

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.523 of 2002

Arising Out of PS.Case No. 20 Year- 1991 Thana -Kurshela District- KATIHAR

Basudeo Rai, son of Shyamdeo Rai, resident of village-Devipur, Police Station-Kurshela, District-Katihar.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 532 of 2002

Arising Out of PS.Case No. 20 Year- 1991 Thana -Kurshela District- KATIHAR

1. **Badri Rai**, son of late Ram Nath Rai
2. **Ram Chandra Rai**, son of late Jagarnath Rai
3. **Dilip Rai**, son of late Bishwanth Rai, all resident of village-Debipur, Police Station-Kurshela, District-Katihar.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 342 of 2004

Arising Out of PS.Case No. -20 Year-1991 Thana -Kurshela District- KATIHAR

Laxman Rai, son of late Jagarnath Rai, resident of village-Debipur, Police Station-Kurshela, District-Katihar.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No. 523 of 2002)

For the Appellant/s : Mr. Ravi Shankar-Advocate

For the Respondent/s : Mr. Bipin Kumar-A.P.P.

(In CR. APP (SJ) No. 532 of 2002)

For the Appellant/s : Mr. Ravi Shankar-Advocate

For the Respondent/s : Mr. Sujeet Kumar Singh-A.P.P.

(In CR. APP (SJ) No. 342 of 2004)

For the Appellant/s : Mr. Ravi Shankar-Advocate

For the Respondent/s : Smt. Abha Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 16-02-2015



Criminal Appeal no.523 of 2002 wherein Basudeo Rai is the appellant, Criminal Appeal no.532 of 2002 wherein Badri Rai, Ram Chandra Rai and Dilip Rai are the appellants, originate against the common judgment of conviction and sentence dated 21.08.2002, passed by the Presiding Officer, Additional Court-II, (Fast Track Court), Katihar in Sessions Trial no.221 of 2001/ 207 of 1991, convicting the appellant Dilip Rai for an offence punishable under Section 307 of the I.P.C. and directed to undergo rigorous imprisonment for seven years, while appellants Basudeo Rai, Badri Rai and Ram Chander Rai have been found guilty for an offence punishable under Section 307/ 149 of the I.P.C. and each one has been directed to undergo rigorous imprisonment for seven years.

2. While the above referred two appeals remained pending, appellant Laxman Rai on whose behalf Criminal Appeal no.342 of 2004 has been filed and who, during continuation of original trial before the learned trial Court defaulted after recording of statement under Section 313 Cr.P.C. and whose trial was bifurcated on account of his absence, was tried under heading of Sessions Trial No.207 of 1991 and during course thereof, was found guilty for an offence punishable under Section 307 I.P.C., 148 I.P.C. and further been directed to undergo rigorous imprisonment for seven years under

Section 307 I.P.C. as well as rigorous imprisonment for one year under Section 148 of the I.P.C. with a further direction to run the sentences concurrently, and as having the same set of evidence against all of them on account thereof, all the three appeals have been directed to be heard analogously and in the aforesaid background, have been heard analogously and are being disposed of by a common judgment.

3. One of the injured, Revti Raman Trivedi (PW-2) recorded first information report on 13.03.1991 at about 11.00 p.m. at Barsoni P. S. alleging inter alia that he along with others came from his village Barsoni to Debipur as one of the member of Barat Party on the eve of solemnization of marriage of son of his co-villager Ramji Rai over his tractor bearing registration no.BRK-8945. At about 6.00 p.m., he reached at Line Hotel situated at village Debipur. While they were staying at line hotel, two persons of Debipur village came and enquired about arrival of Barat Party. Subsequently thereof, three more persons came and again enquired about arrival of Barat Party over which, he had disclosed that they have come. However, the father of bride-groom has gone to Kurshela Bazar for some work. Then thereafter, they insisted that they should carry the bride-groom at the place of bride over which he stated that how the Barati will proceed in absence of father of bride-groom. At that very moment, father of bride namely Shankar Rai came, whom he had also informed



and on account thereof, he pacified the villagers. He had identified one of them. Then thereafter, one villager had again approached and stated that in case of delay, villagers will become annoyed and further, there was every possibility of manhandle. Then thereafter, he carried the bride groom to the place of bride and returned back towards the Hotel. It was 9.00 p.m. when he reached near a well, Laxman Rai, Ram Chander Rai, Shankar Rai, Badri Rai, Dilip Rai and others stopped his tractor and began to assault. During course thereof, Laxman Rai fired causing injury to him. Dilip Rai also fired causing injury to Deep Chandra Rai, his co-villagers. Shankar Rai, Basudeo Rai and others were joined by 8-10 persons duly armed with lathi, bhala and began to assault. In the aforesaid event, his wrist watch was also snatched away. Thereafter, he along with Deep Chandra Rai was taken to Dr. Kumar Anirudh of Samauli where pellet/ bullet was extracted from the injury of Deep Chandra Rai and then thereafter, they have come to police station and got the first information report.

