

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.166 of 1992

Arising Out of PS.Case No. -179 Year- 1983 Thana –Danapur (Shahpur) District- PATNA

1. Uma Rai, son of Ram Babu Rai.
2. Sheochandra Rai, son of Ram Babu Rai.
3. Amar Nath Rai, son of Saryug Rai.
4. Dharamdeo Rai, son of Saryug Rai.
5. Dani Rai, son of Saheb Rai (since dead).

All are residents of Mohalla-Hawaspur, P.S.-Akilpur (Sahpur-Danapur), District- Patna.

.... Appellants

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 188 of 1992

Arising Out of PS.Case No. -179 Year- 1983 Thana –Danapur (Shahpur) District- PATNA

1. Saheb Rai, son of Late Thama Rai (since dead)
2. Shambhu Rai, son of Ram Babu Rai.
3. Ashok Rai, son of Late Ram Ishwar Rai.
4. Lal Kishun Rai, son of Saheb Rai.

All are residents of Mohalla-Hawaspur, P.S.-Akilpur (Sahpur-Danapur), District- Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellants : Shri Shravan Kumar, Senior Advocate.
Shri Dinesh Maharaj, Advocate
Shri Rajiv Nayan Singh, Advocate
For the Respondent : Shri Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

C.A.V. JUDGMENT

(Per: HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL)

Date: 14-05-2015

Both these appeals arise out of the judgment of
conviction and order of sentence dated 30.05.1992 passed by the

learned 5th Additional Sessions Judge, Patna in Sessions Trial No.528 and 545 of 1984, as such, both have been heard together and are being disposed of by this common judgment.

2. By the impugned judgment, appellant no.2 Sheochandra Rai has been convicted and sentenced to undergo rigorous imprisonment for life under Section 307 of the Indian Penal Code and he has further been convicted and sentenced to undergo rigorous imprisonment for one year under Section 148 of the Indian Penal Code and he has also been convicted and sentenced to undergo rigorous imprisonment for three years under Section 27 of the Arms Act. Appellant Nos. 1, 3, 4 and 5, namely, Uma Rai, Amar Nath Rai, Dharamdeo Rai and Dani Rai respectively have been convicted and sentenced to undergo rigorous imprisonment for life under Sections 307/149 of the Indian Penal Code and they have also been convicted and sentenced to undergo rigorous imprisonment for ten years under Section 395 of the Indian Penal Code. Appellant nos. 4 and 5 have also been convicted and sentenced to undergo rigorous imprisonment for one year under Section 148 of the Indian Penal Code and they have also been convicted and sentenced to under rigorous imprisonment for three years under Section 27 of the Arms Act. The appellants of Cr. Appeal (DB) No.188/1992 have been convicted and sentenced to undergo rigorous imprisonment for life under Sections 307/149 of the Indian Penal Code and they have

also been convicted and sentenced to undergo rigorous imprisonment for ten years and three years under Section 395 of the Indian Penal Code and under Section 27 of the Arms Act respectively. However, it has been directed that all the sentences were to run concurrently.

3. The prosecution case, in brief, is that on 17.06.1983 at about 4:30 A.M., accused Sabab Rai, Dani Rai, Lal Kishun Rai, Ashok Rai, Amar Nath Rai, Shambhu Nath Rai, Sheo Chandra Rai, Uma Rai and Kalika Rai along with 8-10 others came to the Darwaja of the informant Lal Babu Rai (P.W.3). Accused Dani Rai caught hold of the informant, assaulted and asked whereabouts of his brother Hira Lal (P.W.2). The informant replied that he (Hira Lal) was not present there, he was at Sherpur. Thereafter, accused Sabab Rai asked that Hira Lal had fled away out of fear as he was to be assaulted by them. Accused Shabab Rai asked his companions to take away the buffaloes of Hira Lal. Thereafter, the accused persons untied five buffaloes and started taking away. In the meantime, his neighbour Asharfi Rai (P.W.1) came there and raised alarm and asked the accused as to why they were taking away the buffaloes. Thereafter, at the instigation of Sabab Rai, appellant Sheochandra Rai fired a shot, which caused injuries to P.W.1 in his both of his thighs. It has been further alleged that accused Dani Rai, Shabab Rai, Kalika Rai and Dharmdeo Rai were armed with country made pistols



and other persons were armed with Lathi. Due to fear of the accused, no one raised alarm and they moved towards the northern side of the village. It has been further alleged that there was litigation between the informant and some of the accused from before. Prior to the occurrence, the accused had ruined the maize and wheat crops of the informant, but no case was lodged as the matter related to the villagers. It has further been alleged that the occurrence was witnessed by several persons including Siya Ram Rai, Ram Pukar Rai, Mahendra Rai.

