

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.378 of 2015

Against the judgment of conviction dated 12.05.2015 and order of sentence dated 15.05.2015 passed in Sessions Trial No. 1812/2011/162/2013 by Sri Paras Nath Rai, learned 3rd Additional District and Sessions Judge, Barh, Patna arising out of Bakhtiyarpur P.S. Case No. 162 of 2009 corresponding to G.R. No. 1078 of 2009

Nawal Roy @ Nawal Rai, S/o Parmanand Roy, Resident of Village Chiraiyan, Police Station Bakhtiyarpur, in the District of Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (SJ) No. 292 of 2015

Arising out of P. S.Case No. - 162 Year - 2009 Thana - BAKHTIYARPUR District - PATNA

Ranjit Singh @ Ranjeet Singh, Son of Late Bhuletan Singh, resident of village Rupas Mahazi, 17 Bigha, P.S. Salimpur, District Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (SJ) No. 326 of 2015

Arising out of P. S.Case No. - 162 Year - 2009 Thana - BAKHTIYARPUR District - PATNA

Satendra Rai @ Satendra Prasad Son of Raj kumar Rai, Resident of Village Chirayan P.S. - Bakhtiyarpur, District Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (SJ) No. 334 of 2015

Arising out of P. S.Case No. - 162 Year - 2009 Thana - BAKHTIYARPUR District - PATNA

- 1. Shiv Kumar Rai @ Shiv Kumar, son of Baldeo Rai
- 2. Chanarik Rai, son of Bilkeshwar Rai
- 3. Amarik Rai @ Amirak Rai, son of Bilkeshwar Rai, All residents of village Chiraiyan, Police Station Bakhtiyarpur, in the district of Patna

.... Appellants

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (SJ) No. 338 of 2015

Arising out of P. S.Case No. - 162 Year - 2009 Thana - BAKHTIYARPUR District - PATNA

Manoj Singh, son of Surendra Singh, resident of Village - Harnahiya, P.S.
Bakhtiyarpur, District - Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (SJ) No. 378 of 2015)

For the Appellant : Mr. Kanhaiya Prasad Singh, Sr. Advocate

For the Respondent : Mr. S.A.Ahmad, A.P.P.

(In CR. APP (SJ) No. 292 of 2015)

For the Appellant : Mr. SR Surender Kr. Singh, Advocate

Mr. Omnath Singh, Advocate

For the Respondent : Mr. Bipin Kumar, A.P.P.

(In CR. APP (SJ) No. 326 of 2015)

For the Appellant : Mr. Jitendra Kr. Roy-1, Advocate

Mrs. Usha Kumari Singh, Advocate

For the Respondent : Mrs. Abha Singh, A.P.P.

(In CR. APP (SJ) No. 334 of 2015)

For the Appellants : Mr. Bhola Kumar, Advocate

For the Respondent : Mr. Sujit Kr.Singh, A.P.P.

(In CR. APP (SJ) No. 338 of 2015)

For the Appellant : Mr. Jitendra Kr. Roy-1, Advocate

Mrs. Usha Kumari Singh, Advocate

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 02-03-2016

Heard learned counsel for the appellants and the State.

2. These appeals are heard together and disposed of by the common judgment and order dated 12th May of 2015 passed by Sri Paras Nath Rai, 3rd Additional District and Sessions Judge, Barh, Patna in Sessions Trial No. 1812 of 2011/162 of 2013 (arising out of Bakhtiyarpur P.S. Case No. 162 of 2009 corresponding to G.R. No. 1078 of 2009).

3. The appellants, namely, 1. Amirak Rai @ Amarik Rai, 2. Ranjit Singh, 3. Shiv Kumar Rai, 4. Manoj Singh, 5. Chanarik Rai, 6. Satendra Rai @ Satendra Prasad and 7. Nawal Rai have been convicted

for the offences punishable under Sections 148, 307/149, 304/149 of the Indian Penal Code and 27 of the Arms Act. Appellants Amarik Rai, Shiv Kumar Rai, Ranjit Singh, Manoj Singh, Chanarik Rai and Satendra Rai @ Satendra Prasad have been awarded sentence of five years rigorous imprisonment for conviction under Section 307 of the Indian Penal Code and seven years rigorous imprisonment as well as fine of Rs. 5,000/- for conviction under Section 304 of the Indian Penal Code. They have also been awarded sentence of 3 years rigorous imprisonment and fine of Rs. 3,000/- for conviction under Section 27 of the Arms Act. They have been further awarded sentence of rigorous imprisonment for 1 year, in case of default of payment of fine one year conviction under Section 304 of the Indian Penal Code, whereas they have been further ordered rigorous imprisonment for six months, in case of default of payment of fine for conviction under Section 27 of the Arms Act. Appellant Nawal Rai has also been awarded sentence of 3 years rigorous imprisonment for conviction under Section 148 and 5 years rigorous imprisonment for conviction under Section 307 and 7 years rigorous imprisonment as well as fine of Rs. 5,000/- for conviction under Section 304 of the Indian Penal Code. He has also been awarded sentence of 1 year rigorous imprisonment. Further in case of default of payment of fine in conviction under Section 304 of Indian Penal Code. The appellant, Nawal Rai has further been awarded sentence of 3 years rigorous

imprisonment and a fine of Rs. 3,000/- for conviction under Section 27 of Arms Act and he has been ordered to undergo rigorous imprisonment for six months more in case of default of payment of fine.

