
(2018) 10 JH CK 0032

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No.232, 235, 242 of 1999(r)

Ayodhya Singh @APPELLANT@Hash State of Bihar

Date of Decision : 31-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 307, 323, 324, 326, 369, 379
Arms Act, 1959 — Section 27
Code of Criminal Procedure, 1973 — Section 313, 360

Citation : (2018) 10 JH CK 0032

Hon'ble Judges : B.B. Mangalmurti, J

Bench : Single Bench

Advocate : V.P. Singh, Binod Kumar, Bandana Kumari Sinha, B.P. Jaiswal, Nehru Mahto

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant and learned counsel for the State.

2. These appeals are directed against the judgment of conviction and order of sentence dated 28th July, 1999 passed by Shri Jitendra Mohan Sharma, the then 7th Additional Sessions Judge, Palamau in Sessions Trial No.36 of 1991 holding the appellant Dinanath Singh guilty under Section 326 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 7 years and further rigorous imprisonment for 2 years under Section 148 of the Indian Penal Code. Appellant-Ajay Singh was convicted under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 3 years as also 2 years under Section 148 of the Indian Penal Code. Appellants Ayodhya Singh, Laxman Singh, Rama Singh, Sheo Kumar Singh, Rajmani Singh, Ram Niwas Singh, Upendra Singh, Sanjay Singh, Dhananjay Singh, Vijay Singh and Akhilesh Singh as well as Ramadhar Singh, Hira Singh, have been convicted to undergo simple imprisonment for six months each under both Sections 323 and 147 of the Indian Penal

Code. Appellant-Hira Singh was further convicted under Section 379 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years.

3. The prosecution case in short, is that the fardbeyan of Rajeev Ranjan Tiwari, recorded by Chandreshwar Singh, Officer-in-Charge, Patan P.S. on

26.11.1989 at 12.30 hours at village Golhana is that on the eve of general election, he was working for Bhartiya Janta Party at village Golhana Booth

no.132 under Patan P.S. and was issuing slip to the voters adjacent to the passage towards two hundreds yards north away from the polling booth and

at that time at about 10.00 a.m. all the accused persons including Jagan Singh (now deceased) came there and asked him to stop the work and hand

over the voter list to them as they will now issue the voter slips. On his refusal, accused persons started assaulting him with fists, slaps and lathi due to

which he received injuries over left shoulder, back, thumb of right hand and over other parts of the body. Informant's brother Priya Ranjan Tiwari

also came for his rescue then Dina Singh took out his country made pistol from his waist and fired upon him, causing several pellets injuries. At that

time, Ajay Singh, fired upon Dinesh Tiwari causing firearm injury. Hira Singh snatched his HMT Kanchan wrist watch and wrist watch of his brother

was also taken by accused persons and they fled away towards village Nawdiha. Thereafter, injured Priya Ranjan Tiwari and Dinesh Tiwari were

sent to Daltonganj for treatment.

On the basis of the above fardbeyan, Patan P.S. Case No.151 of 1989 was instituted corresponding to G.R. Case No.1557 of 1989 for the offence

under Sections 147, 148, 149, 307, 326, 324 and 369 of the Indian Penal Code and Section 27 of the Arms Act and investigation was taken up. After

investigation, the police submitted charge sheet in this case against all accused persons but during trial accused Jagan Singh died hence his name was

expunged.

4. After commitment of case charges were framed upon all accused persons. The prosecution altogether examined fifteen witnesses on their behalf

and one witness was examined on behalf of defence.

5. P.W.1 Karunakar Tiwari has stated that on 26.11.1989 at about 10.45 a.m. he went for voting in General Parliamentary Election and while he was

