

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.359 of 2016

Arising Out of PS.Case No. -73 Year- 2004 Thana -SAMASTIPUR MUFFASIL District-
SAMASTIPUR

Ram Prasad Rai @ Rama Rai, Son of Late Ram Kishun Rai, Resident of Village-
Jitwarpur Dih, Police Station- Samastipur (Mufassil), District- Samastipur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

Criminal Appeal (DB) No. 251 of 2016

Arising Out of PS.Case No. -73 Year- 2004 Thana -SAMASTIPUR MUFFASIL District-
SAMASTIPUR

1. Santosh Kumar @ Santosh Kumar Ray, son of Visho Rai
2. Amal Kumar @ Amal Kumar Rai, son of Ram Prakash Rai, Both resident of
Village- Jitwarpur Dih, Police Station- Samastipur (Mufassil), District- Samastipur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vindhya Keshari Kumar, Sr. Advocate Mr. Rana Sanjay Kumar Singh
For the State	:	Mr. A.K. Sinha, A.P.P. Mr. S.C. Mishra, A.P.P.
For the Informant	:	Mr. Aditya Prakash Sahay.

**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 16-08-2016

Heard learned counsel for the Appellants and learned

Additional Public Prosecutor as well as learned counsel appearing

on behalf of the Informant.



2. Both the appeals arise out of common Judgment of Conviction dated 01.03.2016 and Order of Sentence dated 04.03.2016 passed by the Additional Sessions Judge-II, Samastipur in Sessions Trial No. 407 of 2016/38 of 2015 arising out of Samastipur (Mufassil) P.S. Case No. 73 of 2004, whereby all the appellants have been convicted under Section 302 I.P.C. and sentenced to undergo life Imprisonment with a fine of Rs. 25,000/- each; and 10 years Rigorous Imprisonment and fine of Rs. 1500/- each for the offence under section 307 I.P.C. respectively. Further, all the appellants have been sentenced to undergo Rigorous Imprisonment for 3 years and fine of Rs. 5000/- for the offence under section 27 of the Arms Act. In default of payment of fines, each appellant has to undergo Rigorous Imprisonment for 10 months, 6 months and 2 months respectively under each count. However, all the sentences will run currently.

3. The prosecution case, as set out, in the *Fardbeyan* (Exhibit-3) of Sheoji Rai (P.W. 6) of village Jitwanpur P.S. Muffasil, District- Samastipur recorded by R.P. Mishra on 22.03.2004 at 02:30 pm. at the door of Ram Badan Rai is that on 21.02.2014 at about 10.30 pm., he along with his son Kamlesh Rai (deceased) was returning from the house of Ram Badan Rai.



As soon as they reached in front of his cattle house, all of sudden appellant Ram Prasad Rai @ Rama Rai (not sent up), his son Chandan Rai, appellants Santosh Kumar and Amal Kumar armed with pistol, including 10 to 15 unknown persons caught hold his son Kamlesh Rai, whereupon appellant Ram Prasad Rai with intention to kill, fired at the chest of Kamlesh Rai, who fell on the ground. Thereafter, all the accused persons fled. On hearing the sound of firing, his son Akhilesh Kumar Rai (P.W. 9) reached towards the place of occurrence. As he reached near Kali temple, he was surrounded by the accused persons, who began to assault him also. In the meantime, on account of injury, his son died in front of the door of Ram Badan Rai. Old dispute was the cause for the murder. The occurrence was witnessed by Brahmdeo Rai and Bashishtha Rai (P.W. 3), who would narrate the incident.

4. The prosecution in order to establish its charge examined 11 witnesses. Out of all these 11 witnesses, P.W. 1 Amaresh Rai turned hostile. P.W. 4 Ram Sandeep Nagraj and P.W. 5 Ravi Kumar Pandey are witnesses of seizure of four cartridges. P.W. 7 Dinesh Rai is witness to the Inquest Report of deceased, which is prepared by P.W. 9 Akhilesh Rai and he proved his signature on it as Exhibit-2/2.