4. On the basis of the aforesaid first information report, Kurshela P.S. Case no.20 of 1991 was registered followed with investigation as well as submission of chargesheet ultimately leading to these Sessions Trials as well as meeting with the ultimate result, the subject matter of instant appeal.

5. Defence case as is evident from mode of cross-

examination as well as statement recorded under Section 313 Cr.P.C. is that of complete denial of occurrence coupled with false implication. Furthermore, it has also been suggested that prosecution party might have sustained injuries in different way at their own unholy conduct. To support the same, DWs have also been examined.

6. In order to substantiate its case, prosecution had examined altogether nine PWs, out of whom, PW-1 is Dr. Laxmi Narayan Mandal, PW-2 is Revati Raman Trivedi, PW-3 is Deep Chandra Rai, PW-4 is Lal Chandra Rai, PW-5 is Kisun Rai, PW-6 Lakhan Lal Yadav, PW-7 Ramjee Rai, PW-8 Dr. Prabhu Nath Ram, PW-9 Dr. Kumar Anirudh as well as had also exhibited the document as Exhibit-1 injury report relating to informant, Exhibit-1/1 relating to Deep Chand Rai, Exhibit-2 signature of PW-2 over first information report, Exhibit-2/1 signature of F.I.R.'s attesting witness, Exhibit-3 formal F.I.R., Exhibit-4 letter dated 14.03.1991, Exhibit-5 prescription. Side by side, the defence had also examined two DWs, DW-1 Baidhyanath Sah and DW-2 Dushrath Sahni.

7. The learned Amicus Curiae while challenging the judgment of conviction and sentence has submitted that appellants have been falsely implicated in this case at the instance of their enemies who happen to be relative of the prosecution party. To support the same, the evidence of relevant PWs, more particularly,



PW-3 Deep Chandra Rai, one of the injured as well as PW-4 Lal Chandra Rai have been referred. It has further been submitted that the case of the prosecution suffers from so many infirmities and on account thereof, the assertion and allegation of the prosecution became doubtful. To support the same, it has been submitted that from the evidence of PW-2, informant, it is apparent that his village Barsoni lies 55 kilometers away from Debipur, alleged P.O. From the evidence, it is also apparent that Barati had come over Coach. Then in that event, coming over tractor covering 55 kilometers, without any trailer having ridden by five persons, is nothing but an implausible attempt at the end of prosecution. More particularly, in the background that during investigation, I.O. PW-6 had not supported the aforesaid event.

8. It has further been submitted that the occurrence as alleged, has also become doubtful because of the fact that in the first information report, it has specifically been asserted that after occurrence, informant along with Deep Chandra Rai, PW-3 were taken Samauli where the pellet/ bullet was extracted from the injury by one Dr. Kumar Anirudh (PW-9) is however, found controverted by the PW-2 himself who had stated that while he was carrying Deep Chandra Rai to police station over tractor, met with patrolling party who had directed to go to doctor and then thereafter, extracting the



pellet/ bullet from the wound of Deep Chandra Rai, gone to police station. However, the aforesaid event is not at all corroborated by the I.O., PW-6. It has also been submitted that the injury as alleged, in a manner as advanced caused at the place of occurrence so pointed out is found not at all corroborated by the objective finding of the I.O., PW-6, who had not found a drop of blood at the alleged P.O. nor the mark of tyre of tractor at the alleged place of occurrence.

9. Furthermore, it has also been submitted that Shankar Rai, the father of bride along with his family members would have been engaged in performing rituals than to indulge in criminal activities as alleged. Furthermore, there was no occasion for them to indulge in such kind of activities as they have got no grievance with the prosecution party. Not only this, Shankar Rai was the person who had pacified the villagers at an earlier occasion and on account thereof, it was not feasible for Shankar Rai to participate in such kind of criminal action, as alleged and so, arraying him as an accused, circumstance which falsify the prosecution version.