4. The prosecution case, as alleged in the written report of the informant Mohan Rai, P.W.3 is that on 02.09.2009 voting for PACS election was going on and he came out after casting his vote. In the meantime, Nawal Rai, Dilip Singh, Satrugan Rai, Shiv Kumar Rai, Rajeev Rai, Surendra Rai, Chanarik Rai, Amarik Rai, Shivan Rai, Manoj Singh, Sunil Singh, Nawal Singh along with 10-12 unknown persons started firing upon the informant and others saying that they have cast their votes for Binay, so “Sabko Goli Se Uda Do”. The further case is that they managed to escape towards western side of the house. In the meantime Baby Kumari, the cousin granddaughter of the informant and one Manju Devi, who is neighbour of the informant were coming from the village side after hearing the sound of hulla. Many other persons were also coming to cast vote following them. Both Baby Kumari and Manju Devi have sustained bullet injury. The further case is that Baby Kumari sustained bullet injury by Dilip Singh and Manju Devi sustained bullet injury by Nawal Rai. Having sustained bullet injury, both the injured fell down. Thereafter all the accused persons turned around and started firing towards the polling booth. The further case in the written report that Yugal Rai (P.W.5), Shiv Chander Rai (P.W.2), Shiv Shankar

Prasad (P.W.4), Ramudgar Rai (not examined) etc. have seen the occurrence and they saved the life of informant and others. The further case in the written report that the occurrence took place at about 1:00 P.M.

5. On the basis of the written report submitted by the informant, First Information Report was lodged bearing Bakhtiyarpur P.S. Case No. 162 of 2009, dated 02.09.2009 at 8.15 P.M. The investigation was handed over to Sub-Inspector, Satyendra Sharma. During investigation, the Investigating Officer recorded the further statement of the informant and inspected the place of occurrence. He found the distance between place of occurrence and the Police Station about 8 kilometers. He has given the description of the place of occurrence which is in the midst of the field of Niranjana Rai and Bimal Rai at village Chiraiya and there was a school in the North which is the booth. He has stated that in the north of the place of occurrence there is school, which is the booth in question, in the east there is vacant land of Baldeo Choudhary, in the west there is vacant land of Bhanu Pratap Rai and in the north and south, there is vacant land of Niranjana Rai. The Investigating Officer prepared the inquest report of the deceased and also procured the injury report and recorded the statement of the witnesses. After investigation, the Investigating Officer submitted charge-sheet under Sections 307 and other allied Sections of the Indian

Penal Code. After submission of the charge-sheet, cognizance was taken and the case was committed to the Court of Sessions. After framing of the charge, the trial proceeded. During trial, altogether 15 witnesses were examined.

6. P.W.1, Rajendra Prasad Yadav, is a formal witness and has proved the endorsement over the written report which is in the handwriting and signature of Sri Som Prakash, the then Officer-in-Charge, Bakhtiarpur Police Station, marked as Exhibit-1.

7. P.W.2, Shiv Chander Rai has deposed that he had heard the sound of two firings opened from North and West of the school during the PACS election and when he reached there, he saw that two girls, namely, Manju and one Baby were injured and out of the two, one died at the place of occurrence itself and another girl died during the treatment. However, he has stated that he did not see who had fired and has been declared hostile, during the trial.

8. P.W.3, Mohan Rai is the informant of this case. He has also stated that as soon as he came out after voting in the election of the Chairman he saw two girls, namely, Baby and Manju received gunshot injury and one died on the spot and another died in the way, but he did not see who had fired. This witness has also been declared hostile and cross-examined by prosecution regarding his earlier statement.

9. P.W.4, Shiv Chander Rai has supported the prosecution case that the accused persons including the appellants were armed with pistol, bhala and lathi and Nawal Rai ordered to kill the informant and others as they have voted for Binay. Thereafter, Nawal Rai fired which hit on the chest of Manju and Dilip Singh fired which hit near the ear of Baby Kumari and thereafter, the accused persons started firing moving towards the booth.

10. P.W.5, Yugal Rai has also supported the prosecution case regarding the firing, causing injury to Baby Kumari and Manju Devi as a result of which they succumbed to injury.

11. P.W.6, Rajendra Rai has also supported the prosecution case regarding firing having been made by the accused persons and the firing by Nawal Rai causing injury to Manju Devi and firing by Dilip Singh causing injury to Baby Kumari and they have succumbed to injury due to fire-arm injury.

