

Shashi Kant Singh and Another Vs. State of U.P.

Shashi Kant Singh and Another Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/917607

Court : Allahabad

Decided On : Mar-16-2011

Judge : Vinod Prasad, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - section 313; Indian penal code (IPC) - Section 307, 34, 348, 323, 504, 506; Arms Act - Section 3 And 25; Evidence Act - Section 114;

Appeal No. : Criminal Appeal No.8116 of 2008

Appellant : Shashi Kant Singh and Another

Respondent : Appellants Versus State of U.P.

Judgement :

1. Two appellants Shashi Kant Singh(A1) and Pintoo @ Amrendra Singh (A2) have challenged their conviction under Section 307/34 IPC and imposed sentence there for 10 years R.I. with fine of Rs.25,000/-, the default sentence being one year further R.I. and appellant Shashi Kant Singh has also questioned correctness of his conviction under Section 3/25 Arms Act with imposed sentence of two years R.I. with fine of Rs.10,000/-, the default sentence in lieu of payment of fine being six months further R.I. both convictions and sentences imposed by Additional Sessions Judge, FTC Ist, Ghazipur in the impugned judgement and order dated 14.11.2008 passed in S.T. No.47 of 2007, State Shashi kant Singh and others relating to Crime No.642 of 2006 and connected S.T. No.48 of 2007, State v. Shashi Kant Singh, relating to Crime No.661 of 2006 in the impugned judgement

and order.

2. Briefly narrated prosecution allegations against the appellants are that on 31.11.2006 at 11.00 a.m. A1 and A2 accompanied with acquitted socio criminis Chedi Singh, father of A1 fired upon injured Rudresh Kumar Singh when he was sitting and chatting with covillagers Aras Nath Singh and Tej Narain Singh r/o village Chilahar, district Buxar (Bihar) in front of his gun shop and thereby causing grievous fire arm injuries to all the three of them. Virendra Singh, Rangnath Singh and the informant Durgesh Kumar Singh, PW1, witnessed said incident and rushed to the spot forcing assailants to flee away from the spot on a motorcycle towards Barui crossing. Injured were rushed to Singh Nursing Home,(correct name being Singh Medical and Research centre), Varanasi in a car accompanied by Virendra Singh and Rangnath Singh.

3. Written report Ext. Ka-1, about the occurrence was scribed by informant Durgesh Kumar Singh P.W.1 who got it registered at 12.15 a.m. at police station Jamania, district Ghazipur at a distance of five Kms. as crime no.642 of 2006 U/S 307 IPC.

4. S.I. Brijesh Dubey P.W.5 registered the crime prepared Chik F.I.R., Ext. Ka-2 and crime registration GD entry Ext. Ka-3. Later on same witness had registered F.I.R. and GD entries for offence U/S 3/25 Arms Act against A1 relating to crime No.661 of 2006 on 7.12.2006 at 6.30 p.m. vide Rapat No.30 and, during trial, has proved those documents as well as Ext. Ka-4(Chik F.I.R)and Ext. Ka-5(GD entry).

5. S.I. Ram Chandra Mishra P.W.9, commenced investigation into the crime, copied the Chik FIR, GD entry, penned down 161 Cr.P.C. statement of the informant, conducted spot inspection and prepared site plan Ext. Ka-22, collected blood stained and plain earth, empty cartridge, pellets and prepared their recovery memos Ext. Ka- 23, arrested A2 on the following day, prepared his arrest memo Ext. Ka-24, endeavoured to record statements of injured persons on 15.11.2006 at Singh Nursing Home, Varanasi but could not record it and then endeavour to copy medical examination and injury reports of the injured persons but was informed by the uncle of injured Rudresh Kumar Singh that he will collect the injury reports and will hand it over to him (P.W.9). Thereafter on 22.11.2006 I.O. endeavour to record

161 Cr.P.C. statement of injured Rudresh Kumar Singh at his house but was informed by his servant that he is unfit to give any statement. P.W.9 again endeavoured to record 161 Cr.P.C. statement of injured Rudresh Kumar Singh on the following day but failed in his endeavour. Subsequent investigation was conducted by S.I. R.P. Yadav P.W.8, who commenced it on 25.11.2006, interrogated the appellants on 27.11.2006 and two days thereafter recorded 161 Cr.P.C. statement of injured Rudresh Kumar Singh. On 1.12.2006 P.W.8 copied injury reports, X-ray reports and X-ray plates of Tej Narain Singh and Aras Nath Singh. He also collected the bullets recovered from the body of the injured. On 2.12.2006 second I.O. interrogated witnesses Virendra Singh and Rangnath Singh. On 3.12.2006 P.W.8 moved application for taking remand of A1 and after obtaining it took him out from jail custody from district jail, Ghazipur at 10.11 a.m. and along with Constables Banarasi Yadav, Dharmendra Kumar Chauhan, Arvind Kumar, Dharmendra Yadav accompanied with driver Ramjeet Yadav started at 12.40 afternoon and brought A1 to Canal Road near Harijan Basti, Daruli from where, it is alleged, that A1 took out a .38 bore revolver and informed the I.O. that it was this weapon which was used by him in commission of aforesaid crime. I.O. seized said weapon prepared its seizure memo Ext. Ka-9 and on the basis of said recovery A1 was also booked under 3/25 Arms Act. On 18.12.2006, PW8 interrogated third accused Chedi Singh(since acquitted) and thereafter on 22.12.2006 he prepared the site plan of recovery spot Ext. Ka-20. Subsequent thereto constables witnesses of recovery were interrogated. On 25.12.2006, statement of injured Aras Nath Singh was penned down and concluding investigation charge-sheet under Section 307 IPC, Ext. Ka-21 was laid in court by PW8. A.C.J.M., Ghazipur took cognizance of the offences on 29.1.2007 and registered Criminal case No. 310 of 2007, State v. Shashi Kant Singh and others. A1 was also charge sheeted U/S 3/25 Arm's Act on 30.1.2006 vide Ext. Ka 26, on the basis of which Case No. 661 of 2006 , State versus Shashi Kant Singh was registered in court. PW8 during trial has also proved material exhibits bullet (Ext.1) and recovered revolver(Ext.2). He had dispatched bullet and revolver for forensic examination and Forensic Science Laboratory, Lucknow, report dated 26.6.2007 is on the record, but the same has not been exhibited.

