

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2720 of 2017

Arising Out of PS. Case No.-57 Year-1998 Thana- DORIGANJ District- Saran

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1. Ram Kishore Rai,
 2. Vijay Rai, Both Sons of Late Chandrika Rai, R/o Village- Bindgawa, P.S.- Doriganj, District- Chapra (Saran).
 3. Sanjay Rai Son of Ram Ballam Rai, R/o Village- Mukundpur, P.S.- taraiya, District- Chapra (Saran).
 4. Janak Rai
 5. Sunil Ray Both Sons of Late Baleshwar Rai,
 6. Jatuli Rai @ Jathuli Rai,
 7. Lalit Rai @ Lalot Rai Both Sons of Ram Nath Rai, R/o Village- Bindgawa, P.S.- Doriganj, District- Chapra (Saran).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Md. Imteyaz Ahmad
Advocate

For the Respondent/s : Mr. Sri Shyed Ashfaque Ahmad
Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 03-08-2018

Heard learned counsel for the petitioner and
the State.

2. The appellants have been convicted under
Sections 147, 148, 307/149 of the Indian Penal
Code and Section 25 (1-b) A of the Arms Act vide



judgement dated 28.08.2017 passed by the learned Fast Track Court-II, Saran at Chapra in Sessions Trial No. 322 of 2000; and by order dated 31.08.2017 they have been sentenced to undergo RI for two years for the offence under Section 148 I.P.C.; RI for seven years and a fine of Rs. 10,000/- (ten thousand) and in default of payment of fine to further suffer simple imprisonment of six months for the offence under Sections 307/149 of the I.P.C.; and RI for two years for the offence under Section 25 (1-b) A of the Arms Act. The sentences have been ordered to run concurrently. No separate sentence has been awarded under Section 147 of the I.P.C.

3. The case of the prosecution is based on the written report of one Budhan Rai / P.W. 9, who has alleged that on 12.11.1998, at about 4 o'clock in the evening, the appellants, variously armed with Lathi, Danda, gun etc. came to his house and started firing. As a result of the firing resorted to by the accused persons, Binod Rai / P.W. 4 and Baijnath Rai / P.W. 6 were injured. On hullah, many persons of the neighbourhood arrived. The cause of occurrence, as has been stated in the F.I.R., is old land dispute. On the basis of the aforesaid written



report, a case vide Doriganj P. S. Case No. 57 of 1998 dated 12.11.1998 was instituted for investigation under Sections 147, 148, 149, 448 and 324 of the I.P.C. and Section 25 (1-b) A and 27 of the Arms Act.

4. The police after investigation however submitted charge-sheet under Sections 147, 148, 149, 323, 324, 447 and 307 of the I.P.C. and Section 25 (1-B)/35/27 of the Arms Act, whereupon cognizance was taken and the case was committed to the court of sessions for trial.

5. The learned trial court, after examining 12 witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

6. Mr. Ajay Kumar Thakur, learned Advocate appearing for the appellants has submitted that the judgement and order of conviction is much too presumptuous and against the weight of overwhelming evidence. He has further submitted that the trial court absolutely misdirected himself in not taking into account that in a case lodged by one of the appellants, namely, Ram Kishore Rai against the informant and other persons, in which the aforesaid appellant had been seriously injured.



7. It has further been submitted that the verdict of guilt has been arrived at only on the basis of interested and partisan witnesses and no independent person has come to support the prosecution version.

8. The main plank of argument of Mr. Thakur is that the place of occurrence could not be proved. One of the independent persons, who was brought to the witness box, has not supported the prosecution version and has been declared hostile.

9. Apart from this, there are contradictions in the material particulars provided by the witnesses.

10. On the aforesaid grounds, it has been urged on behalf of the appellants that the judgement and order of conviction be set aside and the appellants be acquitted of all charges.

11. It would now be relevant to refer to the deposition of only two of the injured witnesses, namely, Baijnath Rai (P.W. 6) and Binod Rai (P.W. 4).

12. Baijnath Rai in his examination-in-chief has stated that the appellants had come to the house of informant / Budhan Rai / P.W. 9 at about 4 o'clock in the evening. Appellants no. 1 and 6, viz Ram Kishore Rai and Jatuli Rai @ Jathuli Rai were



armed with guns, whereas the others were carrying lathi, bhala etc. in their hands. On the orders of Baleshwar Rai, Appellant No. 6 / Jatuli Rai @ Jathuli Rai fired from his weapon, causing injuries to Binod Rai. When Budhan Rai / P.W. 9 and Baijnath Rai / P.W. 6 moved ahead for rescuing the injured and for saving their own lives, P.W. 6 fell down by stumbling over a peg in front of the house of one Durga Rai. At that time, it has been alleged that appellant no. 1 / Ram Kishore Rai fired from his weapon which hit P.W. 6 in his arm and chest. Thereafter, he became unconscious. He has further deposed that he had purchased a piece of land, which is in dispute. He has taken to hospital from the Darwaja of Durga Rai, where he was fired at. He recovered his consciousness only on the next day at about 10 o'clock in the morning. The aforesaid witness has admitted that a case had been lodged by appellant no. 1 / Ram Kishore Rai against him and others, but that was a false case.

13. Thus, from his deposition, nothing could be elicited which could demolish the prosecution version. He has categorically deposed that two persons were injured because of the firing resorted



to by appellant nos. 1 and 6 / Ram Kishore Rai and Jatuli Rai @ Jathuli Rai.