12. P.W.7, Bijali Paswan has deposed to the effect that he heard about the occurrence and, hence, he is a hearsay witness and thus, cannot be relied upon.

13. P.W.8, Umesh Prasad has deposed in his evidence to the effect that he was told by the people that Nawal Rai fired causing injury to Manju and Dilip fired causing injury to Baby and, hence, his deposition also cannot be relied upon.

14. P.W.9, Tuntun Paswan has deposed in his evidence to the effect that he heard that two girls, namely, Manju Devi and Baby Devi had received fire arm injury and then he went there and saw the two girls having received bullet injury and thereafter they died. Hence, his deposition is also not credible.

15. P.W.10, Bhagirath Rai is the father of one of the deceased, namely, Baby Kumari. However, he has supported the prosecution case that Nawal Rai fired causing injury to Manju and Dilip fired causing injury to Baby Kumari, the daughter of this witness.

16. P.W.11, Shyam Bihari Rai who is the brother of Manju Devi has deposed that Dilip Singh fired, causing injury to Baby Kumari and Nawal Rai fired causing injury to Manju Devi. Manju Devi received injury on her chest and Baby Kumari received injury in her temple and he proceeded along with Manju to government hospital where she was treated and then referred to Patna Medical College and Hospital, Patna. Thereafter, after 2-3 days she died in the hospital. The police came at Patna Medical College and Hospital, Patna and recorded the statement of P.W. 11 which was read over to him and thereafter he put his signature on the aforesaid statement. He has proved the signature on the inquest report, which has been marked as Exhibit-2. However, in his cross-examination he has stated that he lifted Manju in his lap and took

her to Bakhtiarpur hospital and Police came at the hospital and he gave his statement at 3.00 P.M. and even signed over it.

17. P.W.12, Dr. Arun Kumar Singh is a Doctor who conducted the post mortem examination on the dead body of Manju Devi and has stated that the body of Manju Devi was brought from Tara Hospital Annie Besant Road, Patna and her body was identified by Shyam Bihari Rai, brother of the deceased. He found that rigour morties was present all over the body, abdomen was distend, folley's catheter was present. I.V. line in right hand. He has also stated in his evidence that during course of conducting post mortem the following ante-mortem external and internal injuries were found:-

- i. One entry wound of $\frac{1}{4}$ " diameter on left side of front of chest 6 $\frac{1}{4}$ " left from midline, 9" below from left shoulder lip and 9" above from left iliac chest-margin lacerated and inverted.
- ii. One exit wound of $\frac{1}{2}$ " x $\frac{1}{4}$ " on right side of back of chest 2" right from midline and 10 $\frac{1}{2}$ " below and medial from right shoulder lip-margin lacerated and inverted.

18. The doctor opined that the cause of death was haemorrhage and shock. He has proved his post mortem report which is under his signature, marked Exhibit-3. He has also proved the postmortem examination conducted by Dr. Anil Kumar, tutor of

Department of Forensic Medicine, Patna Medical College and Hospital, Patna, which has been marked as Exhibit-4. However, Exhibit 4 is the postmortem report of Baby Kumari.

19. P.W.13, Anirudh Prasad Yadav has deposed that he recorded the statement of Bhagirath Rai at Patna Medical College and Hospital, Patna in Emergency Ward on 03.09.2009 and also recorded the statement of Fakira Rai.

20. P.W. 14, Satendra Sharma is the Investigating Officer, who conducted the investigation of the case. However, he has deposed that he did not record the statement of Bhagirath Rai, P.W. 10 and Shyam Bihari Rai, P.W.11. who are the father of Manju Devi and brother of Baby Kumari.

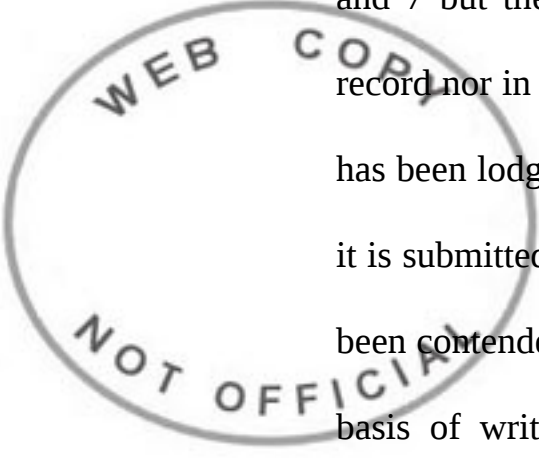
21. P.W.15, Budhdeo Singh proved the inquest report of Baby Kumari.

22. The Trial Court taking into consideration the statement of the witnesses convicted the appellants for the offences under Section 304/149 of the Indian Penal Code and 27 of the Arms Act and sentenced them as mentioned above.

