

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.175 of 2009

1. Binod Ram, son of Karu Ram.
2. Nawal Ram, son of Ramji Ram, both resident of village-Gunjachak, P.S. Chandi, District-Nalanda.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

with

Criminal Appeal (SJ) No. 199 of 2009

1. Raj Balam Ram, son of Ratan Ram, resident of village-Gunjarchak, Police Station-Chandi, District-Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (SJ) No. 261 of 2009

1. Ayodhya Ram @ Loha Ram, son of Ramjee Ram, resident of village-Gunjar Chak, Police Station-Chandi, District-Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In Criminal Appeal (SJ) No. 175 of 2009)

For the Appellant/s	:	Mr. Nandan Prasad Singh-Advocate Mr. Naresh Nandan-Advocate Mr. Shaswat Shanker-Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma-A.P.P.

(In Criminal Appeal (SJ) No. 199 of 2009)

For the Appellant/s	:	Mr. Animesh Kumar Mishra-Amicus Curiae
For the Respondent/s	:	Mr. Sujit Kumar Singh-A.P.P.

(In Criminal Appeal (SJ) No. 261 of 2009)

For the Appellant/s	:	Mr. Arun Kumar Tripathi-Amicus Curiae
For the Respondent/s	:	Mr. Parmeshwar Mehta-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT



10-12-2018

Cr. Misc. No.175 of 2009 wherein appellants Binod Ram and Nawal Ram are the appellants, Cr. Misc. No.199 of 2009 wherein Raj Balam Ram is the appellant and Cr. Misc. No.261 of 2009 wherein Ayodhya Ram @ Loha Ram is the appellant, have been taken together and are being disposed of by a common judgment as all these appeals arise out from common judgment of conviction dated 09.02.2009 and order of sentence dated 10.02.2009 passed by the 2nd Additional Sessions Judge, Hilsa, Nalanda in Sessions Trial No.370 of 1991, whereby and whereunder all the appellants have been found guilty for an offence punishable under Section 307 of the I.P.C. and each one has been sentenced to undergo R.I. for seven years. However, Appellants Ayodhya Ram @ Loha Ram and Raj Balam Ram have been further sentenced to pay fine appertaining to Rs.3,000/- and in default thereof, to undergo S.I. for three months, additionally.

2. Kailash Ram (since deceased) gave his fard-bayan on 23.08.1990, while he was admitted at State Dispensary, Chandi, disclosing therein that on the same day at about 12.30 hours while he was returning from his field and during course thereof, reached in front of house of Ayodhya Ram @ Loha Ram, all of a sudden Ayodhya Ram @ Loha Ram



took out pistol and fired causing injury over his back. Another firing was made by Raj Balam Ram causing injury over his left hand. Binod Ram and Nawal Ram have also fired, but anyhow, he escaped. Pappu Ram armed with Garasa came, but due to timely arrival of villagers including witnesses, he has been rescued and lifted to hospital where he is undergoing treatment. Long standing enmity has been shown to be the motive for commission of the occurrence.

3. On the basis of the aforesaid fard-bayan, Chandi P. S. Case No.246 of 1990 was registered followed with an investigation as well as submission of chargesheet, facilitating the trial, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that informant had sustained the aforesaid injuries in different manner at different place, but in the background of prevailing animosity amongst the party, they have been roped in. However, neither ocular nor documentary evidence has been adduced on his behalf.