14. Binod Rai, another injured, who has been examined as P.W. 4, has also supported the prosecution version. He has also categorically stated that only two appellants were armed with gun, namely, Ram Kishore Rai and Jatuli Rai @ Jathuli Rai. He has alleged that he was fired at only once by appellant / Jatuli Rai @ Jathuli Rai. He was taken to hospital but all through, he never lost his consciousness. He has also admitted that he is an accused in a case lodged by one of the appellants.

15. Thus, so far as firing is concerned, the aforesaid two injured witnesses, namely, P.W. 4 and P.W. 6, referred to above, have supported the prosecution version and have been successful in establishing the case against the aforesaid two appellants, viz. Appellant nos. 1 and 6.

16. Further, it would be relevant to refer to the deposition of the doctor, who had examined the aforesaid two witnesses, namely, P.W. 4 and P.W. 6.

17. Dr. Sanat Kumar Singh / P.W. 7 had examined P.W. 4 and 6 on 12.11.1998. He had found gun shot injuries on their person. Except for one, all other injuries, though by gun, was found to



be simple in nature. This completely proves the prosecution version that fire arm was used by appellants / Ram Kishore Rai and Jatuli Rai @ Jathuli Rai.

18. The informant of this case Budhan Rai / P.W. 9 has also affirmed the prosecution version and through his deposition, the prosecution case stands fully established, so far as appellants, namely, Ram Kishore Rai and Jatuli Rai @ Jathuli Rai are concerned.

19. The other appellants, though are alleged to have been present at the place of occurrence but no overt act has been attributed against them.

20. There is force in the submission of learned counsel for the appellants that their names have only been taken because they are associated with the appellants, Ram Kishore Rai and Jatuli Rai @ Jathuli Rai. Both the injured persons, namely, P.W.s 4 and 6 have not received any injury by any hard blunt substance. Thus, their participation in the occurrence becomes highly doubtful.

21. In the counter case lodged by appellant / Ram Kishore Rai, he has received one grievous and other simple injuries. No reference about the aforesaid injury or the case lodged by the



Appellant No. 1 by the informant in the fard-beyan makes the prosecution version doubtful with regard to the genesis of occurrence and the actual role played by the appellants. As opposed to the aforesaid contention, the learned counsel appearing for the State has submitted that the case lodged by appellant no. 1 against the informant and others was only later in point of time and was primarily in self-defence. In any view of the matter, the case lodged by appellant no. 1 is under trial before the court below.

22. Though, it was necessary for the prosecution to have stated about the injury on one of the accused persons, but suppressing the aforesaid fact, in the first instance, does not require the case to be thrown out; the reason being that if the factum, as narrated by the appellant no. 1, is found to be correct, then the presence of the appellants at the place of occurrence stands established. Millage, in that event can be gained by the appellants only with respect to their contention that there was no intention to cause death. The nature of injuries suffered by P.W.s 4 and 6 as well as the injuries suffered by appellant no. 1 clearly make out that an



occurrence took place, where both the sides used fire arm weapons.

23. According to the prosecution version, the informant as well as P.W.s 4 and 6 were not armed with any lethal weapons. Nobody, according to the deposition of witnesses, came forward to stop the appellants from committing the afraid occurrence. In that event, there was no stopping of the appellants / Ram Kishore Rai and Jatuli Rai @ Jathuli Rai from killing P.W. 4 and P.W. 6.

24. Thus, from the perusal of the evidence on record, the participation of appellants no. 2, 3, 4, 5 and 7 is not established. They are not even alleged to have assaulted the injured persons. Thus benefit of doubt has to be given to the aforesaid appellants.

25. The appeal as far as appellants no. 2, 3, 4, 5 and 7 are concerned succeeds and they are acquitted of all charges.

26. For the consistent evidence of the witnesses including P.W. 4 and 6, the appellants / Ram Kishore Rai and Jatuli Rai @ Jathuli Rai, having fired from the weapons and injuring P.W. 4 and P.W. 6 respectively, their conviction under Sections 147, 148, 307 / 149 I.P.C. and Section 25 (1-b) A of the Arms Act is affirmed and upheld.



27. However, regard being had to the circumstances, viz the aforesaid appellants hailing from the same village as that of the informant and other injured persons; admitted land dispute between the parties; their not having repeated the assault; and appellant no. 1 / Ram Kishore Rai himself having received injuries in the occurrence, this Court is of the view that the interest of justice would be sufficiently met if the appellant no. 1 (Ram Kishore Rai) and appellant 6 (Jatuli Rai @ Jathuli Rai) are sentenced to the period of custody which they have already undergone.

28. This Court has been informed that both the appellants, referred to above, have remained in jail for about 1 ½ years.

29. Thus their appeals are partially allowed, in as much as their conviction is upheld but the sentence is reduced to the period of custody which they have already undergone.

30. The appellants no. 2, 3, 4, 5 and 7, namely, Vijay Rai, Sanjay Rai, Janak Rai, Sunil Rai and Lalit Rai @ Lalot Rai, respectively, are on bail. They are discharged from the liabilities of the bail bonds.



31. The appellants no. 1 and 6, namely, Ram Kishore Rai and Jatuli Rai @ Jathuli Rai are in jail. They are directed to be released forthwith from jail, if not wanted in any other case.

The appeal stands disposed off with aforesaid direction.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	08.08.2018
Transmission Date	