6. According to the prosecution case injured were brought to Singh Medical and Research Center first but were not given any treatment there and were asked to go to SSPG hospital Varanasi and after their return from SSPG that they were admitted in Singh Medical and Research Center and were operated upon. Injuries of injured as has been testified by Dr. Chandra Kishor Prasad Sinha, PW 7 as noted in Exhibit Ka-16 to Ka-18 are as follows:-

7. Exhibit 16

Examined Arash Nath Singh aged about 50 years S/o Late Ram Deni Singh vill Deorhi, P/O Doudpur, District Ghazipur at SSPG On 13.11.2006 time 5.45 PM B/B Mr. Rang Nath Singh Brother M/I Black mile 4 cm above Rt. side above neck 1- LW 0.5 cm x 0.5cm length and breath IBW margin inverted cavity deep 3cm below from umbilicus region dressing material present on the wound. 2- LW 0.5 cm x 0.5 cm length and breadth cavity deep 10 cm below from right illiac crest at Rt hip region All injuries were KUO , advised x-ray abdomen and expert opinion , duration fresh , injury is caused by fire arm object

8. Ext Ka 17

Examined Mr. Rudresh Kumar Singh aged about 45 years S/O Late Udai Narayan Singh R/O Dehari PS Daudpur district Ghazipur at SSPG hospital on 13.11.2006 6pm B/B Mr. Babar Singh SI Ram Nagar Varanasi (Chacha) 1.L.W. 0.8 cm x 0.5 cm length and breadth inverted margin DNP 15 cm below left scapular notch dressing pad present. 2.L.W. 1Cm x 1 cm length and breadth DNP 13 cm below from RT Illiac crest dressing pad present Opinion- All injuries are KUO and advised x-ray at back of abdomen and Rt thigh and expert opinion , Injury is caused by fire arm object , duration fresh.

9. Ext Ka 18

Examined Tej Narayan Singh aged about 46 years S/O Mr Paras Nath Singh R/O Chilhar Distt. Buxar Bihar at SSPG on 13 11.2006 time 7.10 pm. B/B Rameshwar Singh (Brother) 1.L.W. 1Cm x 0.5 cm length and breadth DNP 4.5 cm away from umbilical toward Rt side dressing pad present on wound 2.L.W 1.1 cm x 1 cm

length and breadth x DNP 12 cm below from Rt side abdomen dressing pad present.

Opinion- All injuries are KUO and advised x-ray of abdomen and expert opinion , injuries are caused by fire arm object fresh duration. Subsequent medical examination reports of the injured from Singh Medical and Research Centre Private Limited, in order of their exhibits are Ext.Ka-7, Ka-8, Ka-9(Aras Nath Singh), Ext. Ka-10, 11, 12(Rudresh Kumar Singh) Ext. Ka-13, 14, 15 (Tej Narain Singh).Contents of these medical reports in order of their exhibits are reproduced below:-

10. Exhibit

Patient's Name Mr. Arash Nath Singh Doctor's Name Dr. T.N. Verma Date 13.11.2006 Report CHEST X-RAY PA VIEW Trachea is central Bony cage is normal Both lung fields are clear Both CP angles are clear Heart shadow is normal Dome of diaphragm show normal contour. IMPRESSION: NORMAL SKIAGRAM OF CHEST. ABDOMEN ERECT No gas under dome of diaphragm seen.8 X-RAY PELVIS AP VIEW Bones of pelvis and both hip joints are normal in ap view. RIGHT THIGH AP/VIEW Bones under view are normal.

11. Exhibit

Patient : Arash Nath Singh Age :50 years Sex : M Ref. Dr. : Dr. T.N. Verma DATE : 13.11.2006 ABDOMEN REPORT Real time USG of abdomen and pelvis reveals-
-Liver appears normal in size and shape, contour and echopattern. There is no evidence of any focal lesion seen in the parenchyma. vein and common bile duct are normal.

-Gall bladder is physiologically distended. The wall thickness is normal. There is no evidence of any intraluminal mass lesion or calculi seen. -Pancreas is normal in size, shape and echopattern. No focal mass lesion seen. Pancreatic duct is nor dilated.

-Spleen shows normal size, shape and homogeneous echopattern. No focal lesion is seen in parenchyma.

-Both the kidneys are normal in size, shape, position and axis. Parenchymal echopattern is normal bilaterally. No focal solid or cystic lesion is seen. There is no evidence of renal calculi on either side. -Urinary bladder is normal in size, shape and contour. No intraluminal lesion seen.

-Prostate gland is normal in size, shape and echopattern. No focal lesion seen. The capsule is intact.⁹

-There is evidence of fluid collection in abdominal cavity. Retroperitoneal structures appear normal. IMPRESSION-FLUID COLLECTION IN ABDOMINAL CAVITY.

12. Exhibit

TO WHOM IT MAY CONCERN This is to certify that Mr. Arash Nath Singh S/o Late Ram Deni Singh a resident of Vill-Deoruli, P.O. Douthpur, P/S- Jamania, District Ghazipur is admitted at Singh Medical and Research Centre, Varanasi on 13.11.06 at 1.30 p.m. for the treatment of Fire Arm injury Abdomen & right Hip active bleeding. Both entry and exit wound. His medico legal examination is done at S.S.P.G. Hospital, Varanasi on 13.11.06. He is receiving indoor treatment under the guidance of General Surgeon at S.M.R.C. Varanasi. he is operated by the General Surgeon on 13.11.06 at S.M.R.C. Varanasi.

OPERATIVE FINDINGS:-

(i) Extensive laceration and multiple perforates of proximal jejunum and proximal and mid ileum laceration of mesentry. (ii) Haemoperitoneum 1 and 1/2 litre. (iii) Both entry & exit wound thigh & abdomen. OPERATIVE NOTE:- (i) Right Paramedian Laparotomy done. (ii) Closure of proximal Perforations done. (iii) Resection of 1 and 1/2 of ileum end to end anastomosis done. (iv) Laparotomy wound closed in layers. two drain under G.A. on 13.11.06. Note:- Still the patient is receiving indoor treatment under the guidance of General Surgeon at S.M.R.C.

13. Exhibit

TO WHOM IT MAY CONCERN This is to certify that Mr. Rudresh Kumar Singh S/o Late Udai Narayan Singh a resident of vill-Deorhi, P.O. Doudpur, P/S Jamania, District Ghazipur is admitted at Singh Medical and Research Centre, Varanasi on 13.11.2006 at 1.30 p.m. for the treatment of Fire Arm injury back (Right Side) and right thigh. His medico legal examination is done at S.S.P.G. Hospital, Varanasi on 13.11.06. He is receiving indoor treatment under the guidance of General Surgeon (SMRC) at S.M.R.C. Varanasi. He is operated by the General Surgeon (S.M.R.C.) on 13.11.06 at S.M.R.C. Varanasi.

14. OPERATIVE FINDINGS:-

(i) Both entry and exit wound right thigh active bleeding. (ii) Only entry wound back Bullet removed embedded in Para spinal muscles.

OPERATIVE NOTE:-

(i) Separate vertical incisions back given.

(ii) Bullet removed embedded in Para Spinal muscles.

(iii) closure of wound done.

(iv) Debridement of right thigh wound done & repair of right thigh wound done G.A. on 13.11.06.

(v) post wound left GS draw. Note:- Still the patient is receiving indoor treatment under guidance of General Surgeon at S.M.R.C., Varanasi.

