

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.361 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

- =====
1. Deo Narayan Rai S/O Sri Ganga Rai (abated vide order dt. 15.1.2015)
 2. Umesh Rai S/O Sri Deo Narayan Rai (abated vide order dt.23.2.2015)
 3. Ram Chandra Rai Son of Sri deo Narayan Rai
 4. Vidya Bhushan Rai S/O Sri Laxmi narayn Rai
 5. Laxmi Narayn Rai S/O Sri Ganga Rai (abated vide order dt. 23.2.2015)
 6. Ram Sagar Rai S/O Sri Chabhu Rai
 7. Mahaanand Rai S/O Sri Ram Narayan Rai
All resident of village – Jitwarpur Nizamat, P.S.- Muffasil, District Samastipur.
 8. Bhola Rai @ Bhola Prasad Rai, S/O Late Natho Rai, Village- Athmal Gola, Distt. Patna.
 9. Sone Lal Rai S/O Sri Ganesi Rai, Village Jitwarpur Kharaj, P.s.Muffasil, Distt. Samastipur.
 10. Siya Saran Rai S/O Sri Laxmi Rai, village- Laheria Tola, P.S. Athmal Gola, Distt.- Patna.
 11. Dasrath Pandit S/O Sri Ugen Pandit, village Lemua Barh, P.S.Pandarak, Distt.- Patna.
 12. Dinesh Kumar @ Dinesh Yadav S/O Sri suresh Yadav, Vilalge- Darghi, P.S Pandarak, Distt. Patna Deo Narayan Rai & Ors.
 13. Bachchu Mian @ Md. Bachhu Mian S/O Late Israyeel Mian, village Athmalgola,Distt. Patna.
 14. Vijay Yadav S/O Late Ramchandra yadav, Village- Daraghi, P.S. Pandarak, Distt. Patna.
 15. Umakant Rai S/O sri Deo NarayanRai
 16. Ram Badan Rai S/O Sri Ram Bilas Rai, both resident of village Jitwarpur Nizamat P.s. Muffasil, District Samastipur.

.... Appellants

Versus

State of Bihar

.... Respondent

=====

Appearance :

For the Appellants : Mr. Niraj Kumar Sinha, Adv.

For the Respondent : Mr. Mr. Sujeet Kumar Singh, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 08-01-2018

All the appellants stand convicted under Section 323/149 of the Indian Penal and sentenced to R.I. for six months similarly also convicted under Section 379/149 of the Indian Penal Code and sentenced to undergo for two years thereunder, further convicted R.I.



for three years under Section 27 of the Arms Act read with Section 149 of the Indian penal Code and sentenced to undergo R.I. for three years thereunder.

2. Appellants Dasrath Pandit, Dinesh Kumar Yadav, Bhola Rai, Bachhu Mian, Umesh Rai and Umakant Rai and Mahanand Rai were sentenced to undergo for one year and convicted under Section 147 of the Indian Penal Code and sentenced to undergo R.I. for one year. Appellants Siya Saran Rai, Vijoy Yadav, Ram Sagar Rai, Sonelal Rai, Deo Narayan Rai, Lakshmi Narayan Rai, Ram Chandra Rai, Vidya Bhushan Yadav and Ram Badan Rai are also convicted under Section 148 of the Indian Penal Code and sentenced to undergo R.I. for two years. It has further been directed that all the sentences shall run concurrently.

3. It appears from perusal of the record that after receiving report of the S.P., Samastipur, the appeal in respect of appellant no 1. Deo Narayan Rai, who died during the pendency of the appeal, stands abetted and appellant nos.2 Umesh Rai & 5. Laxmi Narayan Rai also died during the pendency of the appeal, as such a report was called for from the S.P., Samastipur and after receipt of the report, the appeal in respect to appellant no.2, Umesh Rai and appellant no.5. Laxmi Narayan Rai stands abetted, vide order dated 23.2.2015 passed in the instant Appeal.



