

ANUJ SINGH @ RAMANUJ SINGH @ SETH SINGH A

v.

THE STATE OF BIHAR

(Criminal Appeal No. 150 of 2020)

APRIL 22, 2022 B

**[N. V. RAMANA, CJI, KRISHNA MURARI AND
HIMA KOHLI, JJ.]**

Penal Code, 1860 : ss. 324, 307 r/w s. 34 – Voluntarily causing hurt by dangerous weapons or means – Altercation between the one of the appellant and the informant, over a land dispute – Appellants armed with guns fired upon the informant which hit his left foot and the right arm – Other two accused assaulted the informant with spear and lathis – Trial court convicted the appellants u/s. 307 r/w s. 34 and s. 27 of the Arms Act and sentenced accordingly – High Court modified the conviction u/s. 307/34 to s. 324 and awarded two years rigorous imprisonment with fine, while confirming the conviction and sentence u/s. 27 of the Arms Act – On appeal, held: Defence of plea of alibi by one of the appellant does not inspire confidence – Testimony of the witnesses that the appellants were present at the place of occurrence armed with guns and they caused the injury on informant cannot be discarded because of minor contradictions – Medical evidence of the doctor corroborates that the injuries on the informant were caused by firearms – Evidence of prosecution witnesses that the two appellants caused hurt on the body of the informant by using firearm on account of an altercation – Charge of s. 324 of voluntarily causing injuries by firearm-dangerous weapon, established against the appellants, and as such they cannot escape the punishment for using arms prescribed by s. 27 of the Arms Act – Thus, the High Court rightly convicted the appellants for the offences punishable u/s. 324 and s. 27 of the Arms Act – Criminal trial. C
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Dismissing the appeals, the Court

HELD: 1.1 A bare perusal of the deposition of the witnesses prove that the two appellants were present at the place of occurrence with a firearm and injury was caused to the informant H

A due to the act of the appellants. The defence of plea of alibi taken by appellant M that he was posted at Islampur Block does not inspire confidence as there is no attendance register maintained by the office and the prosecution witness has categorically stated that the appellant M was present at the place of occurrence. [Para 16][1033-D-E]

B
1.2 It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed on hand or foot but the constant narrative of the witnesses is that the appellants were present at the place of occurrence armed with guns and they caused the injury on informant. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omission. [Para 17][1033-E-G]

C
1.3 The evidentiary value of a medical witness is very crucial to corroborate the case of prosecution and it is not merely a check upon testimony of eyewitnesses, it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. The medical evidence adduced by the prosecution has great corroborative value as it proves that the injuries could have been caused in the manner alleged. PW-8, doctor who examined the informant has clearly stated that all the injuries attributed on the informant were caused by firearms and that tattooing may not appear over the wound (injured area) if a person fires from 6-7 ft. [Para 18][1034-D-F]

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1.4 A detailed examination of prosecution witnesses clearly establishes that there was altercation between Informant and the two appellants with respect to preventing the Informant from repairing his wall; that all the witnesses unequivocally confirmed the presence of the two appellants at the place of occurrence; that all the eyewitness have confirmed that the two appellants were armed with firearm; that the medical evidence of PW-8, doctor corroborates that injuries inflicted on the Informant were firearm injuries; and that the injuries were inflicted on the non-vital part of the body of the Informant. [Para 19][1034-F-H]

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1.5 The term “hurt” simply means performing an act which leads to physical pain, injury or any disease to a person. At times, hurt may be caused voluntarily or it can be caused by using dangerous weapons or means. A person will be liable to have caused hurt voluntarily through dangerous weapons and means under Section 324 IPC. When a person commits an offence of voluntarily causing hurt by dangerous weapons and means under Section 324 IPC, then such person shall be punished with imprisonment for a period of three years, or with fine. [Paras 20-21][1035-B-C; 1036-B]

1.6 It is evident from the evidence of prosecution witnesses that the two appellants have caused hurt on the body of the informant by using firearm on account of an altercation which took place between the appellants and the informant. It also stands corroborated from the evidence of the prosecution witness that there existed previous enmity between the parties due to a land dispute and the same can be perceived from their acts. Thus, the charge of Section 324 IPC stands established against the two appellants. Once the charge against the appellants under Section 324 IPC of voluntarily causing injuries by firearm, which is a dangerous weapon stands established, they cannot escape the punishment for using arms prescribed by Section 27 of the Arms Act. [Para 22][1036-B-E]

1.7 The High Court has rightly convicted the appellants for the offences punishable under Section 324 IPC and Section 27 of the Arms Act. There is no ground to interfere with the impugned judgment. [Para 23][1036-E]

Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra (2000) 8 SCC 457 : [2000] 3 Suppl. SCR 104 – referred to.

