

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
JAMMU.

CRAA No.99000023/2010

State of J&K

.....Applicant/Petitioner(s)

Through: Mr. Adarsh Bhagat, GA

Versus

**1.Dharam Singh Charak
S/o Sh. Faquir Charak
2.Parvinder Singh Charak
S/o Sh. Dharam Singh Charak
R/o Doda.**

.....Respondent(s)

Through: Mr. R. K. S. Thakur, Advocate
Ms. Neha Abrol, Advocate

**CORAM;
HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE**

J U D G M E N T

1. This appeal is directed against the judgment dated 03.03.2010 passed learned Addl. Sessions Judge, Doda in case titled *State vs Dharam Singh Charak & Anr.* for offence under Sections 307/326/452/427 RPC and 5/27 Arms Act, whereby accused have been acquitted.
2. The impugned judgment is challenged on various grounds inter alia that the judgment is against the law and facts and liable to be set-aside; That the Ld. Trial Court has not appreciated the evidence produced by the prosecution and has excused into serious error of law by disbelieving the evidence of injured Attaullah Trambu PW-4 Thaker Lal and PW-3 Jugal Kishore; That there is enough evidence on record which warrants the conviction and sentence of the accused-

respondents and cannot be thrown out on the basis of minor contradictions; That the prosecution has successfully proved the allegations against the accused by oral and documentary evidence produced at the time of trial and has been able to establish the guilt of accused; That the Judgment even otherwise is illegal and improper and requires to be set aside as the quality of evidence rendered by eye witnesses is sufficient to connect the accused with the commission of offence.

3. Heard learned counsel for the parties, given my thoughtful consideration to the facts of the present appeal as well as also gone through the impugned judgment
4. The allegations against the respondents/accused as per prosecution case are that on 07.05.2002 complainant Thaker Lal lodged a written report in Police Station Doda that land measuring 1 kanal 8 marlas comprising in khasra no.2159/1596/361 is in possession of his mother-in-law which was fenced by boundary wall. He along with his mother-in-law and Jugal Kishore came to know that Dharam Singh Charak along with his son Parminder Singh and other members of family is demolishing the boundary wall during the intervening night of 6/7 May and has caused huge loss and has also caused loss to the tenant of his mother-in-law and has thrown out their belongings from the tenanted room. He visited the spot to assess the situation in the morning along with his mother-in-law and Jugal Kishore and at the same time Attaullah S/o Ghulam Mohd Trambu R/o Doda also came there. Dharam Singh Charak who was in the tenanted rooms and was

holding a 12 bore Gun fired on him to kill him but pellet hit Attaullah who has been admitted in hospital. Dharam Singh with criminal intention trespassed in his land to grab same and committed the occurrence. On this report police registered case vide FIR No.55/2002 for the offences under Sections 452, 307, 427 RPC and 5/27 Arms Act and investigation was commenced. During investigation police allegedly recovered weapon of offence along with one empty cartridge and one live cartridge on the disclosure and Nishandehi of accused, prepared site plan, got the Gun and cartridge resealed and sent for chemical examination and obtained medical report of Attaullah. Recorded statements of witnesses u/s 161 CrPC and on completion of investigation police concluded that accused Dharam Singh along with his son Parminder Singh and other unknown persons forcibly entered in the land of Rukmani Devi and threw out belongings of tenant of Rukmani Devi from the tenanted room and also demolished the boundary wall and damaged vegetables causing total loss of about Rs. 80,000/-. On the day of occurrence, accused with criminal intention to commit murder of the complainant fired on him from his licensed 12 bore Gun which hit Attaullah Trambu and accused Parminder Singh after snatching Carbine from PSO tried to open fire who could not succeed. Accordingly, offences under Sections 452, 307, 427, 326, 427, 34 RPC and 5/27 Arms Act were found proved against the accused and charge sheet was laid before the court.

5. The Trial Court framed the charges against the accused for commission of offences under section 452, 307, 447, 326, 427, 34 RPC and 5/27 Arms Act and their pleas were recorded. The accused-respondents denied the charges and claimed trial of the case and prosecution was, therefore, directed to lead evidence in support of its case.
6. After completion of prosecution evidence by the Trial Court the statements of accused under Section 342 CrPC were recorded. In their statements they stated that their house was damaged by the PWs and police seized licensed Gun of A-1 after ¾ days from his house. It further stated that the complainant and the prosecution witnesses want to grab his 13 marlas of land which he acquired through a Gift Deed and has constructed house thereon.
7. The accused also examined two witnesses in their defence and case was, therefore, fixed for final arguments.
8. The Trial Court after hearing the arguments of both sides acquitted the accused as prosecution had not been able to prove the charge against the accused beyond the reasonable doubt, thus giving the benefit of doubt to the accused persons.
9. In order to find out as to whether aforesaid offences have been committed by the respondents/accused persons beyond all shadows of doubt, it will be appropriate to give a brief resume of the prosecution evidence available on record before the Trial Court.