200 yards before the booth, he saw accused Dina Singh, Rama Singh, Ayodhya

Singh, Ajay Singh, Upendra Singh, Rajmani Singh, Sanjay Singh, Ramadhar Singh, Loha Singh and others came at village Golhana where Rajeev Ranjan Tiwari was giving voter slip on behalf of Bhartiya Janta Party, then accused persons tried to snatch the voter list. When Rajeev Ranjan did not give the voter list then Rajeev Ranjan Tiwari was assaulted by them with lathi and danda. Dina Singh fired from his pistol over Priya Ranjan Tiwari causing injury over his eyes, cheek and head. Accused Ajay Singh fired from his pistol over Dinesh Tiwari and injured him. It was also stated that Priya Ranjan Tiwari, Dilip Tiwari and Dinesh Tiwari were sent to hospital at Daltonganj. He identified four accused persons in the court. During cross-examination, he stated that after stopping the patrolling party, the injured were carried in a truck to Daltonganj Town Police Station. He has stated that in his presence, no one gave any statement either at Town Police Station or in the hospital. He has replied that before the Magistrate who was attached with patrolling party neither he nor any other person stated anything about the incident. He was confronted from his earlier statement. According to this witness, Dina Singh fired over Priya Ranjan Tiwari and Dinesh Tiwari and Ajay Singh fired over Dinesh Tiwari. All the accused persons tried to snatch the voter list and assaulted the informant whereas Dina Singh and Ajay Singh opened fire. He cannot say whether the election of Golhana Booth was cancelled or not.

6. P.W.2- Rabindra Kumar Tiwari, P.W.9- Kripa Nand Tiwari, P.W.14- Satyadeo Tiwari have been tendered by the prosecution whereas P.W. 6 -

Arun Kumar Tiwari, P.W.11- Bindeshwari Tiwari, P.W.12- Dinesh Kumar Tiwari (one of the injured) became hostile.

7. P.W.3-Narad Ram has stated that on 26.11.1989 at about 11.00 a.m. he went at the school for casting his vote. There Ram Singh, Ayodhya Singh,

Dina Singh, Ajay Singh, Sanjay Singh, Ram Niwas Singh, Hira Singh and many other persons came. They asked Purja (voter slip) from Rajeev Ranjan

Tiwari for casting vote to which he refused. Then Rama Singh and Ayodhya Singh assaulted him with lathi and on hulla when Priya Ranjan Tiwari

came, Ajay Singh fired but it misfired. Again he fired which caused injury to Dinesh Tiwari and Dilip Tiwari. He also stated that when the villagers

came, accused persons managed to flee away. The wrist watches of Rajeev Ranjan Tiwari and Priya Ranjan Tiwari were looted by Hira Singh and

others. The injured persons were brought to Daltonganj. He has identified Sanjay Singh and others but does not know their names and claimed to

identify rest other accused persons, who were on representation. During cross-examination, he stated that he was waiting for Purja from Rajeev

Ranjan Tiwari and saw Munna Tiwari, Arun Tiwari, Dilip Tiwari, Manoj Tiwari and Santosh Ram were standing there. He heard sound of firing as he

was standing ten steps from the place of occurrence. He further stated that Dina Singh fired upon Priya Ranjan Tiwari who after getting the pellet

injury fell down but Dilip and Dinesh did not fall. In Paragraph 5 he admitted that his statement was not recorded by the police and for the first time he

is deposing before the court. He denied the suggestion that he is deposing false.

8. P.W. 4 - Santosh Ram stated that on 26.11.1989 at 10.45 a.m. at Golhana school voting was going on for General Parliamentary Election. He has

stated that Rajeev Ranjan Tiwari was giving Purja at 200 Yards away from the booth and he went there for Purja. He further stated that 15-16

persons of village Nawdiha came amongst whom Dina Singh, Ajay Singh, Ayodhya Singh, Rama Singh, Niwas Singh, Upendra Singh, Hira Singh,

Ramadhar Singh, Sanjay Singh and others were present. They demanded voter list from Rajeev Ranjan Tiwari and when he refused, then accused

persons assaulted him with fist and danda. In the meantime, Priya Ranjan Tiwari came and Dina Nath Singh fired upon him by pistol causing injury

over his face and chest. Hira Singh snatched wrist watch from Rajeev Ranjan Tiwari. The wrist watch of Priya Ranjan Tiwari also went missing. He

has identified accused Akhilesh Singh present in court and claimed to identify rest accused who were on representation. During cross-examination, he

has stated that his statement was recorded by the police at about 12.00 noon on the same day. He had not seen any one holding Banduk or pistol but

has heard the sound of firing. He further stated that occurrence lasted for about 15-20 minutes and he remained present there. In Paragraph 15, he

stated that he found three persons became injured. He denied the suggestion that he deposed at the instance of Birmani Tiwari.