4. The fardbeyan was recorded by S.I. G.D. Singh (P.W.4) at 6:30 hours on 17.06.1983 at Shahpur police station. On the basis of aforesaid fardbeyan, Danapur (Shahpur) P.S. Case No.179 dated 17.06.1983 was registered against the appellants and others. After investigation, charge-sheet was submitted against the appellants and one Ram Nagina Rai (who has been acquitted by the learned trial court). The charges were framed against the appellants and Ram Nagina Rai and after the trial; they have been convicted and sentenced as aforesaid except Ram Nagina Rai, who was acquitted for the offence punishable under Section 412 of the Indian Penal Code.

5. During pendency of these appeals, appellant no.5 Dani Rai of Cr. Appeal (DB) No.166/1992 and appellant no.1 Saheb Rai of Cr. Appeal (DB) No.188/1992 died. As such, the appeals on

their behalf abated vide order dated 11.12.2014 of this Court.

6. The learned counsel for the appellants has submitted that the prosecution has failed to produce the witnesses named in the first information report and the charge sheet and there is no explanation for their non-examination offered by the prosecution. From the evidence brought on the record, it is apparent that no case under Section 395 of the Indian Penal Code is made out. The offence under Section 307 of the Indian Penal Code is also not made out. The learned trial court ought to have considered the testimony of P.W.5 Dr. B.N.John who had examined the victim. From the evidence of this witness, it appears that two injuries were found on the body of the victim. He has further stated that both the injuries were from two different shots, whereas, the case of the prosecution is that Sheochandra Rai fired a shot which caused injuries in both thighs of Asharfi Rai. No blood had been found on the place of occurrence. The prosecution has not been able to substantiate its case beyond reasonable doubt.

7. The learned counsel for the State has submitted that the buffaloes of the informant have been recovered by the police and have been handed over to the informant and his relatives. It is the consistent case of the prosecution that at the order of Sabab Rai (died during the pendency of appeal), appellant Sheochandra Rai fired the shot, which caused injuries in both the thighs of Asharfi Rai (P.W.1).

8. After hearing the learned counsel for both the parties and on perusal of the record, it appears that the prosecution has examined five witnesses in support of its case. P.W.1 Asharfi Rai is the injured witness. P.W.2 Hira Lal Rai is the brother of the informant, Lal Babu Rai (P.W.3). P.W.3 Lal Babu Rai is the informant of the case. P.W.4 Ganesh Dutt Singh is the Investigating Officer of this case and P.W.5 Dr.B.N.John is the doctor who has examined P.W.1 Asharfi Rai.

9. P.W.4 has recorded the fardbeyan of P.W.3 and himself started the investigation of the case. He has stated that on 17.06.1983 Lal Babu Rai came to the police station at 6.30 A.M. and he recorded his fardbeyan (Ext.2) and on the basis of it, formal FIR (Ext.3) was drawn. He took the restatement of the informant and the statement of Asharfi Rai (P.W.1). He prepared the injury report and sent Asharfi Rai to Danapur Hospital for his treatment. He recorded the statement of Jagdish Rai, Hira Lal Rai (P.W.2) and went to the place of occurrence as narrated by P.W.3 Lal Babu Rai. The place of occurrence was the vacant land in the eastern side of the house of the informant and his Darwaja. Adjacent north to the Dalan, there is road lying north to south. Adjacent to this road, there is house of Asharfi Rai (P.W.1). He found two Khutas (pegs) on the Dalan for tying two buffaloes and it also appeared that buffaloes used to be tethered there. Five yards from that place, there was a *Bargad* tree and south



to it, there was a house of Raj Ballabh Rai and in the eastern side from the house of Asharfi Rai (P.W.1) and in the western side, there was house of accused Uma Rai and Sheochandra Rai. He took the statement of the witnesses on the place of occurrence. On 8.07.1983, a police officer came to the police station with a buffalo and accused Ram Nagina Rai. The seizure list was prepared, which has been marked as Ext.4. The buffalo was given to Lal Babu Rai on executing a bond. On 29.07.1983, it came to his notice that four buffaloes were caught in the jurisdiction of Pahleja Outpost, which were requisitioned and brought by the constable and Chaukidar. The seizure list (Ext.5) was prepared. Those buffaloes were given to Hira Lal Rai (P.W.2) on executing of a bond (Ext.6).