Case Law Reference

[2000] 3 Suppl. SCR 104 referred to Para 17

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.150 of 2020.

From the Judgment and Order dated 16.01.2018 of the High Court of Judicature at Patna in Cr. Appeal (SJ) No.69 of 2007.

With
B Criminal Appeal No.151 of 2020.

Mrs. Anjana Prakash, Sr. Adv., Anuj Prakash, Ms. Jaikriti S. Jadeja, Prabhat Ranjan Raj, Shantanu Sagar, Advs. for the Appellant.

Abhinav Mukerji, Saket Singh, Ms. Sangeeta Singh, Mrs.
C Niranjana Singh, Advs. for the Respondent.

Gaurav Agrawal, Adv. for the Intervenor.

The Judgment of the Court was delivered by

KRISHNA MURARI, J.

D 1. The appellants in these two connected appeals have challenged the common judgment and order dated 16.01.2018 passed by the High Court of Judicature at Patna (hereinafter referred to as '**High Court**') in Criminal Appeal (SJ) No. 69 of 2007 filed by the present appellants modifying the judgment passed by the Trial Court convicting the appellants under Section 307 read with Section 34 Indian Penal Code (for short
E '**IPC**') and confirming their conviction under Section 27 of the Arms Act. The Trial Court after convicting the appellants under Section 307 read with Section 27 of the Arms Act, sentenced them to undergo five years Rigorous Imprisonment under Section 307 and fine of Rs.5,000/- and three years Rigorous Imprisonment under Section 27 of the Arms
F Act and a fine of Rs.2,000/-. On an appeal filed by them, the High Court converted their conviction under Section 307 read with Section 34 IPC to Section 324 IPC and awarded two years rigorous imprisonment with a fine of Rs.5,000/- and three months simple imprisonment in case of default. The sentence awarded to the appellant by the Trial Court of
G three years Rigorous Imprisonment under Section 27 of the Arms Act was confirmed. Aggrieved by the same, the two appellants are before us.

2. The prosecution case in brief is as under :-

H On the basis of fardbeyan of PW-6 (injured informant), Kumar Nandan Singh made at the clinic of Dr. Himkar, the police

registered an FIR being Case No. 312 of 1999 dated 10.10.1999, Police Station - Lakhi Sarai, under Sections 323, 307 read with Section 34 IPC and Section 27 of the Arms Act. The injured informant, PW-6, stated in his fardbeyan that on the fateful day at about 05:30 PM, while he was repairing the 'Kaccha Mud Wall', which had fallen down due to rain, with the help of hired labourers, his neighbour, namely, accused-appellant, Manoj Singh came and objected to repairing of the wall. The informant told him that the land belongs to him, after which Manoj Singh went to his house and came back again along with co-accused Anuj Singh having guns in their hands. The other two accused, Praveen Singh and Arvind Singh, also came having spears in their hands. It was further stated that Manoj Singh and Anuj Singh both with a malafide intention to kill him, fired shots. The bullet shot fired from the gun of Manoj Singh struck in the left leg and the bullet fired from the gun of Anuj Singh hit the hand. It was further stated that Praveen Singh and Arvind Singh assaulted him with the spear and lathi in their hands. On hearing gun shots, his family members and other villagers came there. Seeing the people coming, all the four accused ran away to their houses. It was further stated that he was brought in an injured condition to the clinic of Dr. Himkar where on arrival of police, the statement was recorded.

3. On the basis of the aforesaid statement made by the injured informant PW-6, the FIR was registered on the same day, however, it was not forwarded to the Court of Chief Judicial Magistrate on the same day but was sent after two days i.e., on 12.10.1999. After completing the investigation, the police submitted a charge-sheet against the two appellants, Anuj Singh and Manoj Singh, under Section 307 IPC read with Section 27 of the Arms Act. The other two co-accused, Praveen Singh and Arvind Singh, were charged under Section 307 read with Section 34 IPC. The Additional Chief Judicial Magistrate took cognizance against the accused persons on 01.09.2000 and the case was committed to the Court of Sessions on 16.01.2001.

