

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.661 of 2015**

Arising Out of PS.Case No. -25 Year- 2008 Thana -NARAINPUR District- BHOJPUR

=====

1. Rajeshwar Rai Son of Late Sudhan Rai Resident of Village - Kurmi Chak, P.S.-
Narayanpur, District- Bhojpur

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. N.K. Agrawal, Sr. Advocate
Mr. Deoeshwar Pd. Singh, Advocate

For the Respondent/s : Mr. Z. Hoda, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 18-08-2018**

Appellant, Rajeshwar Rai has been found guilty for an offence punishable under Section 308 IPC and sentenced to undergo RI for 5 years, under Section 27 of the Arms Act and sentenced to undergo RI for 4 years with a further direction to run the sentences concurrently. Subsequently thereof, the learned lower court had also inflicted fine of Rs. 10,000/- and in default thereof, to undergo SI for 3 months (not specified) additionally by Sessions Judge, Bhojpur at Ara vide judgment of conviction dated 18.09.2015 and order of sentence dated 22.09.2015 relating to Sessions Trial No. 42/2010.

2. Deva Nand Rai (PW-5) gave his Fard-e-beyan on 06.06.2008 at about 4:40 PM at Sadar Hospital, Ara where his daughter/injured Pushpa Kumari was admitted disclosing therein that



yesterday on 05.06.2008 at about 6:00 PM while he was gossiping with his son, Nagmani Rai, daughter, Pushpa Kumari and son-in-law, Kapil Chaudhary at his house, at that very time, his co-villagers, Rajeshwar Rai, Ramesh Rai, Nanhak Rai and Mandhir Rai armed with rifle, gun came abused and called his son. His son did not come from the house. His daughter Pushpa Kumari who was at her Darwaza was shot at by Rajeshwar with rifle. She, after sustaining injury fell down and became unconscious. On hue and cry, villagers began to assemble, during midst thereof, all the four intruded inside his house, caught hold of his son, Nagmani. Then thereafter, Nanhak and Ramesh took away box while Rajesh made firing in the air and left the place.

3. Narainpur PS Case No. 25 of 2008 was registered followed with an investigation. From the record, it is evident that after concluding the investigation only two accused, namely, Rajeshwar and Ramesh were charge-sheeted exonerating Nanhak and Mandhir whereupon the trial commenced and proceeded against these two accused out of whom by the judgment impugned Ramesh has been acquitted convicting the appellant, Rajeshwar Rai in a manner subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313



CrPC is that of complete denial. It has also been pleaded that the prosecution party was hostile since before whereupon the accused persons have been falsely roped in with *mala fide* intention. However, nothing has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 7 PWs who are PW-1, Surendra Rai, PW-2, Nagmani Rai, PW-3 Kapil Patel, PW-4, Pushpa Kumari, PW-5, Deva Nand Rai, PW-6, Dr. Ram Pravesh Singh and PW-7, Md. Taslim as well as had also exhibited Ext-1, Fard-e-beyan, Ext-2 Series, original supplementary injury report. As stated above, nothing has been adduced in defence.

6. Learned counsel for the appellant while assailing the judgment impugned has raised manifold arguments. The first and foremost argument is that from the nature of the injury as is evident from the evidence of PW-6, the doctor, the whole prosecution case belies. Prosecution had not adduced nor exposed the location of the victim as well as assailant during course of alleged occurrence rather the evidence whatsoever at the end of the prosecution is that the accused came and shot at. In the aforesaid facts and circumstances, no injury vertical in nature would have been caused, more particularly, in the background of the fact that there happens to be absence at the end of the doctor that on account of reflection of bullet/pellet such kind of



injury has been caused. That means to say, the manner of assault is not at all found substantiated with the medical evidence. Apart from this, it has also been submitted that injury report completely rules out the prosecution version in the background of the fact that blackening, gun powder has been found around injury, that means to say, injured (PW 4) was assaulted from close proximity which is not the case of the prosecution. That means to say, the injury as found by the doctor might have been caused to the victim in different manner by different person but, on account of prevailing animosity since before, he has been implicated.

