

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.243 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- SASARAM (ROHTAS)

[Against judgment of conviction dated 16.03.2010 and order of sentence dated 19.03.2010 passed by the Additional Sessions Judge, FTC 1st, Sasaram, in Sessions Case No.111 of 2005 arising out of Sasaram (M) P.S. Case No.12 of 2004]

=====

Rajaram Singh, son of Lakhandeo Singh, resident of village- Badka More, P.O.- Nahuana, P.S.- Sasaram (M), Dist.-Rohtas.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

=====

Criminal Appeal (SJ) No. 260 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- SASARAM (ROHTAS)

[Against judgment of conviction dated 16.03.2010 and order of sentence dated 19.03.2010 passed by the Additional Sessions Judge, FTC 1st, Sasaram, in Sessions Case No.111 of 2005 arising out of Sasaram (M) P.S. Case No.12 of 2004]

- =====
1. Ram Badan Singh, son of Munshi Singh,
 2. Bhuneshwar Singh @ Bhanu Singh, son of Munshi Singh,
 3. Mahesh Singh, son of late Ram Sewak Singh,
 4. Hari Singh, son of late Ram Sewak Singh,
 5. Ram Ashish Singh, son of late Shankar Singh,
 6. Nand Jee Singh, son of Chandradeep Singh,
 7. Gaya Singh, son of late Jagdish Singh,
 8. Kameshwar Singh, son of late Ram Naresh Singh,
 9. Suresh Singh, son of Hari Singh,
 10. Raj Keshwar Singh, son of Mahesh Singh,
 11. Chandradeep Singh, son of late Suba Singh, all resident of village- Barka More, P.S.-Sasaram(M), Dist.-Rohtas.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With



=====

Criminal Appeal (SJ) No. 314 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- SASARAM (ROHTAS)

[Against judgment of conviction dated 16.03.2010 and order of sentence dated 19.03.2010 passed by the Additional Sessions Judge, FTC 1st, Sasaram, in Sessions Case No.111 of 2005 arising out of Sasaram (M) P.S. Case No.12 of 2004]

=====

Sri Ram Singh, son of late Ram Naresh Singh, resident of village- Barka More, P.S.-Sasaram (M), Dist.-Rohtas.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

(In all Appeals)

For the Appellant/s	:	Mr. Krishna Prasad Singh, Sr. Advocate with Mr. Rakesh Singh, Advocate Mr. Manish Kumar No.3, Advocate Mr. Bhaskar Shankar, Advocate
For the State	:	Mr. Bal Mukund Prasad Sinha, APP
For the Informant	:	Mr. Pawan Kumar Singh, Advocate Mr. Vinod Kumar Seth, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 18-05-2018

All these three appeals arise out of common judgment of conviction and order of sentence and, as such, they have been heard together and are being disposed of by this common judgment.

2. By judgment of conviction dated 16.03.2010 and order of sentence dated 19.03.2010 passed by the Additional Sessions Judge, FTC 1st, Sasaram, in Sessions Case No.111 of 2005 arising out of Sasaram (M) P.S. Case No.12 of 2004, Appellant, Sri Ram Singh, has been convicted for the offence under Section(s) 307



Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for 10 years with fine of rupees five thousand under Section 307 Indian Penal Code and in default of payment of fine to undergo further imprisonment for three months. He has further been sentenced to undergo rigorous imprisonment for three years under Section 27 of the Arms Act. Appellant, Chandradeep Singh, has been convicted for the offence under Section(s) 307/149 Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years with fine of rupees five thousand and in default of payment of fine to undergo further imprisonment for three months and rest of the Appellants have also been convicted under section 307/149 Indian Penal Code and sentenced to undergo rigorous imprisonment for five years with fine of rupees one thousand and in default of payment of fine to undergo further imprisonment for one month. All the sentences were ordered to run concurrently.