23. The documentary evidence adduced in the case is Exhibit-1, the endorsement of the SHO, Bakhtiarpur Police Station on the written report, Exhibit-2 is the signature of Shyam Bihari Rai on the inquest report of Manju Devi, Exhibit -2/1 is the signature and

handwriting of A.P. Yadav, Daroga, Pirbahore on the carbon copy of the inquest report of Baby Kumari, Exhibit- 3 is the post mortem examination report of Manju Devi, Exhibit- 4 is the post mortem examination report of Baby Kumari, Exhibit- 5 and 5/1 are the charge-sheets, Exhibits- 6 and 7 are the injury reports of Baby Kumari and Manju Devi.

24. The learned counsel for the appellants has challenged the judgment of conviction and order of sentence recorded by the trial Court. It has been contended that there is delay in lodging the First Information Report. It has further been contended that as per the case of the prosecution, the occurrence took place at about 1.00 P.M. P.W. 10 and P.W.11, the father and brother of the victim took the victim to Bakhtiarpur hospital where they were given first aid and injury report was also prepared. Thereafter from Bakhtiarpur hospital the victims were referred to Patna Medical College Hospital, Patna. The distance of Bakhtiarpur hospital and Bakhtiarpur Police Station is very short as P.W.11, Shyam Bihari Rai has stated in his evidence that he lifted Manju Devi in his lap and took her to Bakhtiarpur hospital. Bakhtiarpur Police Station and hospital are on the road itself and the police came in the hospital where he gave his statement to the police and signed thereon. It has further been contended that the Doctor examined the victim Baby Kumari at 04:05 P.M. and Manju Devi at about 10:45 A.M.



at P.M.C.H. and he prepared injury report which is marked as Exhibits 6 and 7 but the said statement recorded by the Police is neither on the record nor in the First Information Report. The First Information Report has been lodged on the basis of the statement of Mohan Rai, P.W. 3 and it is submitted that the earlier version has been suppressed. It has further been contended that the First Information Report has been lodged on the basis of written report given to Bakhtiyarpur Police Station by one Mohan Rai, P.W.3 who has been declared hostile as he did not support the prosecution case and the Investigating Officer in his evidence has stated that he did not record the statement of P.W. 10 and P.W. 11 and further P.W.10 Bhagirath Rai, in his cross-examination, has stated that Nawal Rai shot at Baby Kumari. It has further been contended that P.Ws. 1, 2, 3, 7, 8 and 9 have not supported the prosecution case. P.Ws. 10 and 11 though claimed to be the eye witnesses but their statements were not recorded by the police during the investigation and the statement of P.W.11 that his statement recorded by the police at Bakhtiyarpur hospital on which he signed at about 3.00 P.M. on the date of occurrence, has not been brought on record and the prosecution has suppressed the earlier version. It has further been contended that P.Ws. 2, 5 and 6 are the witnesses and their statements are not worthy of credence as the evidence of P.W.5 suffered from contradiction as he has

not supported the prosecution case before the Police and their evidence are not worthy of reliance to record the conviction.

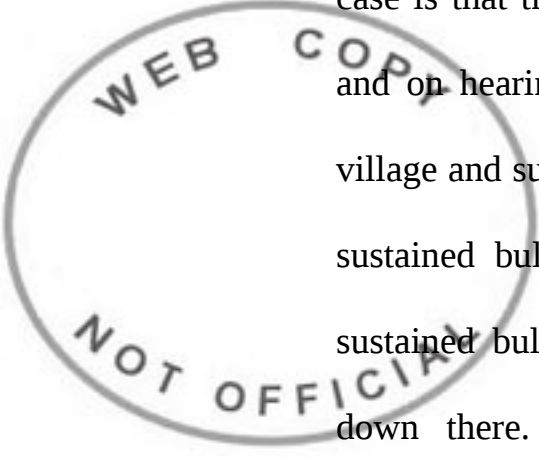
25. Learned counsel for the appellant-Ranjit Singh @ Ranjeet Singh has, however, advanced the argument of the learned counsel for Nawal Rai and submitted that the name of Ranjit Singh @ Ranjeet Singh does not find place in the First Information Report. Statement of P.W.5 was recorded before the Police but P.W.5 has not named this appellant in his statement before the Court and none other witnesses have disclosed the name of the appellant- Ranjit Singh @ Ranjeet Singh in their evidence for their implication in the crime and hence, there is actually no evidence against him to record the conviction.

26. Learned counsel for the appellants-Satyendra Rai @ Satendra Prasad, Manoj Singh, Shiv Kumar Rai @ Shiv Kumar, Chanarik Rai and Amarik Rai @ Amirak Rai further submits that the allegation adduced against them are general and omnibus without any specific role attributed to them and they were named as only the member of the mob without any specific overt act nor they have specifically been mentioned as to who was armed with weapon as there is allegation that the accused persons named, were armed with pistol, bhala and lathi without any specific averment that who was armed with which weapon except the role attributed to Nawal and Dilip to have fired.