10. Furthermore, it has also been argued that the whole event happens to be suffering from falsehood because of the fact that none of the witnesses have stated that at the time of carrying the bride-groom to the residence of Shankar Rai from Debipur Line Hotel, any of the family members of Ramji Rai was present or not. In



likewise manner, it has also been submitted that none of the witnesses have ever stated the place of stay of Barati was fixed and in the aforesaid background, instead of staying at a Line Hotel, it was expected at the end of Barati Party to have stayed at 'Janwasa', the place usually called where Barat stays and in the aforesaid background, certainly there was no occasion for the prosecution party to return back to the place of Line Hotel.

11. It has further been submitted that the prosecution case suffers from umbrageousness mode of identification. Prosecution could not be able to explore the proper source of identification and as such, identifying only those, persons with whom the prosecution party was known since before on account of relationship in their 'Pattidari', is a event which suggests false implication. So, submitted that the judgment of conviction and sentence recorded by the learned lower Court is fit to be set aside.

12. At the other end, the learned Additional Public Prosecutor while supporting the finding recorded by the learned trial Court has submitted that the judgment of conviction and sentence recorded by the learned lower Court is based upon the materials available on the record as well as which conclusively supports the case of the prosecution, identifying the appellants to have caused murderous attack upon the prosecution party by means of firearm and

during course thereof, caused hurt. So, the judgment of conviction and sentence recorded by the learned trial Court is fit to be confirmed.

13. Right from inception of instant case, it is apparent that injured have gone to the place of PW-9 Dr. Kumar Anirudh. He had deposed that on 13.03.1991, one Deep Chandra Rai of village Barsoni came to his place in an injured condition, whom he treated and had taken out one bullet from his back. He had further deposed that one police constable from Kurshela P. S. had arrived at his place whom he had handed over the extracted bullet as well as patient. From his prescription, it is apparent that no such event is found therewith nor is found supported with the evidence of I.O. However, reference to the Sadar Hospital is evident. Furthermore, it relates only to PW-3 Deep Chand Rai and not of PW-2 Revati Raman Trivedi. Deep Chandra Rai was examined on 14.03.1991 at 10.30 a.m. by PW-8, on police requisition in injured condition. He after dressing, referred the patient to Sadar Hospital, Katihar (Exhibit-4). However, again there happens to be absence of PW-2 Revati Raman Trivedi, one of the injured.

14. PW-1, Dr. Laxmi Narain Mandal had examined Revati Raman Trivedi on 14.03.1991 at about 2.00 p.m. and found following injuries:-

1) Multiple splinters injury on right side of face and neck. X-

ray plate no.R/10 dated 14.03.1991 shows no pellet inside body. Nature of injury simple, caused by firearm, time elapsed since within 24 hours.

On the same day, he had examined Deep Chandra Rai, having gone through injury report by Primary Health Centre, Kurshela and found following injuries.

- 1. Four black splinter marks of firearm on right side of cheek.*
- 2. Wound of exit- Incised wound $\frac{1}{2}$ " x $\frac{1}{6}$ " posterior aspect of right shoulder. This wound was made by Surgeon for taking out bullet.*
- 3. Wound of entry- Lacerated wound $\frac{1}{4}$ " x $\frac{1}{4}$ " in front of right shoulder. This wound is communicating with injury no.2.*

It has also been disclosed that a constable, who followed the patient by way of producing a bullet said to have been removed from the wound at Kurshela Primary Health Centre by Dr. Kumar Anirudh, R.M.P. Patient was X-rayed on 15.03.1991 and showed fracture of greater tuberosity of right humerus caused by firearm. Injury nos.2 and 3 were grievous in nature while injury no.1 simple. During cross-examination, it has also been disclosed that no pellet was taken out from injury no.1.

15. Now, coming to ocular evidence, it is evident that from the evidence of PW-2, informant-injured as well as PW-3, Deep Chandra Rai, injured along with other witnesses PW-4, PW-5 and

PW-7, there happens to be consistency amongst them with regard to presence of firearm injury over PW-2 as well as PW-3. Therefore, the finding of the medical evidence is found corroborated with the ocular evidence so far, presence of firearm injury over the person of Pw-2 as well as PW-3 is concerned.