4. The Trial Court after analyzing the statement made by the prosecution witness and the evidence of the defence, vide judgment and order dated 22.12.2006 convicted the accused appellants, Anuj Singh and Manoj Singh, and the other two co-accused, Praveen Singh and Arvind Singh, under Section 307 read with Section 34 IPC. The two

- A appellants herein were also held guilty for the offence punishable under Section 27 of the Arms Act. All the four accused were sentenced to undergo five years of Rigorous Imprisonment under Section 307 IPC read with Section 34 IPC along with a fine of Rs. 5,000/- each with default clause of Rigorous Imprisonment for six months. The two appellants herein were further sentenced to undergo Rigorous Imprisonment for three years under Section 27 of the Arms Act with a fine of Rs. 2,000/- each with default clause for three months on failure to pay the fine.

5. Two sets of Criminal Appeals were filed before the High Court. The two accused, Praveen Singh and Arvind Singh, filed Criminal Appeal (SJ) No. 16 of 2007 whereas the present appellants filed Criminal Appeal (SJ) No. 69 of 2007 challenging their conviction and sentence.

6. The High Court decided both the appeals by common judgment and order dated 16.01.2018 impugned herein. Insofar as, Criminal Appeal (SJ) No. 16 of 2007 filed by Praveen Singh and Arvind Singh is concerned, the same was allowed by the High Court and their conviction and sentence was set aside and they were exonerated.

7. Insofar as the Criminal Appeal (SJ) No. 69 of 2007 filed by the two appellants herein is concerned, the High Court modified the conviction under Section 307 IPC read with Section 34 IPC to Section 324 IPC and modified the sentence awarded under the said Section by the Trial Court to Rigorous Imprisonment for two years with a fine of Rs. 5,000/- with three months Simple Imprisonment in case of default. However, the conviction of the two appellants and their sentencing under Section 27 of the Arms Act was confirmed.

8. We have heard Mrs. Anjana Prakash, learned Senior Counsel appearing for the appellants and Mr. Abhinav Mukerji, Mr. Saket Singh, learned counsel appearing on behalf of the Respondent State and Shri Gaurav Agrawal, learned counsel appearing for the intervenor.

9. Mrs. Anjana Prakash, learned Senior Counsel appearing for the appellants vehemently submitted that though the conviction is under Section 27 of the Arms Act but there is no material available on record to indicate recovery of any gun or any seizure memo showing recovery of any bullet or pellets from the spot. She also points out that even though the fardbeyan was recorded on 10.10.1999 and First Information Report was registered on the same day but the same was sent to the Court of

Chief Judicial Magistrate on 12.10.1999 and in the absence of any explanation for delayed submission of FIR, the whole prosecution story becomes doubtful. A

10. After taking us through the statement of prosecution witnesses, she pointed out the contradictions therein and vehemently submitted that the contradictory statements made by the prosecution witnesses cast a serious shadow of doubt on the genuineness of the prosecution story and, thus, the appellants have been wrongly convicted and are liable to be discharged. B

11. Learned Counsel appearing for the respondent and the intervenor submitted that the High Court after analysing the statement of the witnesses has rightly convicted the appellants and there being no illegality in the impugned order, the same does not warrant any interference. C

12. We have considered the arguments advanced by the learned Counsel appearing for the parties and perused the record. D

13. The main issue arising in this appeal for our consideration is whether conviction of the two appellants, Anuj Singh and Manoj Singh, under Section 324 IPC and Section 27 of the Arms Act is sustainable?

14. The prosecution in all examined nine witnesses and two witnesses were produced on behalf of the defence. An analysis of the testimony of the prosecution witness are as follows: E