27. Learned counsel for the State, however, submits that the witnesses supported the prosecution case in their material particular regarding the involvement of the appellant-Nawal Rai and other accused persons and P.Ws. 4, 5, 6, 10 and 11 have specifically stated of firing by Nawal Rai, causing injury to Baby Kumari and Manju Devi. It has been specifically asserted that Manju received injury on the chest and Baby received injury near the ear. The allegation of both the victims having received the injury by the fire arm has been supported by the Doctor as he has found the injury by fire arm and hence, the ocular evidence is supported by the medical evidence regarding the injury on the persons of the deceased and hence, the prosecution has been able to prove the charges.

28. On the respective submissions of the parties, the question for consideration is whether the prosecution has been able to prove the charges beyond all reasonable doubts.

29. The prosecution case, as alleged, in written report on the basis of which the First Information Report drawn is that on 02.09.2009 voting for PACS election was going on and he came out after casting his vote. In the meantime, Nawal Rai, Dilip Singh, Satrugan Rai, Shiv Kumar Rai, Rajeev Rai, Surendra Rai, Chanarik Rai, Amarik Rai, Shivan Rai, Manoj Singh, Sunil Singh, Nawal Singh along with 10-12 unknown persons started firing upon the informant saying that they have



cast their votes for Binay, so “Sabko Goli Se Udrna Do”. The further case is that they managed to escape towards western side of the house and on hearing alarm, Manju Devi and Baby Kumari came from the village and sustained bullet injury. The further case is that Baby Kumari sustained bullet injury by firing from Dilip Singh and Manju Devi sustained bullet injury by firing of Nawal Rai. Both the injured fell down there. However, there is allegation of firing in the First Information Report, but there is no mention that which weapon was used in firing, whether it was by pistol or by gun or by Rifle or otherwise. The informant is P.W.3, Mohan Rai. The further case in First Information Report that the persons, who saw the occurrence, are Yugal Rai (P.W.5), Shiv Chandra Rai (P.W.2), Shiv Shankar Prasad (P.W.4), Ramudgar Rai (not examined). However, the informant, Mohan Rai who has been examined as P.W.3 in the evidence has stated that who shot the victims he did not see, though he has stated that he saw the injury on the person of Manju and Baby. However, this witness has been declared hostile as he has not supported the prosecution case about the firing by Nawal and Dilip. In the First Information Report, it has been mentioned that the occurrence took place at 1:00 P.M. and the First Information Report has been registered in the Police Station on 02.09.2009 at 8:15 P.M. 15 witnesses having been examined on behalf of the prosecution out of which P.W.1 is a formal witness, P.W.2, Shiv Chander Rai is

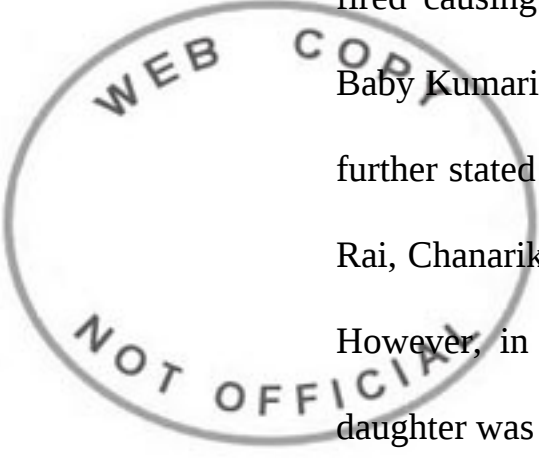
named in the First Information Report and has deposed that he did not see who fired though he has supported the prosecution case that two girls namely, Manju and Baby got injured and one died at the spot and another died during the treatment.

30. Though P.W. 4, Shiv Shankar Prasad, P.W.5, Yugal Rai, P.W.6, Rajendra Rai, P.W. 10, Bhagirath Rai and P.W. 11, Shyam Bihari Rai have supported the prosecution case. The other witnesses P.W.7, Bijali Paswan and P.W.8, Umesh Prasad have disclosed that they have heard about the occurrence and hence, their evidences have not been accepted.

31. P.W.12, Dr. Arun Kumar Singh has conducted the post mortem examination on the person of Manju Devi and he has also proved his report which has been marked as Exhibit-3. He has also proved the post mortem examination conducted by Dr. Anil Kumar which has been marked as Exhibit-4.

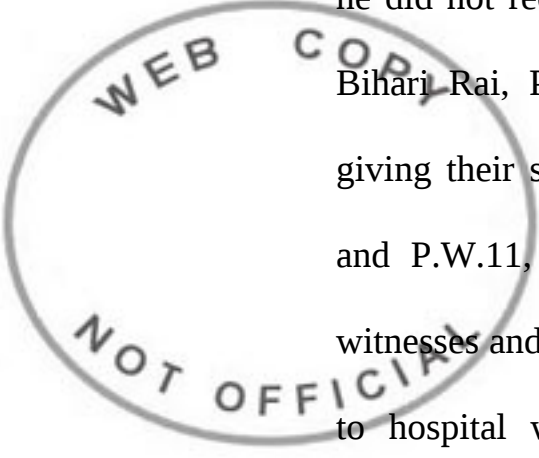
32. P.W.13, Anirudh Prasad Yadav is only a formal witness who has stated that he recorded the statement of Bhagirath Rai is that P.W.14, Satendra Sharma is the Investigating Officer. However, out of the witnesses whose evidences require consideration is evidence of P.W. 4, Shiv Shankar Prasad and P.W. 5, Yugal Rai.