9. P.W. 5 - Dilip Kumar Tiwari stated that on 26.11.1989 at about 10.45 a.m. he was in his house and polling was going on at Golhana booth. About

200 yards before the booth, Purja was being supplied and after getting Purja he went for voting. Babu Sahab of Nawdiha came and they tried to loot

the voter list from Rajeev Ranjan Tiwari and when he refused to hand over the voter list, they started assaulting Rajeev Ranjan Tiwari. Accused Dina

Nath Singh, Rama Singh, Ajay Kumar Singh, Ayodhya Singh, Ramadhar Singh, Ajay Singh and others assaulted him. Dinanath Singh fired from pistol

upon Priya Ranjan Tiwari who came to save his brother. Again a fire was opened by Ajay Kumar Singh who was firing from his revolver upon

Dinesh Tiwari. This witness also got injury from the same firing on his back side. Thereafter, all injured including this witness were brought to Sadar

Hospital, Daltonganj where they were treated. He claimed to identify accused persons. During cross-examination, he stated that voters of village

Golhana were casting their votes and four persons of village Sakhuya were present there but he is not aware about their names. He also replied that

the Babusahebs came walking and surrounded where the voter slips were issued. He could not see who assaulted whom by fist although the assault

lasted for about five minutes. This witness was also assaulted by lathi as well as fist and blow. He was assaulted by Ajay Singh and Ramadhar Singh.

When he first time saw accused persons coming to the place of occurrence, they were not holding Lathi, Danda, Bhala, Garasa or Pistol and Banduk.

He denied the suggestion that he has not seen any occurrence and deposing false before the court.

10. P.W.7 is Dr. Jawahar Lal. He has stated that on 26.11.1989 he was Civil Assistant Surgeon at Sadar Hospital, Daltonganj. On that day, at 11.10

a.m. he examined Priya Ranjan Tiwari and found following injuries:-

(i) Multiple lacerated wounds sizes about 4 m.m. X 4 m.m. x skin deep spread over face, forehead, in front of chest, in front of both sides of the

shoulder and arms with inverted margins of the wounds. No charring and blackening was found around the wounds.

(ii) Subconjunctival haemorrhage of left eye.

(iii) Lacerated wound of right cornea of eye with hyphema (blood in anterior chamber of eye), size was 3 m.m. x 3 m.m. x anterior chamber of eye

deep.

Injury nos.1 and 2 were simple in nature and injury no.3 was grievous in nature. All injuries were caused by firearm. Age of the injuries was within

three hours. These injuries may be possible by pistol in case of multiple pellets were loaded in the said firearm. On the day at 11.15 a.m. he examined

Dinesh Kumar Tiwari and found following injuries over his person:-

- (i) Bruise 8" X 1" over left scapular region on the back.
- (ii) One bruise 3" X 1" over lateral side of left arm.
- (iii) One lacerated wound 4 m.m. x 4 m.m. x skin deep over left arm with inverted margin. No charring and blackening was found around the wound.
- (iv) One lacerated wound 4 m.m.x 4 m.m. x scalp deep over left side of the head with inverted margin. No charring and blackening was found.
- (v) All the injuries were simple in nature. Injury nos. (i) and (ii) were caused by hard and blunt substance and injury nos.(iii) and (iv) were caused by fire arm. Age of the injuries was within three hours. Injury nos. (i) and (ii) may be possible by lathi and injury nos.(iii) and (iv) may be possible by pistol if loaded with multiple pellets.

On the same day at 11.20 a.m. he examined Dilip Kumar Tiwari and found following injuries:-

- (i) One lacerated wound 4 m.m. x 4 m.m. x skin deep over lower part of the left side of the back with inverted margin. No charring and blackening was found around the wound.
- (ii) the injury was simple in nature and was caused by fire arm may be by pistol if loaded with pellet. Age of the injury was within three hours.

He prepared injury reports regarding respective three injuries in three separate sheets in his pen and signature. These are the said injury reports which were identified and marked as Ext.1, Ext.1/1 and Ext.1/2 respectively. During cross-examination, he stated that he did not remove any pellet from these three injured persons. He also replied that blackening and charring is possible when the injury is inflicted from a distance of about four feet.