4. The prosecution case in brief is that a fardbeyan was recorded by Samastipur Muffasil Police Station on 21.11.1990 at 08:30 A.M. at the *darwaja* of P.W.1 that in the morning at about 06:30 he was at his house situated in Khata No.134 (old), Khesara No.1011 (old) of village Jitwarpur P.S. Muffasil Samastipur and was talking with Ram Japit Rai in the meantime, all the accused persons named as the appellants came variously armed and asked him to vacate his house. Further case is that appellant Umakant Rai thrashed his '*Naad*' by *Lathi* and when Ram Japit Rai tried to prevent them appellant Deo Narayan fired from his gun on his leg. Thereafter the appellant Ram Chandra Rai also fired but that does not him. When her brother-in-law Surendra Kumar came, Ram Chandra Rai fired also but that was mis-fired, thereafter, Surendra Kumar was assaulted by the '*But*' portion of the gun due to which he received injury and all the accused persons assaulted him by *lathi*, fists and slaps and on the sound of firing and *hulla*, villagers assembled there and thereafter they started blank firing. It is also the prosecution case that the villagers started brickbatting on the accused persons. Further case is also that appellant Deo Narayan and Ram Chandra entered into his house and Deo Narayan also lifted his suit case. He has also stated that he will inform about the details of the articles. The prosecution has also come with a story that at the time of fleeing away the



accused Vidya Bhushan Rai has taken his motorcycle and two persons sat on the pillion ride of the motorcycle. Further case is that the police officials reached there and they chased the accused persons and they were arrested and they have also received some injuries in course of the arrest. Further prosecution case is that from appellant Siya Saran Rai one double barrel gun with two mis-fire cartridges were recovered and from the pocket of appellant Vijay Yadav cartridges of .315 rifle was recovered and two cartridges were also recovered of double barrel gun from the pocket of Bacchu Mian, whereas .12 bore gun was recovered from the pocket of Bhola Prasad Yadav, 02 cartridges of .12 bore gun were recovered from Dashrath Pandit and similarly cartridges were recovered from other co accused appellants also and a seizure list was prepared on which the independent witnesses Lal Bahadur Rai and Jagdish Rai put their signature. It is also the prosecution case that others were also armed with rifle gun, pipe gun and seeing police party they had threatened them and succeeded in fleeing away. The prosecution claims that the appellant Deo Narayn Rai had come with other appellants with an indentation to dispossess him from his land.

5. On the basis of the aforesaid fardbeyan Samastipur Mufassil P.S.Case no.424 of 2002 was instituted against the appellants and on investigation, the charge sheet has been submitted



and the cognizance of the offence has been taken and ultimately this case has been committed to the court of sessions, which intimately came to the file of Sri Ajay Kumar Sinha, Addl. Sessions Judge, Fast Track Court-2), Samastipur.

6. The charge was framed against appellant Deo Narayan Rai under Section 307, 149, 380 and 157 of the IPC and also under Section 27 of the Arms Act. Similarly the charges were framed against all the appellants under Section 452/149 and 323 of the IPC and further the charge has been framed against appellant Ramchandra Rai under Section 380 of the IPC and 27 of the Arms Act and against Vijoy Rai under Section 379 of the IPC. Further the charge under Section 158 was framed against all the appellants Siya Saran Rai, Dashrath padit, Dinsh Prasad Yadav, Vijay Yadav, Bhola Prasad Yadav, Md. Bachchu Mian and Ram Sagar Rai and the charge under Section 147 of the IPC has been framed against the appellants Dashrath Pandit, Dinesh Kumar Yadav, Bhola Prasad Yadav, Md.Bachchu Mian, Umesh Rai, Uma Katn Rai and Mahanand Rai, further the appellants Siya Saran Rai, Vijay Yadav, Ram Sagar Rai, Sone Lal Rai, Deo Narayan Yadav, Laxmi Narayan Rai, Ram Chandra Rai, Vidya Bhushan Rai and Ram Badan Rai @ Nandan Rai have further been charged under Section 147 of the IPC. Record further shows that the charge under Section 307 of the IPC has also



been framed against Deo Narayan Rai and Ram Chandra Rai on 8.4.1992, which had been signed on 27.8.1992.

