Further, from the perusal of evidence of PW2, it is also clear that PW2 has not seen the occurrence rather he heard from the informant (PW6) and his wife (PW4) that appellant fired with intention to kill and slipper of appellant was left at the place of occurrence which was seen by PW2. But so far as catching the hand of the victim (PW1) is concerned, the same was not witnessed by PW2. In this way, the evidence of PW2 is of no significance in the light of the allegation as alleged by victim under Section 354 of IPC. From the perusal of evidence of PW4, it is clear that PW4 has not stated anything regarding the motive behind the occurrence though motive behind the occurrence has been stated by the victim (PW1). On the point of motive behind the occurrence, statement of witnesses are quite contradictory. In para 1, PW 4 has stated that she was along with her family



members but in para 2 she has stated that she came after hearing the alarm of victim. If PW-4 was already sitting along with family members including the victim as claimed, the question of hearing the victim's alarm does not arise as she herself has stated that she was sitting with all the family members at the time of the occurrence. Further, PW 1 (victim) has stated that firing caused injury to her father (PW6) and PW 4 has stated that firing hit the wall. In this way, on the point of firing, the statement of PW4 is quite contradictory with the statement of PW 1 (victim). On the point of motive behind the occurrence, PW4 has stated that there is no motive behind the occurrence though PW1 has stated that there is motive behind the occurrence as victim's father protested the arrival of appellant in the house of his cousin brother. In this way, evidence of PW 4 is of no significance in the light of the allegation as alleged by victim under Section 354 of IPC. From the perusal of evidence of PW5, it is clear that on the point of firing, statement of PW5 has not been testified and on the said point of firing, she has stated that firing hit the wall which is totally inconsistent with the statement of PW1 who is the victim and PW5 being a minor child, her evidence is necessary to be testified upon the touchstone of Section 118 of Evidence Act but the learned trial



court has not bothered in light of the aforesaid facts and circumstances of the case and the child witnesses is succumbed to tutoring and no reliance can be placed in the light of the facts and circumstances of the case. From the perusal of evidence of PW6 (informant), it is clear that the statement of informant (PW6) is quite divergent on the point of lodging FIR. On one hand, he has stated that written statement was given by him and on the other hand, he has stated that his fardbeyan was recorded which is evident from Ext. 1 itself and the firing materials were not available on record. Torch was source of identification but the same was not available on record and bangles were broken and seizure list was not found on record. In this way, the statement of PW 6 is quite contradictory, inconsistent and full of infirmities.

30. For constituting the offence under Section 354 of IPC, the core aspect is that the intent is required to commit the said offence but in the present case, there is nothing on record to prove the intent as the evidence of prosecution witnesses are full of contradictions, inconsistencies and infirmities as discussed in foregoing paragraphs. Further, the core aspect of offence is not proved by evidence of PWs. 1, 4, 5 and 6. Apart from that, the defence has stated that, as exhibited



through formal witness DW1, the cases have been cited by defence counsel and even PW1 has categorically stated that appellant is one of the witnesses in a case which has been filed by a woman, i.e. wife of Md. Zamir. In this way, enmity between the parties cannot be ruled out. In the present case, the investigating officer has not been examined and defence has been prejudiced thereby. The evidence of investigating officer is very necessary to know the truth of the occurrence if investigation has been conducted in a fair manner. Here, non availability of the investigating officer put question mark on the truthfulness of the investigation. There are several contradictions, inconsistencies and discrepancies found in the evidence of all the prosecution witnesses and they are alleging that the appellant has caught hold the hand of victim. Prudently and pragmatically, without having any intention, merely grabbing hand would prove the case of Section 354 of IPC is beyond the reach of any imagination.