33. P.W. 10, Bhagirath Rai is the father of the deceased, Baby Devi and P.W.11, Shyam Bihari Rai is the brother of Manju Devi. P.W.

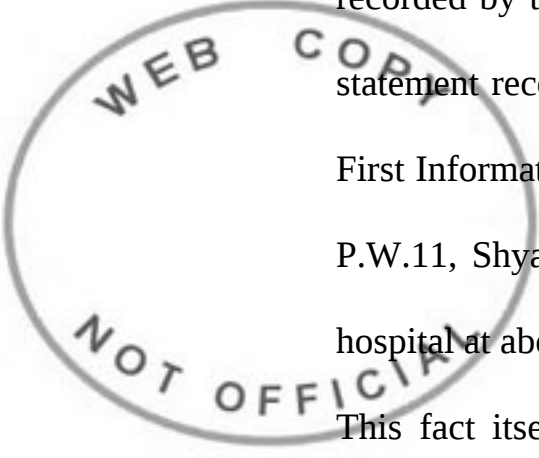


10, Bhagirath Rai has come to support the prosecution case that Nawal fired causing injury to Manju Devi and Dilip fired causing injury to Baby Kumari. He has further stated that they fired from the gun. He has further stated that Satrugan Rai, Shivam Rai, Shiv Kumar Rai, Amarik Rai, Chanarik Rai, Surendra Rai with 10-12 persons were firing by gun. However, in his cross-examination in para 10 he has stated that his daughter was shot by Nawal Rai and this evidence is contradictory to his statement in examination in chief where he has deposed that Nawal shot Manju. He has further stated that he took his daughter from place of occurrence but he cannot say how long the firing was made.

34. P.W. 11, Shyam Bihari Rai is the brother of Manju Devi and though he supported the prosecution case that Nawal fired causing injury to Manju Devi. He has further stated that Dilip also fired which hit the deceased and the rest firing was also made by Nawal Rai. This witness in his evidence, in para 10, has stated that he lifted Manju Devi in his lap and went to Bakhtiarpur where there is a Police Station on the same road on which the hospital stands at Bakhtiarpur. He further stated that police came in the hospital at about 3.00 P.M. and he gave statement to the police on which he put his signature however, that statement is the version earliest at point of time and even earlier to the written report of informant on which First Information Report drawn at this earliest version has been suppressed and not seen the light of the

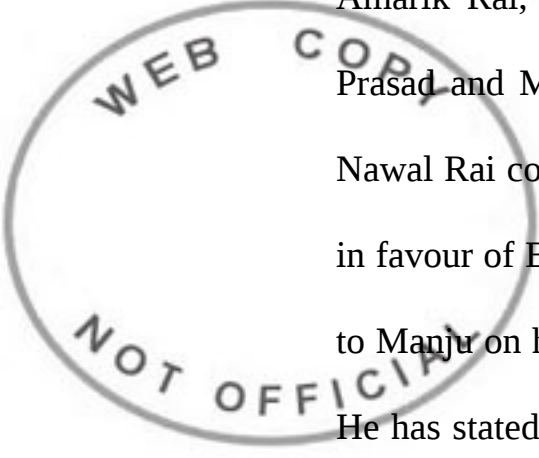


day. The Investigating Officer, P.W. 14 in his statement has stated that he did not record the statement of Bhagirath Rai, P.W. 10 and Shyam Bihari Rai, P.W. 11 during investigation nor he informed them for giving their statements. From the evidence of P.W. 10, Bhagirath Rai and P.W.11, Shyam Bihari Rai it appears that they are most vital witnesses and were present at the time of occurrence and took the victim to hospital where their statement recorded but the said statement suppressed. They have stated that after the occurrence, the victims, Manju and Baby were taken to the hospital. Exhibits- 7 and 8 are injury reports, which have been proved by the Doctor at PHC Bakhtiarapur who examined Baby Devi at 2.45 P.M. at Primary Health Centre, Bakhtiarapur. P.W.11, Shyam Bihari Rai in his evidence has stated that he lifted Manju in his lap and took her to the hospital. The hospital and the Police Station are on same Raod. His statement was recorded by the police at the hospital but the said statement of P.W.11, Shyam Bihari Rai has not been brought on record. In para 10 he has stated that his statement was recorded at about 3.00 P.M. at Bakhtiarapur on which he put his signature but has the said statement has not been brought on record. The said point has not been mentioned in the entire investigation to the contrary the Investigating Officer did not record his statement. Though the injury reports, which have been marked as Exhibits-6 and 7 by prosecution has been brought on record but the Doctor who prepared