5. P.W. 2 Ramashish Rai has stated in his evidence

that he saw the dead body of Kamlesh Rai lying in front of the door of Ram Badan Rai, but he does not know the name of the persons, who committed the murder. In his cross-examination, he stated that the informant Sheoji Rai (P.W. 6) came after one and a half hour of his arrival at the door of Ram Badan Rai.

6. P.W. 3 Vashishtha Rai is named as witness in the *Fardbeyan* by the informant (P.W. 6). He stated in his evidence that the occurrence took place on 21.02.2004 at about 10:30 pm. On hearing *hulla*, he came at the door of Ram Badan Rai where he saw Kamlesh Rai lying dead. He could not know as to who is the assailant of the deceased Kamlesh Rai.

7. In cross-examination, he stated that he did not see any blood at the place of occurrence. He further stated that till the time he remained at the shop, the father of the deceased did not state as to who are the assailants of the deceased. This witness admitted that the deceased has been in custody, quite a number of times.

8. P.W. 6 Sheoji Rai is the informant of the case. He has claimed to be an eye witness to the occurrence. He stated in his evidence that the occurrence took place on 21.02.2004 at about 10:30 pm. He and his son Kamlesh Rai had gone to the house of Ram Badan Rai to discuss some family matters. At that



time, Naval Kishore Rai (P.W. 8) was also present there. When he enquired about Ram Badan Rai, he stated that he is not present in the house. At the relevant time, electric bulb was burning in the cattle house of Ram Badan Rai. Around that time, 10 to 11 persons came, out of whom, he recognized four persons namely, Ram Prasad Rai @ Rama, Chandan Kumar, Amal Kumar and Santosh Rai, all armed with pistol. Out of four persons, Chandan Kumar and appellant Amal Kumar caught hand of the deceased Kamlesh Rai, whereas appellant Ram Prasad Rai fired on the chest of Kamlesh Rai at the distance of 1 ½-2 feet. On account of which, he fell down. Thereafter, they all fled towards Kali Temple firing from their arms. In the meantime, the accused persons also fired upon and injured his younger son, who was coming from the other side. The Police too came to the place of occurrence after one and a half hour of firing. The deceased was then moved to the Hospital. The Police recorded his *fardbeyan* at the door of Ram Badan Rai. He identified his signature on the *fardbeyan*, which is marked as Exhibit-2. The Police sent the dead body of the deceased Kamlesh Rai for Postmortem Examination and after the Postmortem, the dead body was handed over to him.

9. In cross-examination, he stated that Nawal Rai is the own brother of Ram Badan Rai and his son Kamlesh Rai quite



often sits with Nawal Rai and Ram Badan Rai. He stated that his house is situated in Hakimabad Panchayat, whereas the place of occurrence is Jitwarpur Chowk, at about one kilometer away from his house. He further stated that he had gone to the house of Ram Badan Rai at 10:00 pm., but he was not present in his house. In cross-examination, he feigned ignorance that his son had gone to jail along with Nawal Rai (P.W. 8). He also denied the suggestion that his son deceased Kamlesh Rai, Nawal Rai and Ram Badan Rai, are all accused in a case. He further showed ignorance that his son and Nawal Rai used to demand extortion money from F.C.I. Godown. He was also not aware that his son had gone to jail on a number of occasions. In his cross-examination, he stated that it was a moon lit night and generator was also running at the door of Ram Badan Rai, but he can not say whether there is any electric connection in his house. According to him, the second place of occurrence is Kali Temple, where his younger son P.W. 9 was injured. He stated that just near the first place of occurrence, there are houses of Brahamdeo Rai (not examined), Vashist Rai, Prabha Devi (not examined), Lalbabu Rai and Reshma Devi. He stated that at the time of occurrence, he was only standing at the distance of one or a half *laggy* from his son Kamlesh Kumar, but he did not raise alarm. He further stated that there was some blood



on the ground at the first place of occurrence. He also stated that blood had dropped on the shirt of the son of the deceased Kamlesh Rai. He denied the suggestion that he had not stated in the *fardbeyan* that light was burning in the cattle house of Ram Badan Rai. He further denied the suggestion that he did not state in the *fardbeyan* that Chandan Kumar and Amal Kumar had caught hold the deceased.