1. PW- Dr. Abdul Majid Malik deposed that during the month of May 2002 he was posted as Causality

Medical Officer in District Hospital Doda. He received an injury from Police Station Doda on 07.05.2002 wherein medical opinion regarding the injuries mentioned in the injury form sustained by Attaullah Trambu s/o Late Ghulam Mohd R/o Nehru Chowk Doda was sought. He injured the injured and found the following:

M.O.I-Old healed scar below chin.

The injuries noted buy him are as under:

Lacerated wound 1 ½ inch size of first web space of left hand, margins are irregular. Scratching of wound present. There is blackening around the wound margins. Fresh bleeding wound.

In his opinion a simple lacerated wound caused by firearm of 0-2 hours duration. The injuries are simple in nature caused by gun shot. On cross examination stated that he is not a Specialist. He is bachelor of Medicines as well as Surgery. The entry and exit points of the injury have not been mentioned by him in his certificate EXPW-AM9D. The above said injuries cannot be self inflicted. He was shown the gun and the cartridge by the police during the course of investigation and he examined both of them. The gun was in working order and the cartridge was empty. He has not mentioned the range or discharge of the fire in his certificate.

2. *PW Attaullah deposed that on 6/7 April previous year he had been to the house of Ghulam Hassan Tak, who resides near the place of occurrence. He heard noise anjd an towards place of occurrence where an altercation was going on between Master Thaker Lal, Jugal Kishore, their mother and accused persons. Master Thaker Lal asked accused as to why they turned out their tenant and accused Dharam Singh who was standing in the door of house brought out one 12 bore Gun from back side of door and fired on Master Thaker Lal. As he and Thaker Dass were standing at the same place the pellet hit his left hand*

and he fell down. Master Thaker Lal and Nissar Ahmed and others brought him to hospital where he remained admitted for one week. Two Bodyguards of Dharam Singh were also present there and son of Dharam Singh too Carbine of one PSO and tried to open fire but the PSO took back Carbine from him. There was a dispute between the parties due to which accused fired at Thaker Lal but it hit him. On cross-examination stated that houses of Chatter Singh, Dr. Tariq and Chuni Lal etc. are adjoining to the place of occurrence. None of the neighbours were present there at the time of occurrence but thereafter 25/30 people came there. He was standing near Thaker Lal and other people were also standing there but none other came under the impact of Pellet.

3. PW Jugal Kishore *deposed that Mst. Rukmani Devi is his mother and owns land measuring 1 kanal 8 marlas opposite Boys Middle School comprising in khasra No.36 min. Accused have also acquired land measuring 18 marlas from his mother but that is separate land but is in the same khasra number. His mother has constructed one room and one Kitchen in her land and remaining portion is lying vacant and is used for growing vegetable etc. They got their land demarcated through Tehsildar and his mother tenanted room and kitchen to Zarina Begum. On 6.5.2002 accused persons along with some goons came on spot and demolished 70 feet long wall and also broke iron gate and forced out Zarina Begum tenant along with her children and also threw their belongings. On 7.5.2002 Zarina came to their house and narrated whole story to them and then he along with his brother-in-law Thaker Lal went on spot where accused were already in the room and other people also came there and then accused persons attacked them with lathis and thereafter accused Dharam Singh asked his body guard to fire at Thaker Lal and when bodyguard did not do so accused Dharam Singh bought out a rifle from the room and fired at Thaker Lal which hit Attaullah Trambhu and he pushed Thaker Lal away. The accused fired at*

Thaker Lal to kill him and as a result of which Attaullah sustained injuries who was taken to hospital. Accused Parvinder Singh brought out Carbine of Bodyguard and tried to load Magazine to kill them bhu8t witnesses present on spot snatched the Carbine. On cross-examination deposed that occurrence took place on 7.5.2002. On one side of place of occurrence there is house of accused Dharam Singh and land of Ghulam Haider on the other side which is adjoining by the house of Dr. Tariq. Occurrence took place due to land dispute. He has no knowledge as to whether accused Dharam Singh acquired land from his mother or not. Nissar Ahmed Khan, Attaullah and Thaker Lal were present at the time of occurrence and when accused Dharam Singh fired, Ghulam Hussain Tak, Bharat Singh and other people were witnessing from their houses. He reached on spot after fire and his brother-in-law Thaker Lal told him that accused fired at them but no fire was opened in his presence, though accused Dharam Singh tried to load rifle again in his presence. Brothers of accused also gave beating to Thaker Lal and others with lathies due to which Thaker Lal also received injuries.