In his cross-examination, he has stated that he carefully examined the place of occurrence where Asharfi Rai (P.W.1) was injured by firearm. He did not find any blood on the place of occurrence. He did not find any sign of firing a shot. No pellet was recovered from the place of occurrence. He did not take the statement of any of the family members of P.W.1 Asharfi Rai. In paragraph 10, he has stated that there was Diara land (barren land) near the river. The Diara land was around the village. He has stated in paragraph 14 that no member of the family of P.W.1 met him nor gave any statement. In paragraph 17, he has stated that P.W.1 had not stated before him that Dani Rai was slapping Lal Babu Rai

(P.W.3) and other accused were catching hold of Lal Babu Rai.

10. P.W.5 is the doctor, who has stated that on 17.06.1983, he examined Asharfi Rai (P.W.1) and found the following injuries on his person :-

(i) One gun shot wound with burning and singeing of hair measuring $\frac{1}{2}$ " x $\frac{1}{2}$ " x 1" on right thigh.

(ii) One gun shot wound of entry with burning and singeing of hair extended to an area of 4" x 3" of inner lower part of left thigh. The wound of exit was at the back of the thigh. The bullet had fractured the thigh bone which was broken into pieces.

In the opinion of doctor, the injury no.(ii) was grievous and injury no.(i) was simple caused by firearm. The injury had been caused within six hours of examination of P.W.1 by P.W.5.

The injury report has been marked as Ext.7.

In his cross-examination, P.W.5 has stated that both the injuries were from two different shots. Injuries may be possible even by one shot if one limb is over the other. It is not mentioned in the injury report whether both the injuries were in one line or not. He has stated that he cannot say whether the gun was fired from right side or from left side of the injured and whether the injuries were caused while the injured was standing or sitting or sleeping.

11. P.W.1 has stated that the occurrence took place at the time of sunrise on 17.06.1983. At that time, he was giving fodder to his she-buffaloes. 15-20 persons came to the Darwaja of Lal Babu



Rai (P.W.3). He identified 10 of them as Sheochandra Rai, Om Prakash Rai, Shambhu Rai, Dani Rai, Lal Kishun Rai, Sabab Rai, Ashok Rai, Amarnath Rai, Kalika Rai and Dharamdeo Rai. Sheochandra Rai, Shambhu Rai, Dani Rai, Kalika Rai and Dharamdeo Rai were armed with pistol and others were armed with Lathi. Lal Babu Rai was assaulted by Dani Rai and the remaining accused were catching hold of him. Thereafter, accused untied five buffaloes of P.W.3 Lal Babu Rai, which was protested by him (P.W.1). Thereafter, at the instance of Sabab Rai, Sheochandra Rai fired the shot, which hit in his left leg and it crossed and also hit in his right leg. The accused persons took away five she-buffaloes. He was taken to Shahpur Police Station. The Police Officer found him injured and issued a memo for his examination at Danapur Hospital. In his cross-examination, he has stated that at the time of occurrence, his father and his brothers, including himself were at their house. None of them have been examined in support of the case. After the occurrence, he was taken to the police station where his statement was taken down by the police officer. In paragraph 21, he has stated that the accused fired from a distance of about two yards. In paragraph 27, he has stated that at the place of occurrence, there is house of Gurucharan Thakur, Chhedi Lal Rai, Jaga Rai, but none of them have been examined. He has stated in paragraph 30 that he was restless due to suffering the injuries. In paragraph 35, he stated that

he has stated before the Investigating Officer that Lal Babu Rai was assaulted by Dani Rai and the other accused were catching hold of him (Lal Babu Rai), whereas, the Investigating Officer (P.W.4) has stated in paragraph 17 that P.W.1 Asharfee Rai did not state before him that Dani Rai was slapped by Lal Babu Rai and the remaining accused were catching hold of Lal Babu Rai.

It appears from the evidence of P.W.1 that Sheochandra Rai fired into his left leg, which passed through to hit the right leg. P.W.1 has stated that shot was fired at him from a distance of about two yards, whereas, the doctor (P.W.5) had found the gun shot wound with burning and singeing on both the injuries. Burning and singeing on both the wounds is not possible when the shot is shot is fired from a distance of more than two yards moreover by one shot. The evidence of P.W.1 does not appear to be convincing.

12. P.W.2 Hiralal Rai has stated that at the time of occurrence, he was in his house at Sherpur and his brother Lal Babu Rai (P.W.3) came to his house and narrated about the occurrence. Thus, it has been admitted that he is a hearsay witness.