the said injury reports has not been examined. Even, the statement recorded by the police has also not been brought on record, which is a statement recorded prior to the written report on the basis of which the First Information Report was lodged. As per the evidence of the witness P.W.11, Shyam Bihari Rai, his statement was recorded at Bakhtiarapur hospital at about 3.00 P.M. when he went for the treatment of the victim. This fact itself creates a doubt about prosecution case in the written report on the basis of which the First Information Report was lodged. However, it can well be imagined the fact that P.W.10, Bhagirath Rai and P.W.11, Shyam Bihari Rai, who are the father and brother of the deceased, have not been examined by the Police during the entire investigation and his earlier version was suppressed.

35. P.W.14 Satendra Sharma, the Investigating Officer has categorically stated in para 41 of his deposition that he did not record the statement of Bhagirath Rai and Shyam Bihari during the investigation and neither he gave any information to them about recording of their statements and this cast a serious doubt about the conduct of the Investigating Officer. So far as the evidence of P.W. 4, Shiv Shankar Prasad is concerned, who, in his evidence has stated that the occurrence is of 02.09.2009 at about 1.00 P.M. and he was going after casting his vote to village Chiraiyan and reached near about the field of Niranjana then he saw Dilip Singh and Nawal Rai both armed with a gun. It has



further been stated that along with them Satrugan Rai, Chanarik Rai, Amarik Rai, Shivan Rai, Rajeev Kumar, Shiv Kumar Rai, Satyendra Prasad and Manoj Singh were armed with pistol, bhala and lathi, and Nawal Rai commanded that those who are coming after casting the vote in favour of Binay be shot and thereafter Nawal Rai fired causing injury to Manju on her chest and Dilip fired causing injury to Baby on her ear. He has stated that both the injured were sent to the hospital. Hence, the evidence of this witness supported the prosecution case. However, in his cross-examination, this witness has stated that Nawal Rai had fired at Baby and Dilip fired at Manju hence, his evidence in cross-examination is contradictory to his statement in his examination in chief. However, P.W. 14, the Investigating Officer, in his statement, stated that this witness has stated that Nawal fired causing injury to Baby and Dilip fired causing injury to Manju. However, though the complaint has not been made under Section 304 of the Indian Penal Code but it substantiates that P.W. 4, Shiv Shankar Prasad has stated that he has not stated before the Police that Nawal fired which caused injury to Baby and Dilip fired which caused injury to Manju. The Investigating Officer has also stated that the firing by Nawal hit to Baby and firing by Dilip caused injury to Manju and hence the evidence of this witness in his examination in chief stand in contradiction to his statement in cross-examination.

36. However, P.W.5, Yugal Rai, in his evidence has stated that he along with Mohan Rai (P.W.3), Shiv Chander Rai (P.W.2), Shiv Shankar Prasad (P.W.4), Shambhu Rai (not examined), Umesh Prasad (P.W.8), Rajendra Prasad Yadav (P.W.1), and Dinesh Rai (not examined) was coming together and reached at the field of Niranjana Rai and saw Nawal Rai armed with gun, Dilip Singh armed with gun, Chenarik and Amarik armed with gun and Rajeev Rai, Surendera Rai, Satendra Rai, Satrugan Rai, Shiv Kumar Rai and Shivan Rai, all armed with gun, and Dilip Rai fired causing injury to Baby and Nawal Rai fired causing injury to Manju.

37. However, attention of P.W.5, Yugal Rai has been drawn towards the fact that he has not stated before the police that Baby received the injury on firing by Nawal and Manju received the injury on firing by Dilip. However, the Investigating Officer in his evidence has stated that Yugal Rai, P.W.5 has stated that Baby received injury on firing by Nawal Rai whereas Manju received injury on firing by Dilip and hence their evidence stands contradictory.

38. P.W.6, Rajendra Rai has stated that when he reached the field of Niranjana he saw Manju Devi and Baby Kumari coming and Nawal told that they have casted the vote for Binay, so they be shot by bullets. Thereafter the firing took place in which Manju and Baby sustained bullet injury. However, it is submitted by learned counsel for

the appellants that the statement of P.W.6, Rajendra Rai was recorded by the Investigating Officer on 29.11.2009 after two months of the occurrence whereas the date of occurrence is 02.09.2009 i.e. after more than two months of occurrence and, hence, it is stated that the evidence of P.W.6 does not inspire confidence and the belated version cannot raised serious doubt.