7. During the trial following witnesses have been examined : P.W.1 Raj Kumar Rai, informant-injured, P.W.2 Ajit Kumar Rai tendered, P.W.3 Sita Ram Prasad formal witness, P.W.4. Sukhdeo Rai material witness, P.W.5 Surendra Kumar injured, P.W.6 Ram Ratan Rai material witness, P.W.7 Anil Kuamr Rai material witness P.W.8 Raktu Rai tendered, P.W.9 Ramjapit Rai injured, P.W.10 Sujit Kumar, tendered, P.W.11 Bindeshwari Prasad formal witness, P.W.12 Dr. Bed Bhanu Udai Prasad, who has examined one of the injured, P.W. 13 R.P. Mishra, P.W.14, Ram Bihari Singh formal witness, P.W.15 Lalan Prasad Singh I.O., P.W. 16 Ramsanjivan Rai tendered, P.W.17 Vishunkant Jha formal witness, P.W.18 Umashankar Prasad formal witness.

8. Apart from the above evidence, following documents have also been brought on record on behalf of the prosecution : Ext. 1 signature of informant Raj Kumar Rai, Ext. 2 formal FIR, Ext. 2/1 formal FIR of Town P.S.Case no.421 of 1990, under Arms Act, Ext.3 fardbeyan of Town P.S.Case no.421 of 1990 Ext. 4 to 4/6 seven seizure list prepared by Lalan Prasad Singh I/O, Ext. 5 injury report of Surendra Kumar, Ext.5/1 injury report, Ext. 6 endorsement on fardbeyan, Ext. 7 injury report prepared by R.N. Mahto S.I., Ext. 7/1



injury slip of Surendra Kumar, Ext. 8 protest petition, Ext.1/1 signature of Raj Kumar Rai on the protest petition, Ext.9 certified copy of Samastipur P.S.Case No.440 of 1990, Ext. 10 to 10/A two affidavits, Ext. 11 sale letter and Ext. 12 owner book of vehicle.

9. On behalf of the defence also two witnesses have been examined, they are D.W.1 Dr. Bed Bhanu Uday Prasad, who treated appellant Deonarayn Rai, D.W.2 Gopal who proved fardbeyan of Samastipur Muffasil P.S.Case no.440 of 1990; besides that following documents have been brought on record as exhibits. Ext. 'A' injury report, Ext. B Fardbeyan, Ext 'C', endorsement on Ext. 'B', Ext. C' 1 signature of Lalan Prasad Singh, Ext. 'D' copy of order sheet dated 11.10.1993 in Title Suit No.350 of 1996, Ext. 'E'; certified copy of deposition in G.R.Case no.137 of 1990, Ext. 'F' certified copy of judgment in Title Suit no.29 of 1963, Ext. 'G' certified copy of decree of Title Suit No.29 of 1968

10. The defence of the appellants is of totally denial of the occurrence rather they have claimed that the lands belongs to appellant Deo Narayan Rai and they tried to disposes the appellants from that land and also assaulted Deo Narayan Rai, causing injury to him and lodged the present case with a view to grab the land.

11. The learned trial court considering the entire materials available on the record come to a finding that the appellants



committed offences and they were convicted as stated above, however, the learned trial court has also acquitted the appellants from the various charges like Section 157, 158, 450, 452 & 380 of the IPC as well as also acquitted the appellant Deo Narayan Rai and Ram Chandra Rai from the charges under Section 307 of the IPC. The aforesaid judgment is under challenged in the present.

12. Submission of the learned counsel for the appellants is that no such occurrence has taken place and they have been falsely implicated in this case. It is further submitted that the informant tried to dispossess the appellant from the land, which is in the name of the appellant Deo Narayan Rai.