Exhibit

Regn. No. 75 Room No. 28 Date 21.11.06 Patient's Name Mr. Rudresh Kumar Singh Age 46 years Sex Male S/o Late Udai Narayan Singh Address vill-Deorhi, P.O. Doudpur, P/S Jamunia, District Ghazipur. Consultant Doctor Dr. G.S. (SMRC) Date of Admission 13.11.06 Date of Discharge 21.11.06 Diagnosis: H/o Firearm injury back left side & right thigh upper part active bleeding on 13.11.06. Investigation: All attached with card. Brief History: H/o Firearm injury on 13.11.06. General Surgeon's Note: Separate vertical incisions- back given. Bullet recovered.

closure in layers done. Debridement of right thigh wound done. Repair of right thigh wound done under G.A. On 13.11.06.

15. Exhibit

Patient's Name : Mr. Rudresh Kr. Singh Doctor's Name : Dr. T.N. Verma Date 13.11.2006 Report CHEST X-RAY PA VIEW Normal lung fields seen. A radio-opaque shadow (Bullet) seen at the level of medial end of left hemidiaphragm. ABDOMEN ERECT AP/LAT A radio-opaque shadow (Bullet) seen at the level of T-10 on left side.

X-RAY PELVIS AP VIEW

Bones of pelvis and both hip joints are normal in ap view. RIGHT THIGH AP/LAT Bones under view are normal.

16. Exhibit

TO WHOM IT MAY CONCERN

This is to certify that Mr. Tej Narayan singh S/o Mr. Paras Nath Singh a resident of vill-Chilahar, P.O. Indaur, P/s Itari, District Buxar (Bihar) is admitted at Singh Medical and Research Centre Varanasi on 13.11.06 at 1.30 P.M. for the treatment of Fire Arm injury chest and Abdomen. Haemoperitoneum 1 and 1/2 Litres. His medical legal examination is done at S.S.P.G. Hospital, Varanasi on 13.11.06. He is receiving indoor treatment under guidance of General surgeon and physician at Singh Medical and Research Centre, Varanasi. He is operated by the General Surgeon (SMRC) on 13.11.06 at SMRC13 Varanasi. Pt is a known diabetic.

17. OPERATIVE NOTE: (i) Extensive laceration and multiple perforation of distal ileum extending up to I/c junction.

(ii) Haemofacoperitoneum 1 and 1/2 litre.

(iii) Extensive lacerations of mesentery. OPERATIVE NOTE: (i) Right paramedian laparotomy done.

(ii) closure of distal perforations done.

(iii) Repair of mesenteric tear done.

(iv) Perforated ileal loop just proximal to perforation brought out as tump ileostomy done.

(v) Closure in layers two drains under G.A. on 13.11.06.

(vi) Life saving I.C.D. done on right side (Haemithorax-2 litres of clotted blood) on 13.11.06 under G.A.

Note-Still the patient is receiving indoor treatment under the guidance of G.S. & Physician at S.M.R.C. Varanasi.

18. Exhibit 14

Patient's Name : Mr. Tej Narain Singh

Doctor's Name : Dr. T.N. Verma Date 13.11.2006

CHEST X-RAY PA VIEW & ABDOMEN ERECT

19. Homogeneous opacity blunting right CPA silhouetting right hemidiaphragm seen. A radio-opaque shadow (Bullet) seen on left side at the level of T-10. Multiple small radio-opaque shadows seen at the level of T-8 on right side in midline.

20. Exhibit 15

Regn. No. 73 Room No.37 Date 29.11.06 Patient's Name Mr. Tej Narayan Singh Age 40 years Sex Male S/o Paras Nath Singh Address vill Chilahar, P.O. Indaur district Buxer (State of Bihar) Consultant Doctor Dr. G.S. (SNRC), Mr. Akhilesh Kumar Singh Date of Admission 13.11.06 Date of Discharge 29.11.06 Diagnosis: Known DM H/c firearm injury chest & Abdomen active bleeding shock on 13.11.2006.

Investigation : All attached with card.

Brief History : H/c Firearm injury on 13.11.2006.

Treatment Done:-

General

Surgeon's

Note:-

.....

21. After receiving the charge sheets finding offences triable by Sessions Court, Magistrates committed both the cases to Session's court, where it were registered as S.T.No. 47 of 2007, State v. Shashi Kant Singh and others, and S.T.No. 48 of 2007, State versus Shashi Kant Singh. Additional Sessions Judge F.T.C.-I, Ghazipur charged the appellants for offences under Section 307/34 I.P.C. on 30.3.2007 and additionally charged A1 U/S 3/25 Arm's Act. Since all the charges were abjured by the accused who all claimed to be tried that their trial commenced treating S.T. No. 47 of 2007 for charge of attempt to murder as leading case.

22. During trial, in it's endeavour to bring home the charges, prosecution examined informant Durgesh Singh PW-1, injured Aaras Nath Singh PW-2, injured Rudresh Kumar Singh PW-3, injured Tej Narayan Singh PW-4 as fact witnesses. SI Brijesh Dubey, who registered both the FIRs PW -5, Dr. T.N. Verma PW-6, Dr. Chandra Kishore Prasad Sinha PW-7, SI Rameshwar Prasad (retired) second I.O. PW-8, SI Ram Chand Mishra first I.O. PW-9, Sri Ram Jiyawan Yadav PW-10 were formal witnesses.

23. In their statements under Section 313 Cr.P.C., while refuting prosecution allegations all the three accused pleaded their false implication. They examined Vishambher Pandey as DW-1 in their defence.

24. Additional Session's Judge, F.T.C.-I, concluded that guilt of two appellant A1 and A2, could only be established by the prosecution for the charge of attempt to murder U/S 307/34 I.P.C. and charge U/S 3/25 Arms Act against A1 was also established beyond any shadow of doubt and consequently convicted both the appellants for the aforesaid offences and implanted the sentences as has already been inked in the opening paragraph of this judgment. Since trial judge found

prosecution to be unsuccessful in bringing home guilt of accused Chhedi Singh and was also unable to dislodge his alibi, that the trial court gave him benefit of doubt and acquitted him, which acquittal has now attained finality. Hence this appeal by A1 and A2 challenging their convictions and sentences.

25. I have heard Smt. Kamla Singh, learned advocate for the appellants in support of the appeal and learned AGA in opposition and have perused the trial court record.