31. From the perusal of evidence adduced by all the prosecution witnesses, it is crystal clear that their evidences have not been corroborated by any material evidence and the torch which is the source of identification is not seized in the present case. The bangles which have been claimed by victim as



broken and the same is also not exhibited as material exhibit and the pellets were also not shown as material exhibit on the record. In this way, evidence of prosecution witnesses has not been corroborated by material exhibit and the evidence of prosecution witnesses does not inspire confidence and their statements cannot be taken into account in light of the facts and circumstances of the case. It is cardinal principle of law that prosecution has to prove its case beyond the reasonable doubt.

32. The contention of the learned counsel for the appellant is quite tenable and sustainable that on the same set of facts and evidence, the offence under Section 307 of IPC and Section 27 of the Arms Act has not been proved against the appellant. The testimonies of PWs 1, 4 and 6 regarding firing shot with pistol by the accused/appellant do not inspire confidence and the learned trial court has recorded finding that the firing shot by the accused/appellant is not proved beyond the reasonable doubt. In the light of the reasoning given by the learned trial court that if the manner of occurrence has not been proved by the prosecution side on the basis of testimonies available on record, then, it is inconceivable that on the same set of facts another occurrence as alleged under Section 354 of IPC is presumed to be inconceivable in the light of the several



inconsistencies, improvement and infirmities.

33. In the case on hand, one of the questions which was put to the appellant is:-

“ आपके विरुद्ध यह भी साक्ष्य है कि उपरोक्त तिथि एवं समय पर आपने XXX के शील हरण करने का प्रयास किया था। ”

34. At this stage, the learned counsel for the appellant has submitted that, in the present case, examination of accused under Section 313 of Cr.P.C. is mere formality as the questions which were put before the accused/appellant are without having substance. Generally, all the incriminating circumstances are put before the accused so that he can defend his own side, but in the present case, the incriminating materials which were put before the accused/appellant have no relevance to the prosecution case as the pertinent question is as to whether the appellant has made an effort to outrage the modesty of the victim, but from the perusal of material available on record, the specific word “शील हरण” which was put before the accused under Section 313 of Cr.P.C. does not find place either in FIR or in the evidence of the prosecution witnesses and none of the prosecution witnesses has raised such allegation which was put before the accused/appellant during the course of examination of accused under Section 313 of Cr.PC which is not the spirit of



law under Section 313 of Cr.P.C. and the statement has casually been taken by the court.

35. The law on the aspect of the importance of Section 313 examination of an accused has now been so well settled that it requires no further deliberation.

36. However, it would be with profit only to refer to a judgment of the Supreme Court in *Raj Kumar alias Suman v. State (NCT of Delhi)*; AIR 2023 SC 3113, wherein the Bench had referred to a number of decisions on Section 313 Cr.P.C. and its importance and has very pithily summarized the requirements under the Code.

37. The Bench, after referring to the judgments in *Tara Singh v. State*: AIR 1951 SC 441; *Shivaji Sahabrao Bobade v. State of Maharastra*: AIR 1973 SC 2622; *S. Harnam Singh v. State (Delhi Admn.)*: AIR 1976 SC 2140, has summarized the law as follows:-

“16. The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the



basis of which the prosecution is seeking his conviction;

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether



prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered.”

38. The Trial Court, in this instance, has very lightly dealt with the requirement under Section 313 Cr.P.C. and has practically put incriminating circumstance having no spontaneity with the story of prosecution.

39. In this way, from the perusal of FIR as well as evidence of PW 1, it is crystal clear that with regard to the offence under Section 354 of IPC, there was no material to prove the case and the learned trial court has failed in error of law while appreciating the evidence of prosecution witnesses and reached to the wrong conclusion.

40. In the result, in my view, prosecution-case suffers from several infirmities, as noted above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of the settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence is hereby set aside and this appeal stands allowed. The appellant is on bail, he is discharged from the liabilities of bail-bonds.

41. Pending Interlocutory Application(s), if any,



shall also stand disposed of.

42. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

43. The records of this case be also returned to the concerned trial court forthwith.

(Alok Kumar Pandey, J)

alok/-

AFR/NAFR	AFR
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