13. P.W.3 Lal Babu Rai is the informant of the case. He has stated that the occurrence took place on 17.06.1983 at the time of sun rise. 18-20 persons came to the place of occurrence. Out of whom, he identified 10 of them (appellants). The accused Dani Rai, Sabab Rai, Lalika Rai and Dharmdeo Rai were armed with country



made pistol and the other persons were armed with Lathi. The accused Dani Rai caught hold and slapped him and asked about his elder brother Hira Lal Rai (P.W.2). He told that Hira Lal Rai was at village Sherpur. Thereafter, he asked the co-accused to take his five buffaloes. The accused untied the buffaloes. In the meantime, P.W.1 raised alarm and protested. Thereafter, at the instance of Sabab Rai, Sheochandra Rai fired a shot, which caused injuries in both the thighs of Asharfi Rai (P.W.1). The occurrence was witnessed by several persons. Asharfi Rai (P.W.1) was taken to Shahpur police station. In the way, he narrated the occurrence to his brother Hira Lal Rai (P.W.1). His statement was recorded in the police station. He put his signature (Ext.1/2). In paragraph 9, he has stated that all the five buffaloes were received back from the police. In paragraph 10, he has stated that the witness Raja Ram died and other witnesses were gained over by the accused. In his cross-examination at page 14, he has stated that at the time of occurrence, there were five buffaloes at his Darwaja. No other buffalo was there. For those five buffaloes, there was five tubs/Nads and five Khuta and his buffaloes were never taken for grazing. In paragraph 19, he has stated that he showed five tubs and five Khutas of his buffaloes to the Officer-in-charge at the place of occurrence. In paragraph 24, he has stated that Asharfi Rai (P.W.1) raised alarm and came to his Darwaja. No one from the house of Asharfi Rai (P.W.1) or any other person came there. In

paragraph 29, he has stated that appellant Sheochandra Rai fired at Asharfi Rai (P.W.1) from a distance of 7-8 steps.

14. It has been found earlier that the Investigating Officer (P.W.4) had visited the place of occurrence in presence of the informant (P.W.3) and P.W.4 has stated in paragraph 3 that he found Khutas for tying two buffaloes. P.W.4 has also stated that he did not find any blood on the place of occurrence. It was also told to P.W.4 that only one shot was fired. The doctor had found two gunshot injuries with burning and singeing of hair. The injuries of burning and singeing of hair by gunshot cannot be caused from a distance of two yards as stated by P.W.1 and from a distance of 7-8 steps as stated by P.W.3 in paragraph 29 of his deposition.

On the point of distance of the firearm, according to the *Text Book of Medical Jurisprudence and Toxicology by Jaisingh P Modi (24th Addition 2011) at page 540*, it has been mentioned that *“If a firearm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are singed, and the clothes covering the part are burnt by the flame. If the powder is smokeless, there may be a greyish or white deposit on the skin around the wound. If the area*

is photographed by infrared light, a smoke halo round the wound may be clearly noticed. Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or pistol discharged within about two feet”.

We have noticed while examining the prosecution evidence that P.W.1 has stated in paragraph 21 that the accused fired from a distance of about 2 yards, whereas, P.W.3 has stated in paragraph 29 that the appellant Sheochandra Rai fired at Asharfi Rai (P.W.1) from a distance of 7-8 steps. Thus, we find that the ocular evidence of P.W.1 and P.W.3 does not get support from the medical evidence; rather, their evidence is contrary to the medical evidence. As such, on the point of distance of firearm and the injuries did not support the evidence of P.W.1 and P.W.3. The ocular evidence is contrary to the medical evidence.

Secondly, P.W.1 has stated that Sabab Rai was slapping the informant (P.W.3) and other accused were catching hold of Lal Babu Rai, whereas, P.W.3 has stated that Sabab Rai caught hold of him (P.W.3), assaulted him by giving 2 to 4 slaps to him. Thus, there is also contradiction on the point of assault by Sabab Rai.

15. Considering the facts and circumstances of the case, it appears that the evidence of prosecution witnesses (P.Ws. 1 and 3) is not convincing and it does not inspire confidence. Their evidence is not fit to be relied upon. Only one buffalo has been recovered from

the possession of the co-accused Ram Nagina Rai, who was charged under Section 412 of the Indian Penal Code and he was acquitted by the learned trial court. No buffalo has been recovered from the possession of the appellants.

16. For the reasons stated above, we find that the prosecution has not been able to prove its case beyond reasonable doubt. All the accused are entitled to get the benefit of doubt. The appellants are acquitted by giving them the benefit of doubt.

17. In the result, both these appeals are allowed. The impugned judgment of conviction and order of sentence is set aside. The accused are on bail. They are discharged from the liabilities of their bonds.

(Amaresh Kumar Lal, J)

Dharnidhar Jha, J : I agree.

(Dharnidhar Jha, J)

V.K. Pandey/-
A.F.R.

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