26. Assailing and castigating impugned judgment, learned counsel submits that none of the prosecution witness would identify the assailants in the shouting spree which occurred on the date and time of the incident and because of the previous enmity appellants have been falsely implicated. First informant and other witnesses were not present at the spot and testimonies of fact witnesses is anointed with unnaturalities, embellishments, exaggerations and concoctions and it do not inspire any confidence and consequently should not be relied upon. Medical reports were manufactured and fabricated in connivance with relative sub inspector of injured Rudresh Kumar Singh posted in Ram Nagar, Varanasi and who had got him admitted in the hospital. It was this sub inspector who had informed the I.O. that he will collect medical examination reports and will hand them over to him and this was obviously done to aggravate nature of injuries and get medical examination reports manufactured. It was in conspiracy with that sub inspector that all the injury reports in Singh Medical and Research Center, Varanasi, and SSPG hospital Varanasi got manufactured and cooked up. Timings recorded in the various medical reports vis a vis ocular testimonies contradicts each other indicating that entire medical examination reports have been fabricated. Injured left Govt. hospital without any discharge slips and got themselves admitted in a private hospital so that they can fabricate injury reports suited to their interest. Trial Judge disbelieved participation of one of the accused relying upon his alibi, which acquittal has become final and consequently prosecution witnesses are not wholly reliable and their depositions suffers from the vices of embellishment and false implication. It was therefore argued that on the same evidence appellants should not be convicted as they deserves the same treatment. Auxiliary submissions are that the I.O. intentionally and deliberately

delayed interrogating injured witnesses only to suit informant's case to falsely implicate the appellants. FIR and 161 Cr.P.C. statements have been made ante-timed and ante-date. No independent witness had come forward to support prosecution case and hence the fact witness cannot be relied upon. Noting of injuries in the accidental register, not informing police by the doctor at SSPG Varanasi albeit it was a medico legal case, leaving hospital without any discharge slips, accompanying of sub inspector Babban Singh and his intervention in the investigation all are circumstances indicating that none of the prosecution witnesses are reliable and entire prosecution story is cooked up and manufactured and therefore appellants be acquitted. None of the injured or eye witnesses could identify the miscreants and that is why none of injured informed the doctors about the assailants and manner of their sustaining injuries at the earliest opportunities. Since no body had any idea about the shooters therefore doctor at SSPG Hospital, Varanasi did not inform the police about the medico legal case. All this was done at the behest of S.I. Babban Singh, relative of injured Rudresh Kumar Singh PW-3. It was further argued that prosecution is suppressing the real genesis of the incident and testified a cooked up version. In SSPG Hospital, Varanasi, all the injured were found to have been earlier medically attended to as their injuries had dressing materials which fact is belied by ocular testimonies of injured witnesses themselves. It was further submitted that the injured persons left SSPG Hospital, Varanasi all of sudden without intimating hospital authorities and got themselves admitted in Singh Medical and Research Center, Varanasi only to get their injury reports manufactured and cooked up. It was next contended that motive behind the incident is after thought and cause of false implication of the appellants is that A1 had earlier lodged the FIR against PW-3 and informant for offences under Sections 307, 348, 323, 504, 506 I.P.C., at P.S. Jamania on 19.1.2006 as crime no. 21/2006 and to escape punishment in that crime that the appellants have been falsely implicated. It was further submitted that PW-3 is a person having criminal background and is involved in many cases of cheating in the garb of getting jobs and had numerous persons behind his soul who were in the look out to eliminate him and some of those unknown persons had executed the incident who could not be identified and consequently, vindictively, that appellants have been falsely implicated. Surgeon Dr. Ankit Agarwal, who had operated upon the injured, was

deliberately withheld by the prosecution to testify nature of injuries sustained by the injured because he was not ready to toe the line of the prosecution and hence charge U/S 307 IPC should not be countenanced.

27. Castigating the investigation, it was submitted that conduct of both the I.O.s do not inspire any confidence and their depositions have been directly and substantially contradicted by fact witnesses on all important material aspects of the matters. Recovery of firearm alleged to be at the pointing out of A1 is planted recovery and there is no independent corroboration of such a recovery and hence prosecution failed to establish charge U/S 3/25 Arms Act and for that offence A1 deserves to be acquitted. Both the I.O.s toe the line of bolstering up prosecution as was advised to them by the relative S.I. and they had not conducted investigation fairly and judiciously which has left much to be desired.

28. Another limb of submission is that none of the incriminating circumstances were put to the appellants in their examination U/S 313 Cr.P.C. and resultantly they can not be utilized against the appellants to nail them for the charge of attempt to murder. In this respect learned counsel has relied upon some of the decisions of the apex court , which shall be referred to in the later part of this decision at an appropriate stage. Pulling down curtain of the arguments, it was submitted that prosecution has failed to establish appellant's guilt and they be acquitted of both the charges. It was also contended that sentence awarded to the appellants is too sever and if they are not acquitted,their sentence be reduced to period already under gone as they had already served more that two years of incarceration.

29. Learned AGA conversely submits that prosecution has successfully established the charge against the appellants. Minor contradictions and omissions do not distract established factum of incident occurring same time and place and being committed by the appellants whose conviction must be concurred and their appeal being bereft merits be dismissed. Contradictions and omissions are insignificant so as to demolish entire prosecution edifice contends State Counsel. Presence of three injured persons at the scene of the incident can not be doubted and in absence of any motive to falsely implicate their evidences can not be

brushed aside. Concludingly it was submitted that appeal lacks merits and be dismissed.

30. I have considered the rival contentions and have gone through the evidences on record.

Summation of facts and critical analysis of prosecution evidences and exhibits surfaces some very disquieting features of the entire prosecution story. To start with incident is alleged to have occurred in day light when all the injured were sitting and chatting in front of gun shop of injured Rudresh Kumar Singh after approaching them on a motor cycle but very queeriously it is not mentioned that the assailants had approached the spot on a motor cycle. Further the fact that accused escaped from the spot on motorcycle has not been put to the accused also in their statement under section 313 Cr.P.C. FIR can't be encyclopedic nor every minute detail is required to mentioned thereunder but this does not mean that vital facts with which incident is alleged to have started and which form part of the incident and can not go un-noticed and more significantly which fact affects credibility of prosecution witnesses and it's version be also eschewed to be recorded there under. Further informant PW1 is not sure with what weapon incident was committed. He is the owner of a gun shop and was cross examined in detail on that aspect of the matter. How then informant could not identify the weapon. It seems that all theses significant facts were kept in a lurch to be adjusted as and when suited to prosecution case. Another significant aspect is that after the incident informant did not accompany the injured to the hospital nor made any attempt to provide them with medical aid at Ghazipur itself and instead allowed them to be carried to Varanasi , at a distance of more than fifty kilometers with providing any medical aid. Record reveals that this was done at the behest of SI Babban Singh , because he could have got the reports manipulated. Complacency with which informant acted after alleged to have witnessed the incident belies his presence at the spot. His statement that injured were rushed to Varanasi soon after the incident is belied by deposition of PW3 , an injured witness of the incident. Informant is not an injured.