- a) PW-1 and PW-2, Bidya Sagar and Anil Singh, were declared as hostile by the prosecution.
- b) PW-3 Janardhan Singh stated that on 10.10.1999 at 5:30 PM, an occurrence took place and at that time he came from his field to Bajrangbali Mandir and saw Kumar Nandan Singh who was repairing his wall. In the meantime, all the accused person came and started abusing Kumar Nandan Singh. After which, the accused persons went to their house and Anuj Singh and Manoj Singh came back armed with gun while Praveen Singh and Arvind Singh came armed with lathi and spear. Kumar Nandan Singh raised an alarm and told everybody around him to escape from the place of occurrence and in the meantime, the accused Manoj Singh fired a bullet shot on Kumar Nandan Singh which hit his F
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- A left foot. A second shot was fired by accused Anuj Singh due to which Kumar Nandan Singh fell down. Thereafter, all the accused persons ran away from the place of occurrence. In his cross examination, PW-3 stated that accused Manoj Singh was present at the time of occurrence.
- B He also stated that due to gun shot injury, blood was oozing out from the body of Kumar Nandan Singh as a result of which his clothes were stained with blood. He further stated that Lakhisarai Referral Hospital is in between his house and the clinic of Dr. Himkar, however, the doctor was not available in the referral hospital. Therefore, Kumar Nandan Singh was taken to the private clinic of Dr. Himkar for treatment.
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- c) PW-4 Naveen Singh has stated that occurrence took place on 10.10.1999 at 5:00 PM. At that time, he was standing near Bajrangbali Mandir and Kumar Nandan Singh was repairing his wall. In the meantime, accused Manoj Singh came and wanted him to stop repairing the wall. Upon this, an altercation took place between them and after that accused persons returned back to their home. Accused Manoj Singh and Anuj Singh came back from their home and fired upon Kumar Nandan Singh which hit his foot and hand. The accused person fled away on hearing that an alarm was raised. In his cross-examination, PW-4 admitted that there was blood oozing out from his foot and hand due to bullet shot injury. He also stated that accused Manoj Singh is in Government Service but he was present at the place of occurrence.
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- d) PW-5 Gauri Shankar Singh is one of the signatories of the fardbeyan but he has not proved his signature on fardbeyan. He has stated that the occurrence took place on 10.10.1999 at 5:00 PM and at the time, Kumar Nandan Singh was repairing his wall and accused Manoj Singh came and wanted to stop the repairing work. An altercation took place between the two and after that accused Manoj Singh ran towards his house and came back with a gun in his hand. Anuj Singh also had a gun in his hand while Praveen Singh and Arvind Singh were carrying spear and lathi in their hand
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respectively. Accused Manoj Singh opened fire upon Kumar Nandan Singh as a result of which he sustained injury on his leg and Anuj Singh fired upon Kumar Nandan Singh which hit the arm of Kumar Nandan Singh. In his cross-examination, PW-5 admitted that there is an ongoing dispute between the accused persons and Kumar Nandan Singh. He also stated that blood was oozing out from his hand and foot due to the bullet shot injury. He further stated that Manoj Singh and Anuj Singh fired the bullet shot from a distance of 6-7 hands and both bullet shots were fired from the same distance.

- e) PW-6 Kumar Nandan Singh, the injured and informant of the case has stated that occurrence took place on 10.10.1999 at 5.30 PM and at that time, he was repairing his wall. Accused Manoj Singh came on a motorcycle and asked him why he was repairing the wall on the roadside for which he replied saying that he was erecting wall on his own land. Subsequent to which, altercations took place between the two. Accused Manoj Singh and Anuj Singh came with guns and Arvind Singh and Praveen Singh came with lathis. Thereafter, Accused Manoj Singh and Anuj Singh fired upon him which hit his left foot and right arm as a result of which he fell down and became unconscious. He was immediately taken to the private clinic of Dr. Himkar whereby he was given the treatment. In his cross-examination, PW-6 admitted that partition between him and accused person took place 30 years ago and he further stated that he cannot say whether there was any blood oozing out from his body as he was unconscious. He also stated that his dhoti and kurta were stained with blood and on showing it to the sub-inspector, he did not take the same.
- f) PW-7 Jagdish Singh stated that at the time of occurrence, he saw Kumar Nandan Singh was constructing the boundary wall by extending it on the road. Upon this, Praveen Singh, Anuj Singh and Arvind Singh came there and started assaulting Kumar Nandan Singh. On raising alarm, Vinod Singh came with a pistol and fired upon Kumar Nandan Singh as a result of which he sustained injuries on

- A his leg and hand. In his cross-examination, PW-7 stated that accused Manoj Singh was not present at the place of occurrence.
- B g) PW-8, Dr. Himkar is said to have examined the injured informant, Kumar Nandan Singh. He stated that on 10.10.1999 while he was posted as Additional P.H.C Parsama, he examined Kumar Nandan Singh and found the following injuries:
- C *"I. (A) Wound of entry- Lacerated wound of about 1/6" diameter with inverted margin over dorsum of right forearm about 2" proximal to corresponding wrist. There was charring of skin.*
- D *(B) Wound of exit- Lacerated wound of about 1/4" diameter averted margin over the dorsum of right forearm at the same level of wound A.*
- E *II. (A) Lacerated wound of about 1/6" diameter over lateral aspect of left Leg about 6" distal to left knee. It was the wound of entry since the margin of the wound was inverted.*
- F *(B). Wound of exit- Lacerated wound of about 1/4" diameter over the lateral aspect of left leg and at the same level of wound IIA. Margin of wound was inverted.*
- G *(III) Age of injuries within six hours. All injuries are caused by fire arms and simple in nature."*
- H In his cross examination, he stated that in his private capacity, he treated the injured informant and has also stated that he had informed the police about the same. He further stated that he cannot say about the position of entry and exit of the wound when one fires beyond 5 feet. He further stated that he has not found any blunt object and the legs and hands are not vital part of the body.
- h) PW-9 Ram Anup Mahto, the IO of the case has stated that on 10.10.1999, he was posted at lakhisarai PS and on the same day, he was entrusted with the investigation of this

case. During the investigation, he took the statement of the informant and he visited the place of occurrence which is situated at Village Sodhi. He also stated that a dispute was going on between the parties over the said land and he further took the statement of other witnesses. In his cross-examination, he stated that he has not taken the statement of the accused.