11. P.W. 8 - Rajeev Ranjan Tiwari is informant of this case. He stated that on 26.11.1989 at about 10.45 a.m. he was 200 yards north before the

Middle School, Golhana. On that day, Parliamentary Election voting was scheduled and voting was going on in the middle school. He was issuing Purja

(voting slip) to the voters. Around 15-20 persons came and asked him to stop issuance of Purja as they will now issue Purja. Then he narrated the

names of all accused persons being Dinanath Singh, Ayodhya Singh, Rama Singh, Ajay Singh, Hira Singh, Jagan Singh, Ramadhar Singh, Rajmani

Singh, Sanjay Singh, Vijay Singh, Upendra Singh, Shiv Kumar Singh, Ram Niwas Singh and Laxman Singh. He could not remember the names of

other persons. All started assaulting him with lathi, danda and fist causing injuries on his shoulder, back side and right thumb. He further stated that his

younger brother Priya Ranjan Tiwari came from house and stopped them from causing assault. Then Dinanath Singh took out pistol from his waist and

fired upon Priya Ranjan Tiwari causing pellet injury upon his both eyes, face and on chest. The villagers came running. Hira Singh snatched HMT

Kanchan wrist watch and from his younger brother HMT Kajal wrist watch and they fled away. During the occurrence, Dinesh Tiwari and Dilip

Tiwari also got injury. All the injured were taken to Sadar Hospital, Daltonganj but informant was treated at Patan Government Hospital. His

statement was recorded in the village by the Daroga Ji immediately after the occurrence. After reading it, he signed over it.

This witness recognized his signature which has been marked as Ext.2. He also recognized signature of Girja Prasad Singh which has been marked

Ext.2/1. He identified accused Vijay Singh in the court and this witness claimed to recognize other accused persons for which identification of accused

were waived. During cross-examination on behalf of accused Dinanath Singh, he replied that on 26.11.1989 he was studying in B.A. at G.L.A.

College. On that day, parliamentary election was scheduled and its voting centre was middle school situated at his village Golhana. There he was

issuing voter slip to the villagers. At around 11.00 a.m., about 15-20 people who were residents of village Naudiha came and asked him to stop issuing

voter slip and demanded voter list from him on the ground that now they will issue voter slip. This witness refused to do so. Then he was assaulted by

fist and slap as well as from lathi and danda causing injury on his shoulder, left thumb, stomach and on legs. He recognized accused Dinanath Singh

and other 12 accused persons. He further replied that after hearing alarm his younger brother Priya Ranjan Tiwari came and told them to stop. Then

Dinanath Singh took out pistol from his waist and fired upon Priya Ranjan Tiwari causing pellet injuries on his both eyes, face and on chest. After

getting bleeding injuries, Priya Ranjan Tiwari fell down. Thereafter, Ajay Singh fired on the mob causing injury to Dilip Tiwari and Dinesh Tiwari.

Wrist watch of HMT- Kanchan brand was snatched by accused Hira Singh and someone from the accused person snatched wrist watch of Priya

Ranjan Tiwari of HMT- Kajal brand. On seeing the assembly of villagers, accused persons fled away.

Priya Ranjan Tiwari, Dilip Tiwari and Dinesh Tiwari were taken to the Sadar Hospital, Daltonganj for treatment whereas this witness was treated at

Patan Government Hospital. His fardbeyan was recorded in the village by the Thana Officer which has now been marked as Ext.2. In reply to the

cross-examination on behalf of rest of the accused persons excluding Dinanath Singh, he stated that he was not an agent of any political party nor he

was polling agent, but he was issuing voter slip on behalf of Bhartiya Janta Party. He further replied that Ramdeo Ram was candidate on behalf of

Bhartiya Janta Party but he was not authorized on his behalf to issue voter slip. The voting centre was for the voters of village Golhana and Sukhuya.

About 3/4 persons were present where he was issuing voter slip. First of all, he saw 15-20 persons of Haseri at the distance of 30 feet. Seeing them,

he feared. He could not see who possessed lathi. He has not informed the Presiding Officer of the voting centre about the assault caused to him. He

also stated that after one hour of the alleged occurrence Police arrived and sent the injured person from a truck to Daltonganj but no officer

accompanied on the truck. He further replied that he had received injury from 2/3 lathis. He could not remember how many lathis were used. The

assault was continued for about 15 minutes. This witness stated that he did not become unconscious nor had fallen on the ground. He also stated that

he could not say who had snatched the wrist watch of Priya Ranjan Tiwari nor he had seen someone removing wrist watch from him. He denied the

suggestion that he was not present in the village on the day of polling. It is not the fact that that he had not seen the occurrence. He also denied that

he had no knowledge that accused Dinanath Singh was polling agent at Naudiha booth. He also denied the suggestion that he has falsely implicated

accused persons.