31. Authenticity of his deposition rests upon credibility of his deposition. Once his deposition is found to be unworthy of credence it can not be acted upon. Analysis of his depositions surfaces many bizarre conduct indicating that he was not present at the spot. In his statement before the I.O. he had deposed that assailants had fired sheltering themselves behind Marshal car. He could not divulge with whose car injured were dispatched to Varanasi although he had arranged it. No number of motor cycle or its make is mentioned anywhere nor during investigation it surfaced. None of the two I.O.s made any attempt to get that fact verified. Further there is no description of type of weapon used by the assailants. On this aspect of the matter PW1 and other fact witnesses were tested in cross examination at length but they could not give confidence inspiring answers. Albeit prosecution side was a fire arm dealer yet they failed to disclose the type of fire arm used by the assailants. Further presence of PW 1 at the spot is highly doubtful. He is not an injured in the case. According to his deposition gun shop was in his name but no attempt was made to assault him although one of the motives for assault was that accused were denied purchasing of bullets free of costs. Factum of shooting taking place as alleged by the prosecution has not been questioned by the defence. What has been challenged is the participation of accused appellants in the incident. Thus those circumstances which have not been put to the accused during their examination U/S 313 Cr.P.C. can not be utilized against them. Defence has also questioned various medical reports and their contradictions vis a vis with ocular testimonies. Fairness of investigations and reliabilities of depositions of fact witnesses have also been thrown open to challenge. Further what is perceptibly clear is that the vehicle in which the three injured were carried to Varanasi, whether it was Tata Sumo or Marshal Jeep is not clear.

32. Another significant feature of the case is that after the incident, injured persons were rushed to Varanasi and were brought to Singh Medical and Research Center. According to depositions of all fact witnesses they were not given any medical treatment there at that time and were asked to go to SSPG hospital Varanasi to get their injuries examined. But when these injured reached SSPG hospital there the doctor found that injuries of injured were already attended to as those injuries had dressing material on them. Prosecution witnesses, specially injured persons, failed to account for the same as to when and where they were

given medical aid prior to their examination in SSPG Varanasi. This indicate suppression of vital information from the court and on such a deposition it is difficult to place any reliance. What dents prosecution story substantially is the perceptible contradictions in the ocular testimonies vis a vis medical reports. Exhibit Ka-16, Ka-17, Ka-18, which has been proved by PW 7, indicates that Arash Nath Singh was examined at SSPG Hospital at 5.45 pm on 13.11.2006, while Rudresh Kumar Singh was medically examined at 6 pm and Jai Narayan Singh was examined at 7.10 pm. All the three persons were brought to the said hospital by three different individuals in different vehicles. Arash Nath Singh was brought to the hospital by Rang Nath Singh his brother, Rudresh Kumar Singh was brought to the hospital by Babban Singh SI, PAC Ram Nagar who is his uncle and Jai Narayan Singh was brought to the hospital by Rameshwar Singh his brother. Prosecution case is made suspect from the noting in the medical examination reports and the certificates issued by Singh Medical and Research Centre, Varanasi. According to the said report, the three injured persons were brought to Singh Medical and Research Centre, Varanasi on 13.11.2006 at 1.30 pm and were got admitted there. In the said certificates, it is mentioned that the injured persons were got medically examined in SSPG Hospital on 13.11.2006. Thus the two medical examination reports contradicts each other. If the injured persons were examined at SSPG Hospital in the evening of 13.11.2006, their admission in Singh Medical and Research Centre, Varanasi in the afternoon is a false fact and this aspect makes all certificates issued by Singh Medical and Research Center suspect and indicate that they were manipulated and cooked up. It is categorical depositions of all the injured that they were brought to Singh Medical and Research Centre, Varanasi but were not given any treatment. PW-2 at internal page 2 of his deposition testified that after the incident the three injured were carried to Singh Medical and Research Centre, Varanasi where doctor told them to go to Kabirchaura Hospital (SSPG Hospital). They were taken to SSPG Hospital where they were given treatment and their injuries were examined. It is also testified that prior to said medical examination they were not given any medical help.

33. Subsequent thereto they had returned back to Singh Medical and Research Centre, Varanasi where their X-ray was done. PW-7 in his examination-in-chief at

internal page 2 and 3 of his depositions also testified the same fact that they were medically examined at Kabirchaura Hospital and it was only after their medical examination that they were got admitted in Singh Medical and Research Centre, Varanasi. The same fact has been testified by PW-4. Thus the unerring categorical depositions of these witnesses where that they were first medically examined at SSPG Hospital and then were admitted in Singh Medical and Research Centre, Varanasi. Had this fact been correct, admission of the three injured witnesses at Singh Medical and Research Centre, Varanasi at 1.30 in the afternoon, as is mentioned in exhibit Ka 9, 10 and 13 is not correct. This fact throws grave doubt on the medical examination reports submitted by the prosecution and indicates that the prosecution is suppressing an important aspect of the whole incident.

34. Another negative feature in the prosecution case is that when the injured persons were brought to SSPG Hospital, some medical treatment was already given to those injured persons as has been disclosed by Dr. Chandra Kishore Prasad Sinha PW-7 at internal page 8 of his depositions wherein the doctor has testified that he has not mentioned exit wound in the injuries of any of the three injured as there was dressing material on those injuries and, therefore, it was difficult to locate entry and exit wounds. He has further deposed that since there were bandaged on the injuries at the time of medical examination, therefore, looking to the nature of injuries, he has deposed regarding its duration.

35. In view of above statement by PW-7, it is clear that prior to their admission in SSPG Hospital, injured were taken to some other hospital where they were given treatment. It is also the deposition of PW-7 that since none of the injured had disclosed him about the manner in which they had sustained injuries, it was because of that reason that their injuries were noted in the accidental register by him.

36. Another damaging feature of the case is that at the earliest opportunity none of the injured disclosed names of the assailants to any of the doctors neither in SSPG nor Singh Medical and Research Center. They had also not informed to them as to how and in what manner they had sustained those gun shot injuries. According to PW 1 he had started to lodge the FIR after injured were sent to

Varanasi and therefore injured were not informed whether any FIR was registered against the accused or not and in such an eventuality non disclosure of names of assailants to the doctor makes depositions of injured persons suspect. What is dicey is also the fact that by none of the two hospitals police was informed albeit, it was a medico legal case. Police at Varanasi thus was kept at bay ostensibly for the reason that FIR at Ghazipur could be manipulated. It does not stand to reason why SI Babban Singh, who accompanied his injured nephew to Govt. hospital SSPG also did not inform the doctor regarding assailants and the manner in which he had sustained injuries. This fact, creates doubt in the prosecution story. Belated disclosure compels this court not to rely upon testimonies of injured persons. On the said aspect support can be had from following decisions of the apex court:-

37. State of Karnataka v. Venkatesh: AIR 1992 SUPREME COURT 674 wherein it has been held as under :-

4. After giving our thoughtful considerations to the evidence on record, we have not been persuaded to take a view different than the one taken by the learned Sessions Judge and the High Court in this case. The reasoning of the learned Sessions Judge and the conclusions arrived at by him in ordering acquittal of the accused respondents has appealed to us and we, therefore, do not find any cause to interfere with the order of acquittal. The appeal, therefore, fails and is consequently dismissed. The accused-respondents are on bail, their bail bonds shall stand discharged.