5. During course of argument, when the L.C. Record has been gone through, it is evident there from that the



judgment passed by the learned lower Court happens to be illegal in the background of the fact that the same happens to be in contravention of Section 273 of the Cr.P.C. Though the first part of order sheets divulge the conduct of the appellants, their absence to prolong the trial and lastly, they became continuously absent since 06.06.2001, on account thereof, vide order dated 13.03.2008, they were declared absconder and record was directed to be deposited at the record room. Subsequently thereof, appellants Binod Ram and Nawal Ram were arrested on 15.05.2008, while accused Pappu Ram (since acquitted) was arrested on 23.06.2008. Then thereafter, on 24.06.2008, trial was separated with regard to absconding accused namely Raj Balam Ram as well as Ayodhya Ram @ Loha Ram. That means to say, main trial proceeded against three accused namely Binod Ram, Nawal Ram and Pappu Ram. On 03.07.2008, two witnesses Brij Ram (PW-7) and Rama Nandan Ram (PW-8) were examined, cross-examined and discharged. It is further evident that on 22.11.2008, prosecution case was closed on 28.11.2008, statement of the custodial accused Pappu Ram, Nawal Ram and Binod Ram were recorded and then, case was fixed for defence, vide order dated 17.12.2008, the case has been fixed for argument.



6. Now, coming to the status of separate record, which has been numbered as Sessions Trial No.370A of 1991, vide order dated 26.07.2008, Ayodhya Ram @ Loha Ram was apprehended while vide order dated 01.12.2008, it is evident that Raj Balam Ram had surrendered before the learned lower Court. It is further evident that on 11.12.2008, Brij Ram (PW-7) and Rama Nandan Ram (PW-8) were examined, cross-examined discharged and then thereafter, with the consent of the learned Additional Public Prosecutor, prosecution case was closed and the case has been fixed for statement, which was recorded on 19.12.2008. Subsequently thereof, during course of hearing of argument vide order dated 12.01.2009, both the trials have been amalgamated and then, after hearing the argument, the learned lower Court acquitted Pappu Ram while recorded finding of guilt against these four appellants.

7. From the judgment impugned, it is evident that the learned lower Court had completely overlooked the aforesaid event, though under Paragraph-4 of the judgment impugned, some sort of disclosure on that very score, has been made.

8. It is needless to say that PW-7 and PW-8, Brij Ram, Rama Nandan Ram were examined on 03.07.2008 in the



main trial having absence of accused Raj Balam Ram as well as Ayodhya Ram @ Loha Ram while in Sessions Trial No.370A of 1991, they both were examined on 11.12.2008, having absence of Binod Ram, Nawal Ram and Pappu Ram.

9. From plain reading of **Section 273 of the Cr.P.C.**, it is abundantly clear that the witness has to be examined in presence of accused whose presence be either physically or through learned counsel as provided under **Section 205 Cr.P.C.** or under **Section 317 Cr.P.C.** Recording of evidence in absence of an accused is only permissible in accordance with **Section 299 of the Cr.P.C.** and for that, necessary formality were to be exercised. Because of the fact that the said issue is not under subjugation, therefore, the same is being deferred one. Presence of accused during trial has got a purpose. The accused is to be confronted with the incriminating article whatsoever been adduced at the end of the prosecution during course of trial and so, his presence is required so that he be able to hear what kind of incriminating article are being produced against him. Because of the fact that the learned lower court during course of appreciation of the evidence has not bifurcated evidence of PW-7 and PW-8, who, as disclosed above, were examined at two different stages relating to main Sessions Trial bearing No.370



of 1991 as well as separated Trial No. 370A of 1991, on account thereof, the evidence of those Pws having examined under Sessions Trial No.370A of 1991 could not be used against the accused of Sessions Trial No.370 of 1991 and vice-versa that means to say, dealing with the evidence of PW-7 and PW-8 in casual manner happens to be contrary to the spirit of ***Section 273 of the Cr.P.C.*** Furthermore, the aforesaid activity is not at all found excusable in accordance with ***Section 460 of the Cr.P.C.***

10. Consequent thereupon, the judgment impugned is set aside. Appeal is allowed. The matter is remanded back to the learned lower Court to proceed with both the Sessions Trial independently and will hear argument of both the Sessions Trial independently and will pass judgment in both the Sessions Trial independently, but on the same day. The aforesaid exercise must be completed within three months from the date of appearance of the accused/ appellants. The appellants, who are on bail, are allowed to avail the liberty for a week only, during midst thereof, will surrender before the learned lower Court with a prayer for bail, which the learned lower Court will consider in accordance with law. In case of absence of appellants or any of the appellant, the learned lower



Court will be at liberty to proceed in accordance with law
against them.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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