7. Then coming to the status of the witnesses, it has been submitted that prosecution has come up with fantasy. There happens to be clear-cut assertion that four accused persons came, caught Nagmani. At one place, informant had shown Nagmani at the Darwaza along with others. Side by side had also shown Nagmani inside the house. Be that as it may, Nagmani was caught hold of. For that, prosecution had asserted that all the accused persons got inside the house, caught hold of Nagmani and when the evidence of Nagmani (PW-2) is gone through, it is apparent that only his legs and hands were tied without having any untoward activity at the end of the appellants even having fire arms in his hand as alleged by the prosecution. In case, really, the accused persons were in search of



Nagmani, had caught him, there was no occasion for them to shoot at Pushpa, his sister. Furthermore, it has been submitted that there happens to be inconsistency amongst the witnesses so far this part of occurrence is concerned. When the evidence of the witnesses are minutely gone through, it is evident that some had spoken while she was about to close the door, sustained fire arm injury allegedly fired by appellant while others have not. The Investigating Officer PW-7 during course of inspection of the place of occurrence had not found any corroborative evidence to justify the place of occurrence. Moreover, he was shown a hole having over the door and for that, the informant had disclosed that it was due to bullet. When the bullet crossed the wooden plank then, in that circumstance, there was no question for having the gun powder, grease all around the injury. In likewise manner, presence of gun powder around the injury shows falsity in the prosecution case. So submitted that judgment of conviction and sentence recorded by the learned lower court is fit to be set aside.

8. On the other hand, learned APP while supporting the finding recorded by the learned lower court has submitted that after going through the judgment, it is apparent that each and every point has been properly discussed and then thereafter, judgment of conviction and sentence has been recorded against the appellant.



9. After going through the record, it is evident that there happens to be slackness at the end of the prosecution and in likewise manner, at the end of the accused/appellant. PW-1 was declared hostile but during course of examination of PW-7, his attention was not drawn up towards the previous statement of PW-1 at the end of prosecution. In likewise manner, the accused also failed to draw attention of the Investigating Officer with regard to contradiction having in the evidences of the witnesses. That being so, whatever material development as is visualizing in the evidences of the respective witnesses went worthless. That being so, the evidence of the respective witnesses are to be looked into in similar fashion.

10. PW-6 is the doctor. He had examined injured Pushpa Kumari on 05.06.2008 at about 10:30 PM and found the following:-

1. One lacerated wound $\frac{1}{2}$ " x $\frac{1}{2}$ " x 2" vertically deep to muscle on left thigh 8" below left inner crest, margin, blackened, yellow powder material present on margin of wound.
2. Lacerated dot size wounds three in number around first wound, x-ray left thigh A.P. & lateral view was advised



and after having the same by way of supplementary injury report. Opinion has been given as simple in nature caused by fire arm. Caused within six hours.

11. During cross-examination nothing has been at the end of the accused at least how the vertical injury has been caused by means of fire arm whether there was reflection of pellet on account of touching bone, on account of presence of gun powder around the margin of the wound, the distance, the location, the position of fire arm at the time of firing save and except injury was caused by fire arm. That means to say, presence of fire arm injury that too caused within 6 hours since the time of examination of the victim is found uncontroverted.

12. PW-4 is the injured she had deposed that on 05.06.2008 at about 6:00 PM, she was standing at her Darwaza where her co-villagers, Rajeshwar Rai, Ramesh Rai, Nanhak Rai and Mandhir Rai armed with rifle and gun came. Just after arrival, they began to abuse her brother as well as also attempted to catch whereupon her brother Nagmani, her brother-in-law, Kapil Patel and father Deva Nand rushed inside the house. She was about to close the door which she could not during midst thereof, Rajeshwar fired from rifle having in his hand causing injury over her left thigh on account