4. *PW Thaker Lal deposed that on 7.5.2002 at 6.15 a.m he along with his mother-in-law Rukmani Devi and Jugal Kishore s/o Rukmani Devi went to the land of Rukmani Devi near Boys City Middle School as they had received an information that the boundary wall raised by Rukmani Devi was demolished by accused persons during the night of 6/7 May 2002. The accused caused loss to the extent of 70/80 thousands by demolishing boundary wall and breaking iron gate. The information was given to her mother-in-law by some body and she disclosed the same to him. When she reached on spot they found the wall demolished and gate broken and the belongings of tenant were lying scattered in the field. The name of tenant was Abdul Qayoom s/o Abdul Jabbar R/o Kotha who would reside there with his family. Accused Dharam Singh had trespassed in their room*

and was holding 12 bore Rifle and when they asked him as to why he demolished the wall, accused opened fire on him but he bent slightly and the fire hit Attaullah Trambhu on his left hand who was standing just behind him. Accused Parminder Singh snatched Carbine from PSO Vikas Singh and tried to open fire on them but CRP people present there saved them. He lodged report EXPW-TL. On cross-examination deposed that Rukmani Devi has many shops but he does not know the names of her tenants. FIR was written by Bashir Ahmed Trambu. He, his mother-in-law and Attaullah Trambu were present on spot. There are houses of Gandharb Singh, Karnail Singh, accused Dharam Singh and Dr. Tariq near the place of occurrence. The disclosure was made by accused in Police Station in his presence but he does not know who else was there.

5. PW Bashir Ahmed deposed that on 7.5.2002 he along with his brother had been to attend some religious ceremony near the house of accused when they heard noise. One day before accused had demolished wall on spot and Rukmani Devi, Thaker Lal and Jugal Kishore had come there. Accused Dharam Singh asked his son to bring his rifle and he brought rifle from inside and handed over to his father who fired at Master Thaker Lal but as his brother was standing near Thaker Lal and was holding a branch of tree, fire hit him. A-2 snatched a rifle from Body guard of accused Dharam Singh and tried to fire but CRP men came and they snatched rifle from him. He has admitted the contents of seizure memo EXPW-BA. On cross-examination deposed that Attaullah Trambu is his real brother who had gone there before his arrival. The name of tenant was Zarina Begum w/o Abdul Qayoom. It is true that Abdul Qayoom was Body guard of Karamatullah. Nissar Ahmed Khan was present at the time of occurrence. The fire was opened from a distance of about 20 feet. He does not know for how many days Attaullah Trambu remained admitted in hospital.

6. PW Abdul Qayoom deposed that seizure memo bear his signature but no seizure was made in his presence. Recovery memo of 12 bore gun also bears his signatures but contents are not true. Contents of Supurdnama are also not correct. The witness was declared hostile.
7. PW Nissar Ahmed deposed that the contents of seizure memo regarding bed and fard supurdnama re correct and bear his signatures. On cross-examination stated that police obtained his signatures on blank paper.
8. PW Karnail Singh deposed that 2-4 years back in the summer season he had been to take bath on Sprijng and when came back he did not find accused Dharam Singh in his house. He was Body guard of accused Dharam Singh and his wife told him that Dharam Singh has been taken to Police Station and he went there. On cross-examination deposed that he has no knowledge about the occurrence.
9. PW Mohd Usman Patwari deposed that copies of khasra girdawari are in his handwriting and bear his signatures. On cross-examination stated that there is land of Dharam Singh adjoining the place of occurrence and he has a dispute with regard to possession of land with Rukmani Devi. Dharam Singh has 13 marlas of land but separate titma is not prepared.
10. PW Shamas Din Tehsildar deposed that he re-sealed packets of 12 bore gun, one empty and one live cartridge. On cross examination stated that he opened the packet and then resealed the same but he cannot say as to whether rifle was single barrel or double barrel.
11. PW Karamatullah deposed that a quarrel took place between accused and Ruknani Devi, Jugal Kishore and Thaker Lal in the month of April 2004 and fire was opened due to which Attaullah Trambu received injury. Police seized rifle and two cartridges. He has

admitted the contents of seizure memo dated 07.05.2002. On cross examination deposed that he was not present at the time of occurrence but he heard fire sound when he was passing through there and when he reached on spot many people had assembled at the place of occurrence. He does not know the cause of occurrence. Parties had no dispute regarding land where the occurrence took place.