13. The contention of the learned counsel for the appellants is that P.W.1 who is informant has admitted in his evidence in cross examination in para 5 that he has stated in earlier case that the appellant Deo Narayn Rai in collusion with the Survey Karmchari has got his name and the name of his brothers included in *Kaifiyat Khana as Sikmedar* due to that he has lodged a case. He has also admitted that in old *Khatiyani* in *Kaifiyatkhana* father of the accused persons were named as *Sikmedar*. His evidence also shows that he had lodged a case earlier against them and his evidence also shows that his old *Gharari* i.e. house is situated in village and his father and others are living there. He has also admitted in para 10 that



he came later on that Deo Narayn Rai received injury and he was under treatment at Sadar Hospital, Samastipur. His evidence also discloses that he has not filed any amendment petition (in Title Suit) to include the house over the land in dispute and if the aforesaid evidence of the informant has been considered along with certified copy of the judgment of T.S. No.29 of 1961 it clearly shows that the Title Suit filed by P.W.2 informant has been decided against him and he lost the T.S. and this clearly falsify the evidence of P.W.2 that the appellants wanted them to vacate the house.

14. It has also been submitted that though P.W.4 Sukhdeo Rai has also supported the occurrence but he appears to be interested witness and earlier also he had deposed against the appellant in Title Suit and he was made accused along with Raj Kumar Rai in proceeding under Section 107 of the Cr.P.C. lodged by Deo Narayan Rai and further he has also been made accused in the counter case lodged by Deo Narayan Rai bearing Samastipur P.S.Case no.440 of 1990 along with Surendra Kumar (P.W.5) who is own brother-in-law of P.W.2 Raj Kumar Rai and his evidence is also not free from any reasonable doubt. Similarly, Ram Ratan Rai P.W.6 has admitted that there is land dispute between both the parties and he has also admitted that he had been accused in a proceeding under Section 107 of the Cr.P.C. lodged by Deo Narayan Rai along with



Raj Kumar Rai and evidence of P.W.7 Anil Kumar Rai also does not appear to be believable. There are several contradictions taken from his earlier statement before the police in para 4 of his evidence. He also appears to be brother-in-law of the informant, Raj Kumar Rai.

15. Further contention is that P.W.9 is Ram Japit Rai who has himself admitted that he has only received scratch on his leg and he has also admitted dispute between the parties from before and cases are going on. He is also accused in the counter case and their evidence categorically shows that there are interested and inimical witnesses whereas it has also been argued that Ext. 'B' is the counter case lodged by Deo Narayn Rai and Ext. 'D' is the order issuing summons against the accused persons. Further the evidences of I.O. categorically shows that he has found Deo Narayan Rai in injured condition in Sadar Hospital, Samastipur and he was unconscious and on the statement of Deo Narayan Rai he has lodged the present case, as such the appellant Deo Narayan Rai has also received injuries in the same occurrence but the same has not been explained by the prosecution and there is counter case against them also and hence non-explanation of injuries on the person of Deo Narayan Rai also goes against the prosecution and doubts the credibility of prosecution witness.

16. Further submission of the appellant is that though



the prosecution has come with a case regarding recovery of a gun from the appellant Siya Saran Rai and bullets from other accused persons but the I.O. has himself admitted that for that a separate case has been lodged and as such for the same they can not be convicted in the present case.

17. It has also been contended that though it is alleged that appellant Ram Chadra Rai fired and Deo Narayan Rai also fired but there is no injury on the person of the injured of fire arm and even the guns have not been recovered from Deo Narayan Rai or Ram Chandra Rai, as such conviction under Section 27 of the Arms Act against them is also not sustainable in the eye of law.

18. It has also been submitted that the evidence available on the record including the documentary evidence suggests that the land is in the possession of the appellant Deo Nararayn Rai and the informant and others tried to grab the same and due to that the occurrence took place in which Deo Narayan Rai received injuries but the same has been suppressed by the prosecution whereas injuries on the person of the injured in the present case is superfluous in nature but the learned trial court has disbelieved the same and convicted the appellants under Section 307 and 307/149 of the IPC. Accordingly, the impugned order is not sustainable in the eye of law and fit to be set aside.