of which she sustained injury. Blood had oozen out. She was treated at Sadar Hospital, Ara. Identified the accused. During cross-examination at para-2, she had stated that just after receiving bullet, she became unconscious and on account thereof, she is unable to say how she was lifted to hospital. She regained her sense one day after the occurrence. When she regained sense, first of all, she talked with her father. During course thereof, she had disclosed with regard to the occurrence. She had disclosed her father to institute a case. In para-3, she had stated that Ara Police had come after regaining sense by her. Ara Police had recorded her statement but he had not taken her signature. She is unable to say whether his father had given statement before her statement or after her statement. Police of Narainpur had also come but, her statement was not taken at the hospital rather at the village. At para-5, there happens to be contradiction but that had gone worthless as attention of the Investigating Officer was not taken. She had further stated that about a year ago, there was dispute with Rajeshwar relating to a tree. Even thereafter, they remained at the village. No case was instituted therefor. Then had stated that firing was made from front side. After sustaining the fire arm injury, she became unconscious, so she was unable to disclose whether repeated firing was done or not. Then had denied the suggestion that no such type of occurrence had ever taken place.



13. PW-2 is Nagmani who had deposed to the effect that on 05.06.2008 at about 6:00 PM, he was at his Darwaza gossiping with his father Deva Nand. His sister and brother-in-law were also present there. At that very time, his co-villagers, Rajeshwar Rai, Ramesh Rai, Nanhak Rai and Mandhir Rai armed with rifle, gun came and abused. Seeing them, they slipped inside the house. His sister, Pushpa Kumari began to close the door, during midst thereof, Rajeshwar fired from his rifle causing injury over thigh of Pushpa. Blood had oozen out. She became unconscious. Then thereafter, all the accused persons intruded inside his house. Rajeshwar, Ramesh caught hold of him, Mandhir and Nanhak took away the box containing ornaments, clothes and cash. Identified. During cross-examination at para-4, he had shown two outlets in his house one at east side and another at west side. Both outlets open in a Gali. The western outlet is shared by Nawab Sahab. Then had shown presence of the Deep Narayan north to his house. Eastern outlet is shared by Mahadev Sharma. Houses of Pravin Sharma and Viju Sharma lies east to his house. House of Nandlal also lies. House of Mahesh Rai lies south to his house. In para-5, he had stated that after seeing the accused persons, they have not raised hue and cry. They simply slipped from their Darwaza to a room located at southern side of his house having no door. Then had given topography of his house. In



para-6, he had stated that while his sister was about to close the door, firing was made. At the time of firing, the door was not closed. He had seen the accused, making firing. His sister was shot at from a distance of 10 feet. Only one round of firing was made. Then thereafter, the accused persons took away box and during course thereof, they have also fired in air. In para-7, he had stated that after hearing sound of firing 10-20 persons came. When the accused persons were inside his Angan, none of the villagers came inside the Angan. He was not shot at even after apprehension. His hands and legs were tied. His father was not tied. After departure of the accused persons, his father untied him. He had further stated that blood having spread over the ground was shown to the police. The cartridge by which his sister had sustained injury had not passed through the door. Accused persons fired while leaving his house. Accused persons have fired in upward direction. At para-9, there happens to be contradiction. In para-10, he had stated that on account of cutting of tree by the accused persons in the year 2007, they have had grudge though, no case was instituted therefor. Then there happens to be ignorance at his end over litigation with Shyam Narain, Janardan Rai, Ram Kishun Rai and Lal Bahadur Rai. Then had denied suggestion that on account of animosity, this case has been instituted.