3. Prosecution case, in brief, as per *fard-e-beyan* of the informant recorded in Sadar Hospital, Sasaram, is that on 04.01.2004 at 9.00 AM he was going to his *Khalihaan* by tractor. Younger brother of the informant, namely, Pramod Singh, was driving tractor. In the meantime, accused persons (Appellants) along with 5-7 unknown persons armed with gun, *Katta*, *lathi*,



Bhala arrived and raised objection on going with tractor from that land as the land belonged to them. The informant told that the same is government land on which Chandradeep Singh (Appellant No.11 of Cr. Appeal (SJ) No.260 of 2010) fired with his double barrel gun on the informant, but the fire did not hit the informant. The Informant fled away to some distance then co-accused, Sri Ram Singh, again fired on Dina Nath Singh, which hit on his stomach and thereafter he fell down. All the accused persons thereafter fled away. Cause of occurrence is previous land dispute.

4. The Investigating Officer after investigation submitted charge-sheet against all these Appellants. Charge has been framed against Appellant, Sri Ram Singh, for the offence under Section(s) 307 Indian Penal Code and Section 27 of the Arms Act. Other accused persons including Sri Ram Singh were charged for the offence under Section(s) 307/149 Indian Penal Code.

5. The prosecution altogether examined thirteen witnesses in the case. The defence has examined four witnesses. The Court below after trial convicted and sentenced the Appellants as mentioned above.

6. Informant (PW 6) has stated in his evidence that on 04.01.2004 at 9.00 AM he was going with his younger brother, Dina Nath Singh. Tractor was being driven by his brother Pramod



Singh. He was going on his tractor to his *Khalihaan* after crossing government road. All the accused persons armed with *lathi*, *bhala* and gun arrived and surrounded the Tractor and raised objection. The informant told that it is the government land on which accused, Sri Ram Singh and Chandra Deep Singh fired at the Informant, but the fire did not hit. Sri Ram Singh made firing at Dina Nath Singh, which hit in his stomach near naval and he fell down. Thereafter all the accused persons fled away. The villagers as mentioned in the evidence arrived and learnt about the occurrence. The informant brought his injured brother to Sasaram Hospital from where he was referred to Banaras. *Fard-e-beyan* was recorded in the hospital, which has been marked as Ext.1.

7. Dina Nath Singh (PW 5) is the injured. He has stated that on 04.01.2004 at 9.00 AM he along with brother Ramashray Singh and Pramod Singh were going to *Kalihaan* on tractor. When he reached on the government road in front of house of Mahesh Singh, then the accused persons/appellants arrived and raised objection. Sri Ram Singh was armed with his licencee gun. They raised objection then Informant told that this is government land. Thereafter, Sri Ram Singh, fired on informant, but it did not hit him. Thereafter, Sri Ram Singh fired on this witness, which hit in his stomach near naval. This witness had shown the wound in



Court at the time of his evidence. This witness became unconscious. He was brought to Sadar Hospital, Sasaram, from where he was referred to Banaras. He got treatment in J. P. Nursing Home, Banaras. He was discharged from the hospital on 20.01.2004.

He has stated in his cross-examination that all the accused persons arrived at the place of occurrence. Tractor was being driven by his younger brother-Pramod Singh.

8. Besides these witnesses, Sudarshan Singh (PW 1) has stated in his evidence that the occurrence has taken place at 9.00 AM. He was going to his land. He saw 10-12 persons running away and there was *halla*. He identified all these Appellants. They were having *lathi*, *bhala*, gun in their hands. He went towards west in the village and found several persons assembled. He found that Dina Nath Singh has sustained fire arm injury in his stomach near naval. He had fallen on the ground. Ramashray Singh and Pramod Singh told that while they were going on Tractor towards *Khalihan* then Sri Ram Singh has made firing on Dina Nath Singh. This witness has stated that he learnt about the occurrence from Ramashray Singh and Pramod Singh.

9. Nand Kumar Singh (PW 2) has appeared as eye witness. He has stated in his evidence that occurrence took place on



04.01.2004 at 9.00 AM. He was on the road near place of occurrence. He saw Ramashray Singh, Pramod Singh and Dina Nath Singh were going on Tractor. When they reached on road in front of house of Mahesh Singh, then Sri Ram Singh, Kameshwar Singh, Chandra Deep Singh, Nandjee Singh, Gaya Singh, Bhuneshwar Singh, total eleven accused persons, arrived armed with weapon. They had altercation with the Informant. Sri Ram Singh made firing which hit Dina Nath Singh in the stomach near naval.