15. On behalf of the defence, two witnesses have been examined. DW-1 is Shivendu Ranjan, who has been examined on the point of alibi and he has stated that accused Manoj Singh was posted at Islampur Block as junior engineer and he was not present at the place of occurrence on the relevant date. DW-2 is Manish Kumar, who has accepted the original letter sent by B.D.O., Islampur to S.I. Lakhisarai (Ext. A), which was issued on the basis of checking of attendance register.

16. A bare perusal of the deposition of the witnesses prove that the two appellants, Anuj Singh and Manoj Singh were present at the place of occurrence with a firearm and injury has been caused to the informant PW-6 due to the act of the Appellants. The defence of plea of alibi taken by appellant Manoj Singh that he was posted at Islampur Block does not inspire confidence as there is no attendance register maintained by the office and the prosecution witness has categorically stated that the Appellant, Manoj Singh was present at the place of occurrence.

17. It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed on hand or foot but the constant narrative of the witnesses is that the appellants were present at the place of occurrence armed with guns and they caused the injury on informant PW-6. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omission as observed by this court in *Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra*¹. This Court while considering the issue of contradictions in the testimony, while appreciating the evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. Relevant portion of para 42 of the judgment reads as under:

¹ (2000) 8 SCC 457

A *“42. Only such omissions which amount to contradiction in*
 material particulars can be used to discredit the testimony of
 the witness. The omission in the police statement by itself would
 not necessarily render the testimony of witness unreliable.
B *When the version given by the witness in the court is different*
 in material particulars from that disclosed in his earlier
 statements, the case of the prosecution becomes doubtful and
 not otherwise. Minor contradictions are bound to appear in
 the statements of truthful witnesses as memory sometimes plays
C *false and the sense of observation differ from person to*
 person. The omissions in the earlier statement if found to be
 of trivial details, as in the present case, the same would not
 cause any dent in the testimony of PW 2. Even if there is
 contradiction of statement of a witness on any material point,
 that is no ground to reject the whole of the testimony of such
 witness.”

D 18. The evidentiary value of a medical witness is very crucial to
 corroborate the case of prosecution and it is not merely a check upon
 testimony of eyewitnesses, it is also independent testimony, because it
 may establish certain facts, quite apart from the other oral evidence. It
E has been reiterated by this court that the medical evidence adduced by
 the prosecution has great corroborative value as it proves that the injuries
 could have been caused in the manner alleged. In the case at hand, PW-
 8, Dr. Himkar who examined the informant PW-6 has clearly stated that
 all the injuries attributed on the informant were caused by firearms and
 that tattooing may not appear over the wound (injured area) if a person
 fires from 6-7 ft.

F 19. A detailed examination of prosecution witnesses clearly
 establishes:

- G i. That there was altercation between Informant PW-8 and
 the two appellants Anuj Singh and Manoj Singh with respect
 to preventing the Informant Pw-8 from repairing his wall.
- ii. All the witnesses unequivocally confirmed the presence of
 the two appellants at the place of occurrence on 10.10.1999.
- iii. All the eyewitness have confirmed that the two appellants
 Anuj Singh and Manoj Singh were armed with firearm.
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- iv. The medical evidence of PW-8, Dr. Himkar corroborates that injuries inflicted on the Informant PW-8 were firearm injuries. A
- v. Injuries were inflicted on the non-vital part of the body of the Informant PW-8. B

20. It is a well-known fact that the term “hurt” simply means performing an act which leads to physical pain, injury or any disease to a person. At times, hurt may be caused voluntarily or it can be caused by using dangerous weapons or means. A person will be liable to have caused hurt voluntarily through dangerous weapons and means under Section 324 IPC which reads as under:- C

“324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.” D E

21. To establish an offence under Sec 324 IPC, the presence of following ingredients is a must which are as follows:-

- 1. Voluntary hurt caused to another person by the accused, F
and
- 2. Such hurt was caused:
 - a. By any instrument used for shooting, cutting or stabbing, or any other instrument likely to cause death, G
or
 - b. By fire or other heated instruments, or
 - c. By poison or other corrosive substance, or
 - d. By any explosive substance, or H