14. PW-5 is Dewanand Rai, informant. He had deposed



that occurrence is of dated 05.06.2008. His Fardbeyan was recorded on 06.06.2008 at Sadar hospital which was read over to him and then, he had put his signature (Exhibited). He had further stated that on 05.06.2008 at about 6 P.M. he was at his Darwaja along with his son Nagmani, son-in-law, Kapil Patel and daughter. They were gossiping. During midst thereof, his co-villagers, Rajeshwar Rai, Ramesh Rai, Nanhak Rai and Mandhir Rai armed with rifle, gun came and abused his son. They also attempted to go inside the house. His daughter Pushpa Kumari was standing near the door since before attempted to close the door, during midst thereof, Rajeshwar Rai shot at her causing injury over her left thigh. His daughter fell down and became unconscious. Then thereafter, all the accused persons intruded inside his house, caught hold of his son, taken away box having ornaments clothes, cash and then thereafter, the accused persons left the place making firing. On hue and cry raised by him, his co-villager Durga Rai, Kameshwar Rai, Krishna Rai and others came. Motive for the occurrence has been shown as on account of cutting of a mango tree, they had protested. He had further stated that Pushpa Kumari was treated at Sadar Hospital Ara. Bullets was taken out. His daughter remained at hospital from 05.06.2008 to 22.06.2008. On 23.06.2008 she was referred to PMCH where she was also treated. During cross-examination he had stated that no police of town Thana had visited



the hospital. He had not informed Narainpur Police Station before leaving the place. He had further stated that before recording of Fardbeyan, he had disclosed to his daughter regarding injuries sustained by her. His statement was not recorded in presence of his daughter as she was unconscious at that very time. He had further admitted that none of the person having thier house in boundary is witness to this case. He has further stated before firing, there was an altercation in between. It was at the place of occurrence. Then had clarified that aforesaid altercation took place in the year 2007 on account of cutting of a tree and for that, he had demanded money. He had further stated that when the accused persons came at his Darwaja, at that very time, they had not protested rather the accused persons were abusing, seeing whom his son-in-law and son both slipped therefrom. At the time of firing he was at a distance of 2 feet from his daughter. His daughter was shot at from a distance of 10 feet. The weapon by which firing was made was about of 2 feet long. The person who fired was at front while rest were backing him. Firing was made from Gali. After firing, his daughter sustained injury and then, accused persons intruded inside his house. Even thereafter, they fired two more rounds. Blood had spread over on the ground. Clothe of his daughter was soaked with blood. Then thereafter there happens to be contradiction but that has also gone worthless as PW-7 has not been



confronted. Then had denied the suggestion that no such type of occurrence as alleged by him had taken place.

15. PW-3 is the son-in-law who had deposed that on the alleged date and time of occurrence, he was along with his father-in-law and brother-in-law engaged in gossiping at Darwaja. At that very time, Rajeshwar Rai, Ramesh Rai, Nanhak Rai and Mandhir Rai armed with rifle, gun came and abused, whereupon, they slipped inside the house out of fear. Pushpa Kumari was closing the door who was shot at causing injury over thigh. After sustaining injury, she fell down. She was taken to the hospital. At para-2 there happens to be cross-examination relating to topography of the house. Then had stated that after seeing the accused persons they ran inside the house. He along with his father-in-law and brother-in-law had gone inside a room located at western side. They remained there for 5 to 7 minutes. After departure of the accused persons, he along with his brother-in-law and father-in-law came out. When they came out, then 10-12 persons of the village arrived. They had lifted the injured who was unconscious. Blood had spread over the area where she had fallen. Then there happens to be contradiction but that has gone worthless as I.O. had not been confronted.

16. PW-1 is the witness who has been declared hostile but during course of examination of I.O. prosecution had committed



the same kind of mistake.

17. PW-7 is the I.O. He had exhibited the Fardbeyan, formal FIR, endorsement made thereupon. Then had stated that after being entrusted with the investigation, he had recorded further statement of the informant. He had inspected the place of occurrence as pointed out by the informant which happens to be the house of the informant. He had found one door affixed at Darwaja. Informant had disclosed that the hole having present over the wooden door caused on account of passing through of the cartridge. Then had recorded statement of witnesses Nagmani Rai, Shailendra Rai, Sanjay Rai and Surendra Rai. Procured injury report on 18.12.2008. Also procured supplementary injury report and then, thereafter, submitted chargesheet. During cross-examination, he had stated that he proceeded with his investigation on 06.06.2008 right from 6.30 PM. He had further stated that P.O. village Kurmichak is a Naxalite infected area. He had not found blood stain at the P.O. He had not recorded statement of the persons having house in the boundary. Then there happens to be confrontation of the evidences of the witnesses Nagmani Rai as well Kapil Patel.