He has stated in his cross-examination that place of occurrence where altercation took place is a government land and villagers used to move on that road.

10. Sidhnath Singh (PW 3) has stated in his evidence that on 04.01.2004 at 8.00 AM, he was at his Darwaja. He heard noise coming from the door of Mahesh Singh. He went there and saw fire arm injury in the stomach of Dina Nath Singh. Ramashray Singh told him about the occurrence.

He has stated in his cross-examination that Ramashray Singh is his uncle. He has stated that there was bleeding from the person of Dina Nath Singh when he reached at the place of occurrence. Dina Nath Singh was unconscious. He has sustained fire arm injury in his stomach.



11. Sanjay Singh (PW 4) has stated in his evidence that when he went to *Darwaja* of Dina Nath Singh on *hullah*, he found Dina Nath Singh had sustained fire arm injury in his stomach.

12. Sundari Devi (PW 7) has stated that the occurrence had taken place at 9.00 AM. She was going towards *Khalihaan*. Dina Nath Singh had sustained fire arm injury. Sri Ram Singh had fired. The Court below has mentioned in the judgment that this witness is not an eye witness as per First Information Report.

13. Yogendra Singh (PW10) has stated that occurrence took place at 9.00 AM on 04.01.2004. He was moving on his land towards west of village and reached near the house of Mahesh Singh, then he saw several persons had assembled there. Dina Nath Singh was bleeding. Sri Ram Singh and other accused persons as named in the evidence were present there. He saw accused running away armed with *lathi*, gun, *bhala* etc. Ramashray Singh and Pramod Singh told him that Sri Ram Singh had fired.

14. Pramod Singh (PW 13) is brother of the informant. He was driving Tractor as per *fard-e-beyan*. Although this witness is named in the First Information Report, but the police has not named this witness in the charge-sheet. However, this



witness was examined after filing application by the prosecution. This witness has stated that on 04.01.2004 at 9.00 AM he was going on Tractor with Ramashray Singh and Dina Nath Singh. When he reached on the road near house of Mahesh Singh, then accused persons raised objection. Sri Ram Singh was armed with licencee gun and other accused persons were armed with *lathi*, *bhala* etc. The informant told that this land belonged to government on which Sri Ram Singh made firing, but Ramashray Singh saved himself and the fire did not hit him. Sri Ram Singh made second firing, which hit Dina Nath Singh in the stomach near naval. He fell down on the ground. The accused persons fled away considering that Dina Nath Singh has died. This witness has stated in his evidence that police has not recorded his statement.

15. Counsel for the Appellants has argued that since the police has not recorded statement under Section 161 Cr. P.C., therefore, his evidence in Court has no evidentiary value.

16. On the other hand, learned APP has argued that for the mistake and negligence of Investigating Officer, the prosecution should not be allowed to suffer when it has come in the *fard-e-beyan* that Pramod Singh was driving Tractor. In this context, it was responsibility of the Investigating Officer to record statement of this witness. The Investigating Officer has nowhere



mentioned in the case diary that this witness did not present himself for giving statement before the police.

17. The Court below has mentioned in the impugned judgment that there is no entry in the case diary that this witness could not appear before the police for giving statement or the police has made any effort to make this witness present before him for his statement.

18. This Court is of the view that even when the Investigating Officer has not recorded statement of this witness under Section 161 Cr. P. C., then also his evidence in the Court recorded during trial with permission of Court will have corroborative value. As per *fard-e-beyan*, he was the eye witness driving the Tractor on which informant and his brother Dina Nath Singh (injured) were sitting. This Court is of the view that evidence of this witness can be taken into consideration either for corroboration or contradiction even though the Investigating Officer has been negligent and not recorded his statement under Section 161 Cr. P. C.