10. However, in paragraph- 30 of his evidence, this witness stated that P.W. 6 Sheoji Rai did not state before him that he had gone to the house of Ram Badan Rai to discuss some matters and he met Nawal Rai and asked for Ram Badan Rai, who stated that he was not present in the house. Similarly, he stated that P.W. 6 did not state before him that it was not dark night rather bulb was burning in the cattle house of Ram Badan Rai. He further stated that P.W. 6 did not state before him that Chandan Kumar and Amal Kumar Rai had caught hold of the deceased Kamlesh Rai, whereupon Ram Prasad Rai fired from a distance of one and half feet at his chest. Thereafter, all the accused persons fled away.

11. P.W. 8 Nawal Kishore Rai is the brother of the appellant Ram Prasad Rai. He has claimed to be an eye witness of the occurrence though he has not named him in the F.I.R. In his



evidence, he stated that the occurrence took place on 21.02.2004 at about 10:30 pm. At the relevant time, when he was present at his Veranda, Sheoji Rai and his son Kamlesh Rai came for Panchayati and asked about Ram Bandan Rai. He stated that he was not present in the house. Thereafter, Sheoji Rai came down from the Varanda and reached near his cattle house. In the meantime, appellants along with Chandan Rai armed with pistol came and Ram Prasad Rai shot at the chest of Kamlesh Rai, who fell down and died. Thereafter, accused persons fled away. *Darogajee* came around 3:00 to 4:00 pm., in the night and made queries from Lalan Rai and many other persons, who had gathered at the place of occurrence. According to him, the cause behind the occurrence is that Kamlesh Rai wanted to marry his sister in a family, where Ram Prasad Rai also wanted to marry his daughter, but he latter could not succeed. Due to aforesaid reason, Ram Prasad Rai had killed the son of the informant.

12. In his cross-examination, P.W. 8 (Nawal Kishore Rai) stated that Ram Badan Rai and Balwant Rai are his own brothers. He admitted that he along with Ram Badan Rai are accused in Mufassil P.S. Case No. 477 of 2002. Furthermore, he along with the deceased are accused for demanding extortion money from personnel of Central Food Corporation godown. He,

however, denied the suggestion that he did not state before *Darogajee* that he was not present at the *Veranda* at the time of occurrence, rather he was inside his house. In his cross-examination, he further stated that on hearing the sound of firing, he came out from the house and saw Kamlesh Rai in fleeing condition, who died within five minutes.

13. Thus, it appears from the evidence that P.W. 8 is not an eye witness of the assault by firing at the deceased Kamlesh Rai, rather he came out of the house only on hearing the sound of firing.

14. P.W. 9 Akhilesh Rai is an injured, who is brother of the deceased and another son of the informant Sheoji Rai (P.W. 6). He stated that the occurrence took place on 21.02.2004 at about 10:30 pm. in the night at which, he was sleeping in his house. His mother woke him up and informed that his father Ram Badan Rai and his brother Kamlesh Rai had gone to the house of Ram Badan Rai for Panchayati, where firing was going on. On hearing this, he proceeded to the house of Ram Badan Rai. As soon as he reached near Kali Mandir Chowk, the accused persons namely appellant Ram Prasad Rai, Chandan Kumar (not sent up), appellant Santosh Kumar surrounded him, armed with pistol and Ram Prasad Rai ordered to kill. Thereafter, Ram Prasad Rai

himself fired at him causing injury on his right elbow and the other persons also assaulted with *butt* of the rifles. He was admitted for treatment in the Hospital for about 21-22 days.