18. From the evidence available on the record, it is evident that though there happens to be presence of fire arm injury over the person of PW-4 and for that, PW-4 had categorically



identified the appellant Rajeshwar Rai to be author of the injury by means of fire arm irrespective of its nomenclature rifle or otherwise. Though there happens to be disclosure at the end of informant, her father as well as her brother that she was shot at from the distance of 10 feet and in that case certainly the gun powder would not have its presence around the margin of the wound but, surreptitiously the PW-4 had not been cross-examined on that very score. Furthermore, if the evidence of informant, father and brother, brother-in-law is gone through, it is evident that at the time of firing, they were inside a room, whereupon, they had no opportunity to see. From the evidence, it is evident that injury no.1 was vertical but on account of non-cross-examination of PW-4 over her location, position and in likewise manner, of the assailant, defence could not be allowed to take any undue advantage. That being so, presence of fire arm injury at the end of the appellant Rajeshwar Rai is found sufficiently proved. PW-7 the I.O. during course of his cross-examination had stated that no blood stain was found over the ground but that has got no relevance in the background of the fact that the informant PW-5 was not at all cross-examination at that very score at least at his instance the I.O. had inspected the place of occurrence and during course thereof, he had shown blood stain over the P.O. or not. Apart from this, the occurrence happens to be of dated 05.06.2008 while the place of



occurrence was inspected on 06.06.2008. That being so, even disbelieving to some extent the evidence of other PWs on the other pretext, on the factum of fire arm injury caused by appellant is found duly substantiated.

19. *Falsus in uno falsus in omnibus* is not at all applicable, that means to say, part of evidence found to be influenced by some sort of exaggeration, embellishment, deficiency would not enable the whole evidence to be brushed aside, if the remaining evidences are found to be creditworthy. That means to say the part of the evidence which the witnesses had substantiated regarding proper identification of author of fire arm injury to be Rajeshwar Rai, is legally permissible and to that extent, the evidence of other PWs are also relied upon.

20. Now coming to the crucial aspect, it is apparent from the evidences of the witnesses that even after coming inside the house, the accused persons fired repeatedly in the air. Had there been an intention for causing murder, there would have been such kind of activity in the background of presence of sufficient opportunity. In likewise manner, had there been an intention to commit culpable homicide to murder then in that event also the accused persons would have reacted in same manner having proper opportunity, sufficient time, more particularly when there happens to be an allegation that



they intruded inside the house and during course thereof presence of all the witnesses was there at the mercy of the accused. But they were not at all aimed at. Mere single shot, that too causing injury over non-vital of body and more particularly was not at all found to be dangerous to the life of the victim rather, simple in nature and further the doctor even had not suggested that the injury would have caused profused bleeding endangering the life of the victim, on account thereof, arraying the appellant to be guilty for an offence punishable under Section 308 of the IPC is not at all found inconsonance with the evidence available on record.

21. That being so the conviction and sentence recorded against the appellant for an offence punishable under Section 308 IPC is struck down. In stead thereof, appellant Rajeshwar Rai is found guilty for an offence punishable under Section 324 IPC as well as under Section 27 of the Arms Act. Considering the submission having made on behalf of the appellant in consonance with materials available on record, it is found expedient in the interest of justice to inflict the rigorous imprisonment of two years under Section 324 IPC as well as 27 of the Arms Act respectively reducing the sentence of four years having inflicted by the learned lower court retaining the fine as well as default clause.

22. Accordingly, appeal is partly allowed. Appellant



is on bail, his bail bond is hereby cancelled directing him to surrender to serve out the remaining part of sentence within a fortnight, failing which the learned lower court will be at liberty to proceed against him in accordance with him.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21.08.2018
Transmission Date	21.08.2018