19. On the other hand the learned counsel for the appellants has supported the judgment on the ground that the evidences are consistent on the record supported by the medical evidence and the police came just after the occurrence at the place of occurrence and a large number of appellants were arrested while fleeing and there is recovery of gun and bullets from them, in such a situation there is no infirmities in the conviction and it appears to be just and proper.

20. Considering the evidence available on the record on the aforesaid background of the submission raised by both the parties, it appears that P.W.1 is the informant in this case and in his evidence he has supported the prosecution case, so far as manner of assault and case of theft is concerned, however, his evidence clearly discloses that he has land dispute with the appellant Deo Narayn Rai from before and as pointed out by the defence, he has also admitted that the land in dispute was earlier recorded in the name of father of the informant and he had lodged a case earlier against the same but the Ext. 'D'. Judgment in this suit shows that the Title Suit lodged by Raj Kumar Rai informant that the disputed land is in Schedule given at the foot of the plaint as of *kast kaimi* land in possession of the plaintiffs and defendants have no *sikmi* right therein and also for decree of suit with cost, has been decided against the informant and



in favour of the appellant, it is one of the circumstances against the prosecution.

21. All other witnesses have also supported that there is land dispute between the parties from before. It further appears that all the witnesses have supported the manner of occurrence and also supported that the appellant Deo Narayn Rai fired causing injury on his leg of Ramjapit Rai and Ram Chandra Rai fired on Raj Kumar Rai that did not hit him and their evidence is also that Deo Narayan Rai entered inside the house of Raj Kumar Rai and taken away suitcase and Ram Chandra Rai had taken away watch Vidya Bhushan Rai has taken away motorcycle and almost all the witnesses have supported the same. However, story of theft of suitcase and watch had not been find true by the learned trial court and Ramjapit Rai had not got any firearm injury on his person and admittedly the firing made by Ramchandra Rai does not hit Raj Kumar Rai.

22. On the close scrutiny of the evidence it appears that P.W. 2 is interested witness and P.W.3 is the formal witness and P.W.4 had earlier also deposed against the appellant Deo Narayan Rai in Title Suit before the learned Munsif and he is accused in the counter case lodged by the appellant Deo Narayn Rai also earlier he was accused in a case instituted under Section 107 of the Cr.P.C. Similarly, P.W.9 is also accused in a case lodged by Deo Narayan Rai



and his evidence in para 6 shows that he had stated later on that all the accused persons have received injuries. The prosecution case shows that he has received gun shot injuries in his leg. He has himself admitted that he has not been examined by the Doctor as he has only scratch injury on his person. P.Ws.5 and 7 are own *saala* (brother in law) in this case and P.W.6 is also accused in a proceeding under Section 107 of the Cr.P.C. lodged by Deo Narayn Rai, hence, it appear that all the witnesses are either inimical or interested and related witness.

23. The Hon'ble Apex Court in a case of ***Raju @ Balachandran @ Ors.- Vrs. State of Tamil Nadu*** reported in (2012) ***12 SCC 701*** has discussed the evidence of related and another type of witnesses and held in para 24 of the judgments as follows : -

“For the time being, we are concerned with four categories of witnesses – a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that



is expected and required.

24. In view of the aforesaid settled law, the evidence of the witnesses has to be scrutinized in the present case as the land in question appears to be of the appellant Deo Narayan Rai. Further Deo Narayan Rai has also received injuries in the present case, which has appeared from the evidence of I.O. (P.W.15) and the injury was serious and found in unconscious condition in the hospital. The defence has brought the evidence of Dr. Bed Bhanu Udai Prasad D.W.1 and he has stated in his evidence that he examined Deo Narayan Rai and found following injuries that shows injury no.2 and 3 were grievous in nature :-