12. P.W.10 Priya Ranjan Tiwari, brother of informant and one of the injured stated that on 26.11.1989 at around 10.30-11.00 a.m. voting for the

parliamentary election was going on at Middle School, Golhana. He after casting vote returned to the residence and was brushing his teeth. Then he

could hear alarm that some persons are assaulting his brother Rajeev Ranjan Tiwari. His brother was issuing voter slip. Then he went there running

and also raised alarm for saving his brother. He saw Ajay Singh, Rama Singh, Ayodhya Singh was assaulting his brother Rajeev Ranjan Tiwari with

lathi and his brother fell on the ground. Meanwhile, Dinanath Singh took out pistol from his waist and fired causing injuries to his face and in both eyes,

both shoulders and on chest. This witness fell down and became unconscious. He could not see who had removed his wrist watch. He further stated

that he regained his consciousness at RMCH, Ranchi. His right eye is completely damaged and from his left eye there is bleak vision. He could not see

the accused persons from this distance although he claimed to recognize accused persons but the identification was not objected by the defence.

During cross-examination on behalf of accused person, he stated that his statement was recorded by the Police on the next date of occurrence but he

had not signed over it. He is a matriculate and no injuries were caused to his hand. He was fully conscious at the time of recording of his statement.

The Daltonganj Police or Patan Police have not recorded his statement. His statement was recorded at Ranchi. He also replied that when he reached

at the place of occurrence at that time assault was being caused through lathi and Dinanath Singh was standing at the distance of about 12 yards. He

got fire arm injury while he was running and pellets have also come from the south side. He denied the suggestion that there was no such occurrence

as he narrated in his evidence.

13. P.W.13 Shiv Nandan Mahto is second Investigating Officer who has taken over investigation from Chandreshwar Singh who was first

Investigating Officer and has been examined as P.W.15 herein. This witness has stated that he has recorded the statement of witness Dinesh Kumar

Tiwari, Dilip Kumar Tiwari and Priya Ranjan Tiwari and after completion of investigation submitted charge-sheet. He further submitted that witness

Dinesh Kumar has stated before him that Dinanath Singh, Ayodhya Singh, Ajay Singh, Ramadhar Singh, Rama Singh, Manoj Singh, Upendra Singh

and Rajmani Singh of village Naudiha had surrounded them as he was casting his vote. Then they demanded his voter slip and snatched from his hand.

When he protested, he was assaulted with fist, slap and danda. Rama Singh and Ayodhya Singh ordered to kill him upon which Dinanath Singh and

Ajay Singh took out revolver from their respective waist and fired upon him. During cross-examination, he has stated that he had not inspected the

place of occurrence. He did not send blood stained cloth and blood stained soil for examination as these things were not received by him. Some

contradictions were taken from this witness in which he replied that witness Dilip Kumar Tiwari has not stated before him that Dinanath Singh had

fired from his pistol upon Priya Ranjan Tiwari and thereafter one more firing was done but he could not see. He has not stated in his statement that at

the time of assault Lathi, Danda, Bhala, Garasa and Banduk were seen by him. The statement of this witness was not recorded in the hospital. He has

denied that the witness has stated before him that when he was going to cast his vote at the same time Babusahebs and others of Naudiha village

were demanding the voter list from Rajeev Ranjan Tiwari and when he refused, he was assaulted by accused Dinanath Singh, Rama Singh, Ajay

Singh, Ayodhya Singh, Ramadhar Singh, Dhananjay Singh etc. He denied that he had recorded the statement of Priya Ranjan Tiwari at Ranchi. He

denied the suggestion that he has not conducted proper investigation and falsely implicated the accused persons and submitted charge-sheet.

14. P.W.15 Chandreshwar Singh is first Investigating Officer of this case. He stated that on 26.11.1999 he was posted at Patan Police Station. On

that day, the parliamentary election was going on. He got wireless message from Daltonganj police station about the assault at village Golhana under

Patan Police Station at Booth no.132 and injured have reached Daltonganj for treatment. He reached Golhana Middle School with Armed forces and

the Magistrate deputed therein. He recorded the statement of informant Rajeev Ranjan Tiwari at Golhana at his residence. It was read over to him.

Then informant signed over it.