16. The only aspect, which remains under controversy and over which, repeated hammering has been made on behalf of appellants, is over place of occurrence, as well as the manner whereunder occurrence took place coupled with authenticity over identification in the background of the fact that prosecution had alleged with specific allegation against the appellants to be author of the injuries sustained by them. In this regard, the evidence of PW-2 in Para-5 has to be taken note of wherein, he had specifically disclosed the distance in between Barsoni to Debipur, 55 kilometers and on account thereof, covering such by distance by a tractor bearing registration no.BRK-8945, is the matter of consideration. Even during course of investigation, presence of aforesaid tractor has not been found by the I.O., PW-6 nor during course of evidence, the I.O., PW-6 had stated like so. Because of the fact that presence of tractor, that too, having its headlight properly functioning would play an important role as, from the evidences of the witnesses, PW-2 Para-5, PW-3 Para-4, PW-4 Para-3, PW-5 Para-3 have stated that it was dark night and

further, as the witnesses have not deposed over source of identification and being a stranger, it was not possible for the prosecution to have properly identified the miscreants even by quit or voice nor they claimed.

17. The theme of identification became further suspicious in the background of the fact that after carrying the bridegroom at the place of Shankar Rai and not meeting with anybody at his residence, happens to be improbable. If such story is accepted, then, there was no question to leave the bridegroom at the place of Shankar Rai, all alone without having company at his side because, at that moment, the bridegroom was centre of attraction. Therefore, letting down the bridegroom in careless way at the Darwaza of Shankar Rai by the members of prosecution party, appears to be unaccordant -assertion.

18. From the evidence of PW-3 in Para-3, it is apparent that appellant Basudeo Rai happens to be his cousin brother in-law (Sala) and as per evidence of PW-4 Lal Chandra Rai, Para-7, his sister was married in the village, along with the fact that Shankar Rai, whose daughter was going to be married, really indulge in such kind of criminal activities, which, at least would have cost dear to him.

19. Investigating Officer, PW-6 had visited the place

of occurrence on the same day and as per Para-2, the objective finding relating to the place of occurrence, it is evident that he had completely ruled out the place of occurrence, as pointed out by the prosecution, to be the place of occurrence near the well as he had not found the tyre marks, blood stain, empty cartridges etc.

20. Apart from this, the material development having visualizing from the evidence of Deep Chandra Rai (PW-3), Lal Chandra Rai (PW-4), Kishun Rai (PW-5) is found duly corroborated with the evidence of PW-6 in Paras-5, 6 and 7 respectively.

21. As per first information report, there happens to be complete absence of co-incidence meeting with police personnel by the prosecution party however, brought by PW-2 in Para-1 by stating that while he was carrying Deep Chandra Rai to police station over tractor, met with police patrolling party in midst of way, who directed him to go to Samauli for treatment, firstly. Accordingly, they have gone to the place of Dr. Kumar Anirudh where bullet from the body of Deep Chandra Rai was extracted. He has been cross-examined on that very score under Para-8. In likewise manner, PW-3 during his examination in-chief had also stated, however, is found subsequently introduced under Para-6, supported by PW-4 in his examination-in-chief as well as Para-4, PW-5 in Para-3 has not been testified by the I.O., PW-6 during course of investigation, nor the PW-

6 had supported the prosecution version with regard to examination of Deep Chandra Rai (PW-3) by Dr. Kumar Anirudh (PW-9) and instead thereof, he had stated that he had sent both the injured to Kurshel Sadar Hospital.

22. Now, coming over source of identification, as is evident from the deposition of the witnesses, there was no source of light at the place of occurrence during commission of the occurrence. It is also evident from the evidence of the witnesses including that of PW-2, the owner/ driver of the tractor as well as PW-3, one of the injured as well as taking into account the status of PW-3, PW-4, it is apparent that none of them had disclosed that there was light and identification of accused was made in the light itself, be it from torch, head light of tractor or any other source. That means to say, source of light was not at all disclosed and on account thereof, identification of accused that too, resident of different village having no access in day to day affair, was really possible? PW-6, I.O. also did not speak on this score. Therefore, process of identification is found predatory in nature. Such lopsidedness prevailing in the prosecution case is not going to improve the status even having identification at trial stage as identification at an initial stage has been found plagiarized.

23. Consequent thereupon, the judgment of conviction and sentence recorded by the learned trial Court is set

aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liabilities.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-16.02.2015
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