15. In his cross-examination, he stated that he sustained only one fire arm injury at the elbow. He stated that on account of injury, blood spilled on the ground. However, he does not know whether the Police took blood stained soil or not.

16. P.W. 10 Dr. Ravi Bhushan Srivastava, who was posted at Sadar Hospital, Samastipur as Medical Officer on 22.02.2004 and on the same day examined the deceased and found the following injuries :-

- i) Lacerated wound 1 ½" x ½" x scalp skin deep on mid parietal area of scalp interiorly.*
- ii) Lacerated wound 1 ½" x ½" x scalp skin deep in right occipital area of scalp.*
- iii) Lacerated wound 1" x ½" x scalp skin deep on posterior part of left parietal region.*
- iv) Lacerated wound 1" x ½" x scalp skin deep on right temporal area of head.*
- v) Swelling 2" x 2" on dorsal aspect of right hand with pain.*
- vi) Lacerated wound 1 ½" x ½" skin deep on areal aspect of right leg on upper on third part.*
- vii) Abrasion 2" x ½" on right leg on interior part upper one third part, half inch lateral to mid line of leg.*

viii) Abrasion $\frac{1}{4}$ " chanter lateral part of right knee.

ix) Lacerated wound $\frac{1}{4}$ " in diameter with everted margin and tattooing (blackening) around it depth up to chest cavity. Situated on right infra clavicular area on front (wound of entry).

x) Lacerated wound of size $\frac{1}{2}$ " x $\frac{1}{4}$ " chest cavity (probe of communicating will wound of entry) situated on right supra clavicular area (wound of exit).

Mark of identification: Injury (i) and (ii) cause latter scar. Age of injury within 12 hours.

Injury No. (ix) and (x) are caused by firearms and simple in nature. Injury No. (i) to (viii), except injury no. (v) are simple and caused by hard and blunt object. Injury No. (v) grievous caused by hard and blunt object.

On the same day he conducted the Postmortem on the dead body of deceased Kamlesh Rai and found following findings :

Antimortem Injuries :

(i) Lacerated wound $\frac{1}{2}$ " in diameter with everted margin and blackening (charring) around the margin of wound communicated with the other wounds situated on back.

Passing through chest cavity the wound is situated in mid clavicular line $1\frac{1}{2}$ " below the inferior margin of clavicle on right side of chest on front.

(wound of entry)

(ii) Lacerated wound of size $\frac{3}{4}$ " x $\frac{1}{2}$: x

communicating with wound of entry (injury no. ii, with everted margin, situated on back in infra scapular area. Blood is oozing out from it (wound of exit).

On suggestion of chest :- Chest cavity filled with (Torn) about 200 ml. Left lung is pale.

Above wound causing by fire arms.

Time elapsed since death – within twenty four hours.

In my opinion death is due to shock and hemorrhage due to above injury which is in normal course, sufficient to cause of death.

17. P.W. 11 Rajeshwar Prasad is the Investigating Officer of the case. He stated that on 22.02.2004, he was posted as Officer-in-Charge of Samastipur (Mufassil) Police Station. At 1:30 pm., he heard rumour of death of son of Sheoji Rai. On hearing such rumour, he recorded Station Diary Entry and reached the place of occurrence at about 2:30 pm. along with other Police Officers. He took the *fardbeyan* of Sheoji Rai at the door of Ram Badan Rai, which is in the hand writing of C.P. Rai, which he proved as Exhibit-3. He also proved the F.I.R. as Exhibit-4. He also prepared the Inquest Report of the deceased and proved the same as Exhibit-5. He further stated that he sent the dead body of the deceased for Postmortem Examination. Thereafter, he inspected the place of occurrence which is in front