He recognized the fardbeyan which has been marked and already exhibited. On that very basis, a formal F.I.R. was drawn up which was in his

handwriting and signature to which he identified and the same was marked as Ext.4. He took the investigation and inspected the place of occurrence

which was Middle School at Golhana village and at 200 yards north is the road. He had recorded re-statement of the informant and statement of other

witnesses and on 23.04.1990 handed over the charge of investigation to Shiv Nandan Mahto (Daroga).

Contradictions have been taken from this witness about the statement of Arun Kumar Tiwari, Bindeshwar Tiwari, Karunakaran Tiwari and Santosh

Ram. This witness has not recorded the statement of Dilip Kumar Tiwari and Priya Ranjan Tiwari. After recording of fardbeyan, he had not visited

Daltonganj as he was not aware that all injured went to Daltonganj. He further stated that he had not seized any blood stained soil or danda, torn

papers or Khokha from the alleged place of occurrence. He denied the suggestion that he had not properly investigated the case.

15. The statement of accused persons were recorded under Section 313 of the Code of Criminal Procedure where they denied the evidences against them.

16. The defence side has examined D.W.1 Gupteshwar Prasad Singh working as Health Worker in Patan Primary Health Centre who brought on

record injury report of Ayodhya Singh as Ext.A and injury report of Rama Prasad Singh as Ext.A/1. The injury report of Shiv Kumar Singh as Ext.A/2

and Laxman Singh as A/3. These injury reports were prepared by Dr. Parsu Ram Prasad which was in his handwriting and signature.

17. Learned Senior Counsel appearing in Cr. Appeal (S.J.) No.232 of 1999(R) and in Cr. Appeal (S.J.) No.242 of 1999(R) submitted that genesis of

case is that informant claiming himself to be agent of Bhartiya Janta Party and on that very basis were issuing voter slip which was demolished from

his own statement in Paragraph 11 where he has stated that he was neither polling agent of Bhartiya Janta Party nor he was polling agent of any

political party. He further admitted in subsequent Paragraphs 14, 15 and 16 that he had not informed the Presiding Officer of polling booth immediately

after the assault nor he tried to inform others. In Paragraph 17, his attention was drawn about the injuries upon the appellants which was denied by

him. He also submitted that P.W.1 in his evidence at Paragraphs 3 and 9 stated that when Priya Ranjan Tiwari was brought to Daltonganj on a truck,

he was enquired by Superintendent of Police and thereafter Priya Ranjan Tiwari, Dilip Tiwari and Dinesh Tiwari were forwarded to the hospital for

treatment. Learned Senior Counsel also submitted that in Paragraph 9 P.W.1 had stated that in his presence, Narendra Nath Tiwari had given

statement at Daltonganj Town Police Station but this Narendra Nath Tiwari was not examined by the prosecution which falsifies the prosecution case

and Priya Ranjan Tiwari became informant of this case who has categorically stated that his statement was recorded at his village and the

Investigating Officer P.W.15 has also stated that he had not visited Daltonganj for recording of statement of injured persons. He further stated that

injury reports were not brought on record by the prosecution but by the order of the court these were called and were marked Ext.A series. Lastly, he submitted that after lapse of so many years accused Ayodhya Singh, Laxman Singh, Rama Singh, Sheo Kumar Singh, Rajmani Singh, Ram Niwas Singh, Upendra Singh, Sanjay Singh, Dhananjan Singh, Vijay Singh, Akhilesh Singh in Cr. Appeal (S.J.) No.232 of 1999(R) and Ajay Singh, Ramadhar Singh and Hira Singh in Cr. Appeal (S.J.) No.242 of 1999(R) may be given benefit of doubt or the benefit as provided under Section 360 of the Code of Criminal Procedure.

18. Mr. B.P. Jaiswal, learned counsel appearing on behalf of convict Dinanath Singh in Cr. Appeal (S.J.) No.235 of 1999(R) submitted that the prosecution could not prove that grievous hurt was caused to informant or other injured persons. Injuries were found upon brother of informant examined as P.W.10.-Priya Ranjan Tiwari, but it does not fall under that category. The injury no.3 was found to be fire arm injury. This witness has also could not name that who had taken away his wrist watch. He further submitted that there is no permanent privation of any injury as one of the eyes was completely damaged but the same was not supported either by the doctor or any other witness. Learned counsel further submitted that admission of this witness in hospital was not proved nor any Discharge Slip was brought on record as well as the evidence of this witness was denied by the first I.O. examined as P.W.15 in Paragraph 6 of his evidence. In these circumstances, Sections 379 and 326 of the Indian Penal Code are not made out, at best it would fall under Section 324 of the Indian Penal Code. Since this convict had remained in jail custody for more than two months which could be held sufficient punishment.