38. In Peddireddy Subbareddi v. State of A.P.: AIR 1991 SUPREME COURT 1356 it has been held by the apex court as under:-

"4. No doubt, plurality of witnesses is not necessary to establish a fact in issue and a conviction can be based on the testimony of a sole witness provided that evidence is wholly believable (Vide Vadivelu Thevar v. State of Madras, AIR 1957 SC 614) : (1957 Cri LJ 1000). In the present case as we have come to the conclusion that the evidence of the P.W. 1 is clouded with strong suspicion and as the first information report was lodged by a delay of 15 hours, the false implication of appellants in the present case cannot be completely ruled out. On going through the judgments of both the Courts below we are unable to share with the finding

rendered by the two Courts holding the appellants are guilty of the charges with which they stand convicted.

39. Another negative aspect of prosecution case is that 161 Cr.P.C. statement of the injured persons could be recorded very belatedly with out forthcoming of a convincing explanation from the injured them selves. It is not that the I.O. failed to record them at the earliest opportunity but the injured themselves eschewed it to be recorded. No where it has been brought on record that the injured were unable to get their statement recorded when I.O. had approached them but for one reason or the other they escaped from giving their statement to the I.O. as has been disclosed by PW-9 SI Ram Chandra Mishra. According to his deposition, he had conducted investigation from 13.11.2006 to 25.11.2006 and during this period, he has not been able to interrogated the injured persons at all because of their excuses. Deposition of the I.O. that he had endeavoured to record their statement while they were hospitalized in Singh Medical & Research Centre, Varanasi, is also not convincing and acceptable, as none of the doctors from the Singh Medical Hospital, Varanasi ever testified that when the I.O. had come to record the statements of the injured, they were not in a position to give statements. From the medical reports also it is not born out that injured persons were unable to give statements to the I.O. On such factual aspect it not difficult to conclude that intentionally and deliberately 161 Cr.P.C. statement of the injured were not recoded for many days to adjust prosecution version. This fact further erodes the credibility of prosecution case.

40. Additionally, P.W.9 stated that he had endeavoured to collect the injury reports and the X-ray reports from Singh Medical Center but uncle of Rudresh Kumar Singh, S.I. Babban Singh informed him that he will collect all the papers and will submit it to the police. This deposition by P.W.9 goes a long way to indicate that S.I. Babban Singh was interfering with the investigation. It is the case of the defence that the appellants have been falsely implicated in the present case at the behest of said S.I. Babban Singh because of the old enmity and the F.I.R. about the present incident was recorded anti-time. On this aspect another unsatisfactory feature is that F.I.R. Of the occurrence was dispatched to the Magistrate on 16.11.06 whereas the incident had occurred on 13.11.06. This belated dispatching

of the FIR , on analysis of entire facts of the case assumes importance to indicate that the same was registered ante timed and this creates a doubt on the authenticity of the first information report and the earliest version of the prosecution. Defence has suggested that GD was stopped and F.I.R. was registered after due consultation and deliberation. In this respect, it is noted that no other crime whatsoever was registered either prior or subsequent to registration of the crime of the present incident on the date of the incident, which fact has been testified by PW-5 I.S. Brijesh Dubey at internal page no.3 of his deposition and therefore possibility of registration of ante time FIR can not be ruled out. In view of the above, it is difficult to conclude that the injured witnesses are telling the truth as at the earliest opportunity they did not inform the doctor about the incident. Had they knew the assailants, there would have been no difficulty for them to divulge the incident to the doctor at the time of their medical examination. Since the prosecution is suppressing the material fact of taking the injured to unknown hospital where they were given first aid and their injuries were attended to with their belated 161 Cr.P.C. statement and a belated disclosure, makes the prosecution case suspect. In view of above decisions of the Apex Court evidences of PW-2, PW-3 and PW-4 is not free from doubt. In this respect, it is also noted that all the three injured persons were admitted in Kabirchaura Government Hospital (SSPG Hospital) and after their injuries were examined all of sudden, without informing the doctor or taking the discharge slip, they left SSPG Hospital and got themselves admitted in Singh Medical Research Centre Varanasi. There is no discharge slip from SSPG Hospital on record. This fact makes the medical report from Singh Medical Research Center suspect.

41. Another noticeable feature of the case is surreal conduct of informant PW 1 and his deposition taken as whole projects that he is not a truthful witness and was not present at the scene of the incident when it happened. He himself is not an injured person. Fire arm shop license was in his name but no attempt was made to assault him. Although he is brother on one of the injured he did not carry him to the hospital soon after the incident to avail him medical aid and instead left him to reel under pain and bleed to death. It is noted here with astonishment that according to injured they were provided first medical aid only at 5.45 pm in SSPG Varanasi, which fact too was found false causing serious dent in the prosecution

version. The incident is alleged to have occurred in Jamania District Ghazipur but none of injured was taken to district hospital at Ghazipur and instead they opted to get medical aid at a distance of more than fifty Kms in a private hospital at Varanasi. This was done ostensibly for the reason that the prosecution, with the help of the said S.I. Babban(Babar) Singh was in better position to get medical report tickled with. It is because of this reason that no blood stained cloths of any of the injured was handed over to the I.O. nor the same was endeavoured to be seized and when I.O. attempted to collect medical reports, he was told by relative SI that he will collect it and will hand it over to him indicating thereby that medical reports were not ready by that date.

42. This is a serious lapse on the credibility of prosecution version. NO independent witness has come forward to support prosecution and all interested partisan and enemical witnesses have been examined who all have testified parrot like statements and when tested in cross examination they have faltered on every aspect. Injured witnesses even did not allow I.O. to interrogate them at the earliest opportunity.

43. Further according to prosecution version incident occurred at 11 a.m. and injured were rushed to Varanasi to Singh Medical research Centre but there they were not given any medical aid and therefore they came to SSPG hospital where they were given medical treatment for the first time. This time was 5 .45, 6 and 7.10 p.m. If this version is to be believed then all the three injured remained in that very condition in which they had sustained injuries for all this long six hours³⁴ which do not inspire any confidence at all. Why they did not inform the police to get quick medical aid. In spite of advise of X-ray , why they left SSPG hospital without any discharge slips and without getting them x-rayed. All this facts remains unexplained and makes prosecution version unconvincing difficult to sooth ever inquisitive mind. In SSPG they were found to have medical bandage on their injuries and it does not stand to reason why prosecution is suppressing this fact of medical attendances prior to SSPG Varanasi. On this aspect injured version is directly contradicted by medical reports and consequently indicates that injured witnesses are not wholly reliable and they have not disclosed true version of the incident.