39. From perusal of the records, i.e., Exhibits 6 and 7, it is apparent that the victims were examined on 02.09.2009 at about 2.45 P.M. and 3.00 P.M when the victims were endorsed by the Officer-in-charge of Bakhtiaripur Police Station on 02.09.2009 and it must have come to the knowledge of the police about the evidence of P.W.11, Shyam Bihari Rai that when he took the victim to the hospital, where the statement of P.W.11 was recorded by the police as well as the injury marked, which stand substantiated by the Exhibits 6 and 7. However, the earlier version of the prosecution has been suppressed and not seen the light of the day, The case proceeded on the basis of the written report by P.W.3, Mohan Rai and this also goes to show that the First Information Report was registered on 02.09.2009 but sent to the Chief Judicial Magistrate on 04.09.2009 and there is no explanation for the delay in sending the same. The Investigating Officer has specifically stated in para 24 that fardbeyan was sent on 04.09.2009 in the Court and there is no mention of the reason for delay in sending the First Information

Report. Hence, it is apparent that the earlier version of the case has been suppressed and the case proceeded on the belated version of written report. In the written report, there is no mention about the fact that who was armed with which weapon. There is no mention that the accused persons had started firing and there is also no mention whether the firing was done by a gun or a revolver or a pistol. However, the witnesses are at variance with regard to the arms attributed to the accused persons.

Some have stated that accused armed with the country made rifle, some have stated about the gun and except Nawal and Dilip with regard to the other accused persons the witnesses are not specific as to who were armed with which weapon and some have stated that except Nawal and Dilip, they do not know who were armed with which weapon and there is general allegation that accused persons were armed with bhala and lathi but there is no mention that who was armed with bhala and who was armed with pistol or lathi. However, though in the First Information Report, it has been mentioned that Dilip fired causing injury to Baby and Nawal fired causing injury to Manju. However, the evidence of P.W.5 and P.W. 6, which is hit by contradiction as the Investigating Officer has stated that whatever has been stated by the witnesses P.W. 4 and P.W.5 regarding the injury on the person of Baby and Manju is in contradistinction to the statement made before the Police. Though it is true that the contradiction has not been recorded strictly in compliance

to Section 145 of the Evidence Act, as per the Tahsildar Singh's Case however, in sum and substance, their evidence is found to be contradictory on going to the facts and evidence of the witnesses in cross-examination.

40. However, the most specific feature of the case is that the victim was examined at Bakhtiarpur Primary Health Centre and the said examination was done on the requisition of the Station Head Officer and P.W. 11 has stated that his statement was recorded and he signed over it but that statement has been suppressed though it was the earlier version, which has not seen the light of a day and hence, the First Information Report lost its significance. The delay in sending the First Information Report to the Court is due to some hanky panky and the investigation is not proper though P.W.10, Bhagirath Rai and P.W.11, Shyam Bihari Rai are the most important witnesses of the case, who are father and brother of the deceased but their statements were not recorded by the Investigating Officer during investigation. The Investigating Officer has specifically stated that he did not record the statement of P.W.10, Bhagirath Rai and P.W.11, Shyam Bihari Rai and the evidence of witnesses i.e. P.W. 4, Shiv Shankar Prasad and P.W.5, Yugal Rai suffers from contradiction and the statement of P.W.11, Shyam Bihari Rai recorded after more than two and half months. Hence, their evidence does not inspire confidence. From the further evidence of the

Investigating Officer, it is apparent that the occurrence took place near the polling booth and the information was also given and the same was recorded at the Police Station vide Station Diary No. 57 dated 02.09.2009, however, the same has also not been brought on record and hence, it is apparent that the earlier version has been suppressed.

41. Hence, having regard to the aforesaid facts, I find that the appellant Nawal Rai is entitled to the benefit of doubt. I find and hold that the prosecution has not been able to prove the charges beyond all reasonable doubts against the appellant-Nawal Rai. The Investigating Officer has also not found any objective finding at the place of occurrence like the blood or the cartridges or the remains of the fire arm at the place of occurrence and hence, it casts a serious doubt about the manner of occurrence.

42. The main allegation against Nawal Rai @ Nawal Rai is of firing. However, with regard to Ranjt Singh @ Ranjeet Singh, there is no evidence at all and so far the other appellants are concerned, the allegations against them are general and omnibus without any specific allegation against them and their presence at the place of occurrence like a number of the mob. Moreover, having regard to the facts and circumstances of the case that the initial version of the case of prosecution and the Station Diary entry regarding the information given by the Officer at the polling booth near the place of occurrence has been

suppressed, the appellants are entitled to benefit of doubt and hence, I give them benefit of doubt as the prosecution has not been able to prove the charges beyond all reasonable doubts. Therefore, I acquit the appellants from all the charges levelled against them and set aside the impugned judgment and order of the trial Court. The above noted appeals are allowed. Appellant Nawal Roy @ Nawal Rai in Cr. Appeal (SJ) No. 378 of 2015, who is in custody, is directed to be released forthwith, if not wanted in any other case. The other appellants are on bail. They are discharged from the liabilities of their respective bail bonds.

(Gopal Prasad, J)

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