19. Mr. Nehru Mahto, learned Additional P.P. appearing on behalf of the prosecution submitted that P.W.4-Santosh Ram and P.W.5-Dilip Kumar Tiwari, P.W.10- Priya Ranjan Tiwari are eye witnesses and have fully established the case of prosecution regarding offence fallen under Sections 326, 324 and 379 of the Indian Penal Code. The injuries found upon Priya Ranjan Tiwari is grievous in nature caused by firearm. Therefore, the conviction and sentence imposed upon them are sufficient in proportion to their criminal acts.

20. Having heard learned counsel for the appellants as well as learned Additional

P.P. and also on scrutiny of evidences adduced on behalf of prosecution, it would appear that P.W.1- Karunakar Tiwari, P.W.4- Santosh Ram and P.W.8- Rajeev Ranjan Tiwari, informant of this case, have categorically stated about the firing made by Dinanath Singh causing injury to Priya Ranjan Tiwari as also firing made by appellant Ajay Singh causing injuries to Dinesh Tiwari and Dilip Tiwari. The oral evidence about the firing by these two appellants are also supported with the evidence of P.W.7- Dr. Jawahar Lal, who had examined all the three injured namely Priya Ranjan Tiwari, Dinesh Kumar Tiwari and Dilip Kumar Tiwari. The Doctor has found two simple injuries and one grievous injury by firearm upon the body of Priya Ranjan Tiwari, examined as P.W.10. The Doctor has also found simple injury caused by firearm upon the body of Dilip Kumar Tiwari another injured, who has been examined as P.W.5. The Doctor has also found simple injuries caused by firearm as also by the hard and blunt substance upon Dinesh Kumar Tiwari, examined as P.W.12 but he has not supported the prosecution case and was declared hostile by the prosecution.

21. Therefore, the prosecution on the basis of oral as well as medical evidence could able to prove the firing made by appellant Dinanath Singh and Ajay Singh.

22. The court below after careful consideration of the case, came to the finding that all the accused persons formed an unlawful assembly with a common object to disturb the voting. They tried to snatch the voter list from the informant and when he objected, he was assaulted. When the brother of informant intervened in order to save him, appellant- Dinannath Singh fired upon him causing injury in which one of the injuries was found grievous in nature whereas appellant- Ajay Singh fired which caused injury to P.W.5- Dilip Kumar Singh and P.W.12- Dinesh Kumar Singh but as per the injury report both received simple injuries. It was further held that the intention of the appellant was not to commit murder rather they came with an object to cast bogus voting. The prosecution witnesses found accused persons presence and were identified taking part in the assault. Appellant- Dinanath Singh and Ajay Singh were seen by the prosecution witness using firearm putting human life in danger and thus on the basis of oral as well as medical evidence appellant-Dinanath Singh was held guilty under Sections 326 and 148 of the Indian Penal Code whereas Ajay Singh found guilty

under Sections 324 and 148 of the Indian Penal Code. On further consideration and to meet the ends of justice, the sentence awarded to Dinanath

Singh is modified and reduced to three years rigorous imprisonment under Section 326 of the Indian Penal Code. The sentence awarded under Section

148 of the Indian Penal Code upon Dinanath Singh and Ajay Singh are affirmed.

23. So far rest appellants are concerned, they have been rightly held guilty under Sections 323 and 147 of the Indian Penal Code and the sentence of

six months simple imprisonment under both the Sections are hereby, affirmed. Appellant- Hira Singh is also separately held guilty under Sections 379

of the Indian Penal Code and has been awarded three years rigorous imprisonment as he was held guilty for removing wrist watch of informant

Rajeev Ranjan Tiwari which has been supported with the oral evidence of P.W.3- Narad Ram, P.W.4-Santosh Ram and P.W.8-informant, Rajeev

Ranjan Tiwari, but the sentence awarded to him is also reduced to six months simple imprisonment.

24. In the circumstances, the judgment of conviction and order of sentence dated 28th July, 1999 passed by the then 7th Additional Sessions Judge,

Palamau in Sessions Trial No.36 of 1991 is affirmed except with the above modification in sentence as indicated hereinabove.

25. In the result, these appeals are dismissed with the above modification in sentence.