12. PW Zarina Begum deposed that she has no knowledge about the occurrence. She was tenant in the house of Mohd Shafi Butt R/o Gattu Mohalla. She was declared hostile and on her cross-examination she deposed that police did not record her statement. The witness has denied the statement recorded under section 161 Cr.P.C.

13. PW Vikas Singh deposed that in the month of May 2002 he was posted as PSO with accused Dharam Singh. He along with other PSO Karnail Singh had been to a Spring to take bath and when came back at 9 a.m they did not find accused in the house but he was in Police Station Doda. The witness was declared hostile and in cross-examination deposed that on the day of occurrence he remained absent and other PSO was also with him and he has no knowledge whether anybody attacked Dharam Singh or Dharam Singh attacked anybody in his absence.

14. PW Mohd Hanief SI has investigated the case in hand and he prepared the site plan and recovered one rifle and one empty cartridge on the disclosure and nishandehi of accused Dharam Singh. On cross-examination deposed that when he reached on spot Nissar Ahmed was there and other witness were also present there. No other PW except Nissar Ahmed resides near the place of occurrence. Thaker Lal and Abdul Qayoom were present there at that time. No CRP personnel is cited as witness but he does not know as to whether they reached on spot before his arrival or not. He does not remember as to when rifle was sent to FSL no officer from FSL is cited witness

he does not know as to whether report from FSL was obtained or not.

15.The charge against the accused is that accused Dharam Singh along with his son Parminder Singh and other unknown persons forcibly entered in the land of Rukmani Devi and threw out belongings of tenant of Rukmani Devi from the tenanted room and also demolished the boundary wall and damaged vegetables causing total loss of about Rs. 80,000/-. On the day of occurrence, accused with criminal intention to commit murder of the complainant fired on him from his licensed 12 bore Gun which hit Attaullah Trambu and accused Parminder Singh after snatching Carbine from PSO tried to open fire who could not succeed.

16.So as per the charge sheet two occurrences are disclosed to have taken place. One is that accused Dharam Singh along with his son Parminder Singh and other unknown persons forcibly entered in the land of Rukmani Devi and threw out belongings of her tenant Zarina Begum from the tenanted room. Regarding this occurrence there is only one eye witnesses namely Zarina Begum but she has not supported the prosecution case and has denied that any occurrence had taken place in her presence. She has further stated that she was tenant in the house of Mohd Shafi Butt of Gattu Mohalla. The version of PW Thaker Lal that it was PW Zarina who disclosed the occurrence to him is belied by this witness. As such there is no direct evidence to this occurrence. Though there is circumstantial evidence of PWs Thaker Lal, Bashir Ahmed and Atta Mohd who have stated

that they found the accused persons in the room of Rukmani Devi which was in occupation of Zarina Begum as tenant but this circumstance has been controverted by PW Zarina Begum by stating that she was never tenant in the said house. Regarding the allegation of trespass and damage in the premise owned by Rukmani Devi, it was Rukmani Devi who could have stated about the same and also regarding PW Zarina Begum as her tenant but she has not been examined by the prosecution for the reasons better known to them. So, as per the evidence on record the first occurrence is not established by the prosecution.

17. Now regarding 2nd occurrence which is alleged to have taken place on 7.5.2002. A bare perusal of statements of PWs 2, 4 & 5 i.e., PW Attaullah Trambu, PW Thaker Lal and PW Bashir Ahmed, it is revealed that they have contradicted each other regarding the participation of the accused persons in the commission of occurrence. PW Attaullah deposed that accused Dharam Singh took out his 12 bore Gun from backside the door and fired at Thaker Lal but PW Thaker Lal deposed that accused Dharam Singh was having rifle in his hand . PW Bashir Ahmed deposed that accused Dharam Singh asked his son A-2 to bring rifle from inside, so this witness has narrated a different story. The witnesses have also contradicted each other as to their position at the time of alleged fire. As per PW Attaullah, he and Thaker Lal were standing in the same row and accused Dharam Singh fired on Thaker Lal but it hit him. However, PW Thaker Lal has deposed that PW Attaullah was standing behind