of the door of Ram Badan Rai, situated at Jitwarpur. In his evidence, he stated that he recovered four empty cartridges from the place of occurrence and prepared the seizure list, which is marked as Exhibit-7. Thereafter, he took the statement of number of witnesses namely Akhilesh Rai (P.W. 9), Ravi Kumar Pandey (P.W. 5), Sandeep, Ramashish Rai (P.W. 2), Dinesh Rai (P.W. 7), Vashistha Rai (P.W. 3), Reshma Devi, Jagnarayan Rai, Naval Kishore Rai (P.W. 8), Amresh Rai (P.W.1) and Ramswarath Rai (P.W. 2). He further stated that after investigation, he submitted charge-sheet only against the above three appellants namely Ram Prasad Rai, Santosh Kumar and Amal Kumar. He did not submit charge-sheet against Chandan Kumar, as he did not find him guilty of the crime. He further stated that he did not find blood stain on the ground either at the first place of occurrence or second place of occurrence.

18. Mr. Vindhya Keshari Kumar, learned Senior counsel appearing on behalf of the appellants submits that no case either under section 302/34 or 307 of the I.P.C. are made out against the appellants. He further submits that from the evidence of the witnesses, it would appear that the informant is not an eye witness of the occurrence. Moreover, the appellant Ram Prasad Rai is in custody since 11 years 4 months, and the appellants of

Cr. Appeal No. 251 of 2016 were in custody for about one year during trial.

19. On the other hand, Mr. Ashwani Kumar Sinha, learned counsel for the State as well as the informant has justified the impugned judgment of conviction and order of sentence passed against the appellants.

20. On going through the evidence, it would appear from the *fardbeyan* of the informant, Sheoji Rai (P.W. 6) that the occurrence of assault was witnessed by one Brahamdeo Rai and Vashisth Rai (P.W. 3). Vashisth Rai, in his evidence, stated that when he reached at the place of occurrence, he saw the dead body of Kamlesh Rai lying in front of the door of Ram Badan Rai, having sustained fire arm injury and P.W. 6 Sheoji Rai only came at the place of occurrence after one and half hours. At that time, no one was aware as to who were the assailants. Similarly, Nawal Kishore Rai (P.W. 8) has also claimed to be an eye-witness of the occurrence. But from his evidence, it would appear that at the time of occurrence, he was inside the house and only after hearing the sound, he came out and saw deceased Kamlesh Rai running in injured condition, who died soon thereafter.

21. It would, thus, appear from his evidence that he

is not an eye witness to the occurrence. Ramashish Rai (P.W. 2) stated in his evidence that informant Sheoji Rai (P.W. 6) came one an a half hour after the occurrence. He was not present at the time of occurrence, when the firing was resorted at his son Kamlesh Rai. It is difficult to comprehend that in winter season one would go to arrange Panchayati at 10:00 pm., to the place of occurrence, which is one kilometer away from his house.

22. Thus, we are of the considered view that the prosecution has not been able to prove its charge against the appellants under Section 302/34 of the I.P.C. As such, we acquit them of the charge of murder. So far as the charge of 307/34 is concerned, we find that the injured Akhilesh Ram (P.W. 9) has supported the prosecution case that he was surrounded by all the three accused-appellants and they fired upon Ram Prasad Rai. Dr. Ravi Bhushan Srivastava (P.W. 10) has found one gun shot injury simple in nature and other injuries, on the person of the deceased caused, are of hard blunt substance.

23. We, thus, find that prosecution has succeeded in bringing home the charge under Section 307/34 of the I.P.C. against all the appellants and section 27 of the Arms Act as against the Ram Prasad Rai. Under the facts and circumstances of the case, for the ends of justice, we modify the sentence to the

period already undergone.

24. In the result, these appeals are partly allowed.

The appellants are acquitted under Section 302/34 of the I.P.C. but they are convicted under section 307/34 of the I.P.C. and section 27 of the Arms Act with the modification in the sentence as period already undergone.

(Samarendra Pratap Singh, J)

(Rajendra Kumar Mishra, J)

Shailendra/-

AFR/NAFR	N.A.F.R.
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