- “1. Abrasion over the right fore arm upper part pastriarly 1 ½” X ¼” with swelling.***
 - 2. Abrasion over right fore arms ¼” X ¼”.***
 - 3. Swelling with abrasion over left fore arm upper part pastriarly 1 ½” X ½”.***
 - 4. Lacerated wound over right side of face laterly to right eye 2 1/2” X ½” X ½”.***
 - 5. Bruise over body of left side 3” X 1’4”.***
 - 6. Bruise over back right leg 3” X ½”.***
 - 7. Abrasion over right side of forehead ¼” X ¼”.***
- X-ray of injury no.1 was done in Janki X-Ray, Samastipur dt. 25.11.90 shows fracture of right ulna.***
- Nature of injury- Injury no.1 is grievous and other injuries are simple caused by hard and blunt substance and as lathis.***
- Age within six hours.”***

This witness has proved the injury report of Deo Narayan Rai as Ext. ‘A’



25. In this regard, Dr. Bed Bhani Uday Prasad has also been examined as P.W.12 and he has stated that he has examined Surendra Kumar and found one lacerated wound over the left perital region of the scalp 2" X ½" X 1 ½". Similarly P.W.13 R.P.Mishra has examined Raj Kumar Rai (P.W.1) and he has found scratching and tenderness on the left palm.

26. It is well settled principle that the prosecution does not have to explain about the injuries which are superfluous in nature found on the person of the accused persons but if the injuries are grievous in nature and admitted by the I.O. itself, it is the duty of the prosecution to explain the circumstances under which the injuries were caused to the appellant Deo Narayn Rai and however, in the present case no such explanation has come from the prosecution and that creates doubt about credibility of P.Ws. There are evidences also that shows that the appellant Deo Narayn Rai and Ram Chandra Rai fired from the gun on Ram Japit Rai and the informant Raj Kumar Rai but evidence of Ram Japit Rai shows that he has received scratch injury on his leg and he has not got himself examined by the Doctor even the police has not issued any injury slip to him where Raj Kumar Rai has also not received injury as he bend down, as such there are no fire arm injury against the informant or others available on the record. There is also nothing available on the record that the



gun and used bullets were recovered from the possession of the appellant Deo Narayan Rai and Ram Chandra Rai rather it shows that they have been recovered from other accused persons and for that another case has been lodged under Section 25 and 26 of the Arms Act, hence, conviction of the appellant under Section 27 of the Arms Act also does not appear to be free from reasonable doubt. The prosecution has also come with a case that appellant Vidya Bhushan Rai has taken away motorcycle but it is the prosecution case that they on chase were arrested but in spite of that there appears no recovery of motorcycle from them and evidence of I.O. does not show as to whether he has made any investigation about the recovery of the motorcycle.

27. The aforesaid fact is relevant in the background that the story of theft of suitcase and other articles has not been found true by the learned trial court itself.

28. Considering the facts and circumstances which I have discussed above in totality suggests that 1. there is admitted land dispute, 2. land in question appears to be in possession of the appellant Deo Narayan Rai, 3. there are superfluous injuries on the person of Surendra Kumar whereas Ram Japit Rai has himself stated that he has received scratch injury on the other hand there is grievous injuries on the person of the Deo Narayn Rai. 4. I.O. has found Deo



Narayn Rai admitted in the hospital in injured condition just after on the next day of the occurrence and he was found in unconscious condition, 5. The Doctor has found grievous injuries on his person and there is absolutely nothing to show that there is fire arm injury, 6. no recovery of fire arms from the appellants at the spot and so far recovery of arms and ammunition is concerned, another case has been lodged against them and 7. Evidence of theft of motorcycle also does not appear to be believable in the background of discussions made above.

29. In such view of the matter, conviction of the appellants does not inspire confidence and as such prosecution has failed to prove charges, as framed against them beyond reasonable doubt and they are entitled for benefit of doubts. However, learned Trial court has not considered those infirmities, inconsistencies and discrepancies as discussed above.

30. Accordingly, this appeal is allowed.

31. The judgment of conviction and sentences passed by the learned trial court are set aside and as the appellants are on bail they are discharged from their liabilities for their bail bonds.

(Vinod Kumar Sinha, J)

chn/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.01.2018
Transmission Date	25.012018