44. Another argument against the impugned judgment which goes a long way against the prosecution is that under 313 Cr.P.C. incriminating circumstances have not been put to the accused at all. In this respect, I have perused the questions formulated in 313 Cr.P.C. which were put to the accused . It is evident that said examination is woefully deficient as incriminating evidences brought on record by the prosecution witnesses during their testimonies were never put to the accused. Question nos.1 and 9 when read together, does not mention any incriminating circumstances, which was brought on the record. Nowhere it was questioned that the deceased and injured were sitting in front of their gun shop nor it is questioned as to whether the assailants had come on motorcycle. Their weapons are not even mentioned. It is also not mentioned that they intended to kill Rudresh Kumar Singh and in that endeavour, Arash Nath Singh and Tej Narain Singh also sustained injuries. Formulated question no.1 is wrong statement of fact as the common intention was to cause murder only to Rudresh Kumar Singh and in that shooting spree Arash Nath Singh and Tej Narain Singh sustained injuries per chance. The deposition of the witnesses is that Chhedi Singh has instigated on which all the three assailants fired at Rudresh Kumar Singh and in that shooting two other injured sustained injuries. Thus there was no motive or intention of the assailants to cause death of two other injured. In this respect the charge framed against the three appellants is also defective. Once there was no intention to cause death of Arash Nath Singh and Tej Narain Singh, the three appellants could not have been charged with common intention to cause injuries to all the three injured U/S 307/34 I.P.C. The charge instead should have been under Section 307 I.P.C. simplicitor for causing injuries to Rudresh Kumar Singh by resorting to gun fire and in respect of other two injured should have been under 326/34 I.P.C. of causing grievous hurt as gun shot injuries sustained by Tej Narain Singh and Arash Nath Singh were accidental without any intention to commit murder. Thus, it is clear that neither the charge framed against the appellants was correct nor their examination under Section 313 Cr.P.C. was right. Question No.1, as pointed out above, therefore, was factually wrong. In question no.9, only this much has been asked that the accused has heard the statements of PW-1 Durgesh Singh, PW-2 Arash Nath Singh, PW-3 R.K. Singh, PW-4 T.N. Singh, and what they have to state in respect of their depositions. This is no examination of the accused nor it is

asking incriminating circumstances appearing against the accused. This fact naturally has prejudiced the case of the appellants as they could have specifically and categorically denied the facts stated by fact witnesses during the trial. Examination of the accused under Section 313 Cr.P.C. is a very important aspect of the trial procedure. It is required to give an opportunity to the accused to state what they had to say about the depositions of witnesses. Statement under Section 313 Cr.P.C. is the first positive disclosure of the defence by the accused. It is the earliest opportunity which is afforded to the accused in a trial. The trial courts are required to question the accused personally because of such importance. If the accused has not been given any opportunity to rebut incriminating circumstances appearing against them in the prosecution evidences then those circumstances cannot be taken into consideration while judging their guilt. Importance of recording of 313 Cr.P.C. statement in accordance with legislative intent has been time and again reiterated by the Apex Court. Some of the decision on this legal aspect of the matter are referred to below:-

45. In case of State of Punjab Vs Hari Singh: AIR 2009 SC 1966 it has been held by the apex court as under :-

44. When the accused was examined under Section 313 Cr. P.C., the essence of accusation was not brought to his notice, more particularly, that possession aspect, as was observed by this Court in Avtar Singh and Ors. v. State of Punjab (2002 (7) SCC 419). The effect of such omission vitally affects the prosecution case.

46. In Ganesh Gogoi v. State of Assam: AIR 2009 SUPREME COURT 2955 apex court has held as under:-

28 . It does not appear that any witness has deposed that the appellant is a member of ULFA. Therefore, it is a very unfair question. The Court has allegedly convicted the appellant under Section 3(2)(i) but the ingredients of the Section 3(2)(i) were not been put to him. Therefore, there has not been a fair examination under Section 313 of the Cr.P.C. at all. The provisions of Section 313 are for the benefit of the accused and are there to give the accused an opportunity to explain the "circumstances appearing in the evidence against him". In Basavaraj R. Patil

and others v. State of Karnataka and others - (2000) 8 SCC 740, this Court held that those provisions are not meant to nail the accused to his disadvantage but are meant for his benefit. These provisions are based on the salutary principles of natural justice and the maxim 'audi alteram partem' has been enshrined in them. Therefore, the examination under Section 313 has to be of utmost fairness. But that has not been done here. This is also a factor vitiating the trial.

47. Ajay Singh v. State of Maharashtra: AIR 2007 SUPREME COURT 2188 it has been laid down by the Supreme Court as follows:-

10. The purpose of Section 313 of the Code is set out in its opening words - 'for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him.' In Hate Singh, Bhagat Singh v. State of Madhya Pradesh it has been laid down by Bose, J. that the statements of accused persons recorded under Section 313 of the Code 'are among the most important matters to be considered at the trial'. It was pointed out that the statements of the accused recorded by the committing magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box and that they have to be received in evidence and treated as evidence and be duly considered at the trial. This position remains unaltered even after the insertion of Section 315 in the Code and any statement under Section 313 has to be considered in the same way as if Section 315 is not there.

11. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.

12. The word 'generally' in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the

circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.

13. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

14. Above being the position, the inevitable conclusion is that the prosecution has failed to establish the accusations. The conviction is set aside. The appeal is allowed. The appellant be set at liberty forthwith if not required in any other case.

48. In the decision of Avtar Singh and Others VS State of Punjab : 2002 (7) SCC 419 apex has held as follows:-

A case of drawing presumption under S. 114 of the Evidence Act could perhaps be made out then to prove the possession of the accused, but, the fact remains that in the course of examination under S. 313, Cr. P.C. not even a question was asked that they were the persons in possession of poppy husk placed in the vehicle. The only question put to them was that as per the prosecution evidence,

they were sitting on the bags of poppy husk. Strangely enough, even the driver was questioned on the same lines. The object of examination under S. 313, it is well known is to afford an opportunity to the accused to explain the circumstances appearing in the evidence against him. It is unfortunate that no question was asked about the possession of goods. Having regard to the charge of which appellants were accused, the failure to elicit their answer on such a crucial aspect as possession, is quite significant. In this state of things, it is not proper to raise a presumption under S. 114 of Evidence Act nor is it safe to conclude that the prosecution established beyond reasonable doubt that the appellants were in possession of poppy husk which was being carried by the vehicle.

49. Since I find that examination of the accused in the present case is absolutely perfunctory and casual and does not mention any incriminating evidences against the appellants, their conviction under Section 307 I.P.C. cannot be sustained in view of the above law laid down by the Apex Court.

50. Another glaring defect in the impugned decision is that trial court on the same evidence disbelieved participation of Chedi Singh and accepted his alibi, when , according to prosecution case incident started with his instigation. Once the trial court had found participation of Chedi Singh suspect it should have scanned evidences of fact witnesses with much more circumspection and caution, which it did not do and accepted evidences against the appellants in a pedantic manner without critically appreciating it for their worth.