him and not in the same row. He has further stated that he bent slightly and the bullet hit PW Attaullah. PW Bashir Ahmed has stated a different story that PW Attaullah was standing near PW Thaker Lal but he was holding a branch of tree and the fire hit his hand. So these discrepancies in their statements cast doubt as to their presence on the spot. Had all of them been present there they would have clearly stated as to where the injured was standing and what was the role of the accused. These witnesses have also contradicted each other regarding the role of A-2. As per PW Attaullah, A-2 tried to open fire after taking cartridge from PSO but PSO snatched Carbine from him but PW Thaker Lal states that CRP personnel saved them from A-2. PW Bashir Ahmed states that CRP personnel snatched Carbine from A-2 and not PSO as deposed by PW Attaullah. So this is another serious contradiction which casts doubt as to the presence of these witnesses on spot. Though the two PSO's Karnail Singh and Vikas have also been examined by the prosecution but they have not supported the prosecution case, as they have denied of being present on spot at the time of occurrence. The witness are, therefore disputing the presence of each other on spot.

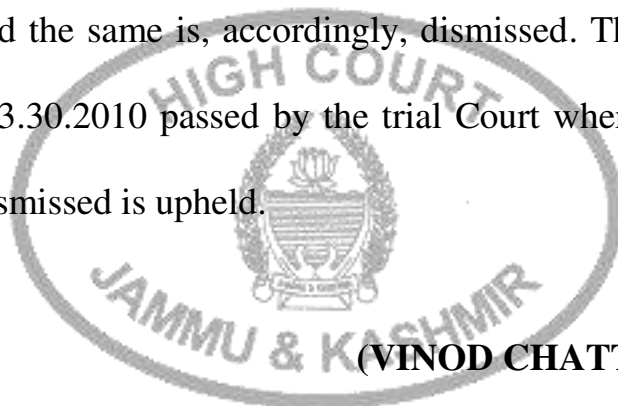
18. From the perusal of the file it reveals that police has cited as many as seven eye witnesses i.e PW-2 Attaullah Trambu, PW-4 Thaker Lal, PW-5 Bashir Ahmed, PW-6 Abdul Qayoom, PW-8 Karnail Singh, PW-12 Zarina Begum and PW-13 Vikas and out of these witnesses only 3 witnesses i.e PW 2, 4 & 5 have supported the prosecution case, whereas remaining witnesses have turned hostile. It is consistent

evidence of these witnesses that PW Nissar was present there at the time of occurrence and CRP persons intervened and stopped A-2 from opening fire from the Carbine of one PSO but PW Nissar has not supported the prosecution and also none of CRP personal has been cited as witness. These witnesses have also deposed that many other persons had assembled there but none of them has been cited and produced as eye witness. These persons who witnessed the occurrence were independent witnesses and their withhold raises adverse inference against the prosecution. If the evidence of complainant, injured and Bashir Ahmed inspires confidence and is free from infirmities the withhold of other independent witnesses may lose its significance. Had they been present on spot they would have corroborated the occurrence. It has also come in the statement of PW Jugal Kishore, some persons of the locality were witnessing the occurrence but they have not been produced by the prosecution.

19. As per the I.O the seized Gun along with empty cartridge was sent to FSL for chemical examination but no report has been placed on file to prove as to whether any discharge was made from the said Gun and the empty was discharged from the said Gun and could have caused the injury. In the given circumstances the forensic evidence was essential but the same has not been produced by the prosecution. Therefore the absence of opinion ballistic expert, in the given circumstances, affects the prosecution case especially when the evidence of so called eye witnesses is shaky.

20. Thus, from the evidence on record, the direct evidence is shaky and is not creditworthy and sufficient to convict the accused persons without corroboration from independent witnesses who allegedly were present on spot but not examined by the prosecution. The contradictions and discrepancies in the statements of the witnesses are material and go to the very root of the case and it will not be safe to base conviction of accused persons without any cogent evidence.

21. From the discussion made hereinabove, it is held that prosecution has miserably failed to prove the charges framed against the accused-respondents beyond reasonable doubt, therefore, the instant appeal fails and the same is, accordingly, dismissed. The order of acquittal dated 03.30.2010 passed by the trial Court whereby the challan has been dismissed is upheld.



(VINOD CHATTERJI KOUL)
JUDGE

Jammu
30.12.2023
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Whether approved for reporting? Yes/No