19. Dr. Kanhaiya Mahto and Dr. Ajay Gupta have been examined as PW 8 and PW 9. PW 8 has examined the injured Dina Nath Singh, on 04.01.2004. He found lacerated wound with inverted margin $\frac{3}{4}$ " in diameter, cavity deep over left side of



abdomen (wound of entry) and lacerated wound with inverted margin 1” in diameter, cavity deep over upper part of left Glutel region (wound of exit). Injury Nos.1 and 2 were communicating to each other. Weapon used was fire arm. Age of injury was within six hours. The Doctor finally opined after looking into the Injury Report submitted by J. P. Nursing Home, where surgery was performed, that Injury Nos.1 and 2 were grievous in nature and dangerous to life. The Injury Reports have been proved by this witness and marked as Ext.2 and Ext.3.

20. Dr. Ajay Gupta (PW 9) is Surgeon at J. P. Nursing Home, Banaras. He has deposed that on 05.01.2004, injured, Dina Nath Singh, was admitted in his Nursing Home. He performed operation. There was gun shot injury in the abdomen. Anterior and posterior stomach wall was perforated. This witness has proved the Injury Report issued by J. P. Nursing Home, Banaras, which has been marked as Ext.4. He has stated in his evidence that during operation he found gross fecal and blood contamination in abdominal cavity.

21. PW 11 (Saiyad Irshad Ali) and PW 12 (Bholi Paswan) are the Investigating Officers of the case.

22. PW 11 (Saiyad Irshad Ali) has stated that he has submitted charge-sheet in the case.



23. PW 12 (Bholi Paswan) has stated in his evidence that he recorded *fard-e-beyan* of the informant. He has proved the same. He has also described the place of occurrence. He recorded statement of other witnesses. He did not record statement of Tractor Driver, Pramod Singh. He has not seized blood stained earth and empty cartridges from the place of occurrence.

24. The defence has examined four witnesses in the case, namely, DW 1 (Mahesh Singh), DW 2 (Ram Badan Singh), DW 3 (Bijendra Ram) and DW 4 (Bhaiya Ram Singh).

25. DW 1 (Mahesh Singh) has stated that he is Complainant of Complaint Case No.721 of 2003. DW 2 (Ram Badan Singh), DW 3 (Birendra Ram) and DW 4 (Bhaiya Ram Singh) have stated that because of previous land dispute accused persons have been implicated in this case.

26. This Court after looking into the evidence finds that informant, Ramashray Singh, along with injured, Dina Nath Singh and Pramod Singh were going on Tractor on the date of occurrence towards *Khalihan*. In front of house of Mahesh Singh on the road, the accused persons raised objection and when the informant insisted that it is a government land then accused Sri Ram Singh fired causing injury to Dina Nath Singh in his stomach near naval. The informant, Ramashray Singh, PW 6, has fully



described about the manner of occurrence committed by the accused persons. Evidence of the informant gets full corroboration from the evidence of injured, Dina Nath Singh (PW 5). He has stated that when he along with his brother Pramod Singh were going on Tractor in front of house of Mahesh Singh, accused persons arrived armed with *lathi*, *bhala* and gun and raised objection. When they insisted that it is government land, then Sri Ram Singh made firing causing injury in his stomach near naval and he fell down.

27. The police has not recorded statement of Pramod Singh during investigation. But he has been examined by the prosecution after taking permission from the Court as PW 13. He has supported the case of the Informant. He has stated in the evidence that he was driving Tractor on which Informant, Ramashray Singh, and his brother, Dina Nath Singh were sitting. When Tractor reached on road in front of house of Mahesh Singh, then accused persons raised objection. The informant insisted that it is government land and then Sri Ram Singh made firing causing injury in the stomach of Dina Nath Singh near naval and he fell down. He was taken to Sadar Hospital, Sasaram, from where he was referred to Banaras for better treatment. Other witnesses, namely, Sudarshan Singh (PW 1), Nand Kumar Singh (PW 2),



Sidhnath Singh (PW 3), Sanjay Singh (PW 4) and Sundari Devi (PW 7) have all stated in their evidence that Dina Nath Singh was lying injured on the road in front of house of Mahesh Singh. They learnt that Sri Ram Singh caused fire arm injury to Dina Nath Singh in his stomach.

28. The Doctors, PW 8 and 9, have found fire arm injury in the abdomen of injured, Dina Nath Singh (one wound of entry and one wound of exit as mentioned in detail in the Injury report) caused by fire arm. Both injuries were communicating to each other.