51. Acquittal of Chedi Singh had dwindled credibility of prosecution evidences to a great extent. Falses in uno, falses in omnibus does not apply to our criminal jurisprudence but this does not mean that truncated unbelievable prosecution witnesses be relied upon to form opinion against the accused howsoever unconvincing it may be. Adverting now to the conviction of A-1 under Section 3/25 Arms Act, it is detected that there is no independent witness of recovery nor there is mention of any discloser statement by A-1. Under Section 27 of the Evidence Act what is admissible is the disclosure statement of an accused, which leads to recovery and not the recovery as such. This aspect of the matter is too settle a proposition of law and is no longer res integra. The record does not indicate

mention of any disclosure statement by the accused and hence the recovery of weapon at the pointing out of A-1 cannot be considered to be a recovery under Section 27 of Evidence Act. On such an evidence, conviction of A-1 under Section 3/25 Arms Act, therefore, also is unsustainable. This view is further strengthened from the fact that perusal of record of the leading case indicates that the police were conniving with the prosecution and were interested in cooking up a case against the appellant. In absence of any independent corroboration, it is difficult to believe that illegal firearm was recovered at the pointing out of A-1. In *Geejaganda Somaiah v. State of Karnataka*:AIR 2007 SUPREME COURT 1355 apex court has held as under :-

21. Section 25 of Evidence Act mandates that no confession made to a police officer shall be proved as against a person accused of an offence. Similarly Section 26 of the Evidence Act provides that confession by the accused person while in custody of police cannot be proved against him. However, to the aforesaid rule of Sections 25 to 26 of the Evidence Act, there is an exception carved out by Section 27 the Evidence Act providing that when any fact is discovered as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 27 is a proviso to Sections 25 and 26. Such statements are generally termed as disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker. Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence.

22. As the section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no

effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 the Evidence Act. 23. The position of law in relation to Section 27 of the Evidence Act was elaborately made clear by Sir John Beaumont in Pulukuri Kottaya and others vs. Emperor [AIR 1947 PC 67] wherein it was held : "Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police Officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown has argued that in such a case the 'fact discovered' is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban

will lose its effect. On normal principles of construction their Lordships think that the proviso to S.26, added by S.27, should not be held to nullify the substance of the section. In their Lordships view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are admissible since they do not relate to the discovery of the knife in the house of the informant."

24. In *State of Uttar Pradesh vs. Deoman Upadhyaya*, AIR 1960 SC 1125 this Court held that Sections 25 and 26 were manifestly intended to hit an evil, viz., to guard against the danger of receiving in evidence testimony from tainted sources about statements made by persons accused of offences. These sections form part of a statute which codifies the law relating to the relevancy of evidence and proof of facts in judicial proceedings. The State is as much concerned with punishing offenders who may be proved guilty of committing offences as it is concerned with protecting persons who may be compelled to give confessional statements. Section 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of truth of the statement made by him and the legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. In that case the High Court had acquitted the accused on the ground that his statement which led to the recovery of *gandasa*, the weapon of offence was inadmissible. The accused Deoman had made a statement to hand over the

gandasa which he stated to have thrown into a tank and got it recovered. The trial court convicted the accused for the offence of murder. The Full Bench of the High Court held that Section 27 of the Evidence Act which allegedly created an unjustifiable discrimination between persons in custody and persons out of custody offending Article 14 of the Constitution of India, 1950 (in short the 'Constitution') was unenforceable. After the opinion of the Full Bench a Division Bench of the Court excluded from consideration the statement made by the accused in the presence of the police officer and held that the story of the accused having borrowed a gandasa on the day of occurrence was unreliable. The accused was acquitted but at the instance of the State of U.P., the High Court granted a certificate to file the appeal in this Court. This Court did not agree with the position of law settled by the High Court and decided to proceed to review the evidence in the light of that statement in so far as it distinctly related to the fact thereby discovery being admissible. Dealing with the conclusions arrived at by the High Court and on the facts of the case, this Court observed :

"The High Court was of the view that the mere fetching of the gandasa from its hiding place did not establish that Deoman himself had put it in the tank, and an inference could legitimately be raised that somebody else had placed it in the tank, or that Deoman had seen someone placing that gandasa in the tank or that someone had told him about the gandasa lying in the tank. But for reasons already set out the information given by Deoman is provable in so far as it distinctly relates to the fact thereby discovered; and his statement that he had thrown the gandasa in the tank is information which distinctly relates to the discovery of the gandasa. Discovery from its place of hiding, at the instance of Deoman of the gandasa stained with human blood in the light of the admission by him that he had thrown it in the tank in which it was found therefore acquires significance, and destroys the theories suggested by the High Court."

25. In *Mohmed Inayatullah vs. The State of Maharashtra*, AIR 1976 SC 483 it was held that expression 'fact discovered' includes not only the physical object produced but also place from which it is produced and the knowledge of the accused as to that. Interpreting the words of Section "so much of the information" as relates distinctly to the fact thereby discovered, the Court held that the word

"distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of provable information. The phrase "distinctly" relates "to the fact thereby discovered". The phrase refers to that part of information supplied by the accused which is the direct cause of discovery of a fact. The rest of the information has to be excluded.

26. In *Earabhadrapappa alias Krishnappa vs. State of Karna-taka*, 1983 (2) SCR 552 it was held that for the applicability of Section 27 of the Evidence Act two conditions are pre-requisite, viz., (i) information must be such as has caused discovery of the fact, and (ii) the information must 'relate distinctly' to the fact discovered. Under Section 27 only so much of the information as distinctly relates to the fact really thereby discovered, is admissible. While deciding the applicability of Section 27 of the Evidence Act, the Court has also to keep in mind the nature of presumption under Illustrations (a) to (s) of Section 114 of the Evidence Act. The Court can, therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relations to the facts of the particular case. In that case one of the circumstances relied upon by the prosecution against the accused was that on being arrested after a year of the incident, the accused made a statement before the police leading to the recovery of some of the gold ornaments of the deceased and her six silk sarees, from different places which were identified by the witness as belonging to the deceased. In that context the court observed :

"There is no controversy that the statement made by the appellant Ex.P-35 is admissible under S.27 of the Evidence Act. Under S.27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word 'fact means some concrete or material fact to which the information directly relates."

27. In *State of Maharashtra vs. Damu, S/o Gopinath Shinde and Ors.*, JT 2000 (5) SC 575 has held that the Section 27, the Evidence Act was based on the doctrine of confirmation by subsequent events and giving the section actual and expanding meanings, held :

"The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in section. The decision of the Privy Council in Pulukuri Kottaya vs. Emperor [AIR 1947 PC 67] is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced; the knowledge of the accused as to it, but the information given must relate distinctly to that effect."

52. Wrapping up on the evidence led in the trial conviction of A1 for offence of 3/25 Arm's Act is also unsustainable.

53. In view of above, I allow the appeal, set aside the impugned judgment of conviction and sentence and acquit the appellants. They are in jail and are, therefore directed to be set free forthwith from there unless they are incarcerated in connection with any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com