29. PW 9 is the Doctor, who performed operation of the injured, Dina Nath Singh. He has stated in the evidence that there was gun shot injury in the abdomen of the injured. Anterior and posterior stomach wall was perforated. He has stated in his evidence that during operation he found gross fecal and blood contamination in abdominal cavity.

30. This Court has opined above that although Pramod Kumar, PW 13, has not been examined by the police during investigation, even then his evidence in Court can be considered for the purpose of contradiction and corroboration. He is named in the *fard-e-beyan* as an eye witness. Evidence of this witness in this case, which was recorded after getting permission from the Court,



cannot be brushed aside merely because the Investigating Officer had been negligent in not recording his statement during investigation and has not named him in charge-sheet. The prosecution cannot be made to suffer on account of arbitrariness and negligent action of the Investigating Officer during investigation.

31. Therefore, this Court on the basis of evidence of the prosecution witnesses finds that prosecution has been able to prove the charge under Section(s) 307 Indian Penal Code and Section 27 of the Arms Act against the Appellant, Sri Ram Singh, (Cr. Appeal (SJ) No.314 of 2010. There is specific allegation against Sri Ram Singh of causing fire arm injury in the abdomen of Dina Nath Singh, which was found by the Doctor to be grievous in nature and dangerous to life. Dina Nath Singh was sent to Sadar Hospital, Sasaram, from where he was sent to Banaras where he was operated in private Nursing Home, namely, JP Nursing Home. Ajay Gupta (PW 9) has stated in his evidence that he performed operation of the injured and found gross fecal and blood contamination in abdominal cavity. Anterior and posterior stomach wall was perforated.

32. Therefore, this Court does not find any illegality in the impugned judgment of conviction and sentence passed



against Appellant, Sri Ram Singh, (Cr. Appeal (SJ) No.314 of 2010).

33. Accordingly, impugned judgment of conviction dated 16.03.2010 and order of sentence dated 19.03.2010 passed by the Additional Sessions Judge, FTC 1st, Sasaram, in Sessions Case No.111 of 2005 arising out of Sasaram (M) P.S. Case No.12 of 2004, with regard to Appellant, Sri Ram Singh, (Cr. Appeal (SJ) No.314 of 2010) is hereby affirmed. His bail bond is hereby cancelled. He is directed to surrender in the Court below to serve remaining period of the sentence as ordered by the learned Court below.

34. In the event, he fails to surrender before the Court below, the Court below will take appropriate steps, in accordance with law, to secure his appearance to serve out the remaining period of sentence as awarded by the Court below.

35. So far Appellants of Cr. Appeal (SJ) No.243 of 2010 and Cr. Appeal (SJ) No.260 of 2010 are concerned, there is no direct evidence against them of causing any overt act or any injury to any of the members of the prosecution party.

36. Therefore, impugned judgment of conviction dated 16.03.2010 and order of sentence dated 19.03.2010 passed by the Additional Sessions Judge, FTC 1st, Sasaram, in Sessions Case



No.111 of 2005 arising out of Sasaram (M) P.S. Case No.12 of 2004, with respect to other Appellants, namely, Raja Ram Singh (Cr. Appeal (SJ) No.243 of 2010), 1. Ram Badan Singh, 2. Bhuneshwar Singh alias Bhanu Singh, 3. Mahesh Singh, 4. Hari Singh, 5. Ram Ashish Singh, 6. Nandjee Singh, 7. Gaya Singh, 8. Kameshwar Singh, 9. Suresh Singh, 10. Raj Keshwar Singh and 11. Chandradeep Singh (Appellants of Cr. Appeal (SJ) No.260 of 2010) is hereby set aside. They are acquitted of the charges levelled against them. They are also discharged from the liabilities of their respective bail bonds.

37. Accordingly, Cr. Appeal (SJ) No.243 of 2010 and 260 of 2010 are allowed and Cr. Appeal (SJ) No.314 of 2010 is hereby dismissed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	05-04-2018
Uploading Date	19-05-2018
Transmission Date	19-05-2018

