

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.19 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHABHUA (KAIMUR)

[Against the judgment of conviction and order of sentence dated 03.01.2009 passed by the Additional Sessions Judge, Fast Track Court No. II, Kaimur at Bhabhua, in Sessions Trial No.241 of 2004/23 of 2008 arising out of Kudra P.S. Case No.30 of 2003]

- =====
1. Ram Surat Singh, son of late Moti Singh,
 2. Shri Bhagwan Singh,
 3. Chandeshwar Singh,
 4. Anirudh Singh,
 5. Ram Awadh Singh,
 6. Subash Singh, all sons of Ram Surat Singh,
 7. Baleshwar Singh, son of late Moti Singh,
 8. Ram Ratan Singh, son of Baleshwar Singh, all resident of village-Sabadalpur, P.S.-Kudra, District-Kaimur at Bhabhua

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Vivekanand Singh, Advocate

For the Respondent/s : Mr. Bal Mukund Pd. Sinha, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 19-04-2018

By judgment of conviction and order of sentence dated 03.01.2009 passed by the Additional Sessions Judge, Fast Track Court No. II, Kaimur at Bhabhua, in Sessions Trial No.241 of 2004/23 of 2008 arising out of Kudra P.S. Case No.30 of 2003, all the Appellants have been convicted for the offence under Section(s) 307/34, 341, 323, 324 Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for seven years



for the offence under Section(s) 307/34 Indian Penal Code with a fine of Rs.5,000/- each and in default of payment of fine to undergo further rigorous imprisonment for two years. No conviction has been awarded under other counts.

During hearing of this appeal, it has been submitted that Appellant No.1, Ram Surat Singh, has died. A Supplementary Affidavit has been filed today annexing Death Certificate of Appellant No.1, Ram Surat Singh, which shows that Appellant No.1, Ram Surat Singh, has died on 27.11.2013.

In such view of the matter, this appeal has abated against the Appellant No.1-Ram Surat Singh.

Accordingly, this appeal is dismissed as having abated against Appellant No.1-Ram Surat Singh.

So far other Appellants are concerned, they are alleged to have assaulted the informant and have caused injury by fire arm.

Informant, Ramanand Singh, has been examined as PW 8. He has stated in his evidence that Ram Awadh Singh, Subhash Singh and Anirudh Singh fired on him causing injury. He has also stated that Chandeshwar Singh, Shri Bhagwan Singh and Baleshwar Singh, Ram Surat Singh, caused fire arm injury to his father. In the meantime, his daughter, Ranjeeta, came and she also sustained injury. He has further stated in his evidence that he sustained injury in his chest, shoulder, thigh etc. Father of the informant sustained



injury in his chest. Daughter of the informant sustained injury at *Pakhura* (joint of elbow and hand), stomach and waist.

Father of the informant, Kachahari Singh, has been examined as PW 5. He has stated in his evidence that on the date of occurrence three persons were armed with gun and four persons were armed with *Katta*. Anirudh Singh, Ram Awadh Singh and Subhash Singh were armed with gun. Chandeshwar, Shri Bhagwan, Ramratan and Baleshwar were armed with *Katta*. Anirudh Singh, Ram Awadh Singh and Subhash Singh fired, which caused injury to his son, Ramanand Singh. Chandeshwar, Shri Bhagwan, Ramratan and Baleshwar fired with *Katta* causing injury to this witness in shoulder and upper side of abdomen. Ramanand Singh sustained injury in his left shoulder. Grand-daughter of this witness, Ranjeet Kumari, also sustained injury on her waist, stomach etc.

Third injured, Ranjeeta Kumari, who is niece of the informant, has been examined as PW 7. She has stated in her evidence that Anirudh Singh, Subhash and Ram Awadh caused gun shot injury to his uncle, Ramanand Singh, (informant). Baleshwar Singh, Chandeshwar Singh, Shri Bhagwan Singh and Ram Ratan Singh caused fire arm injury to her grand-father, Kachahari Singh. She started weeping. Then on the order of Ram Surat Singh, Anirudh Singh fired from his fire arm causing injury to her in *Pakhura* (joint of elbow and hand), stomach and waist.



All these witnesses have stated that the occurrence has taken place on account of land dispute.

Doctor has been examined as PW 11. He has proved Injury report of all the injured, which have been marked as Ext.3, 3/1 to 3/2.

The Court below has also discussed about the injury of all the three injured in the impugned judgment. The doctor has found 'pea' shaped injury on the person of all the injured. The doctor has opined injury no. II on the person of the Informant, Ramanand Singh, to be grievous. Similarly, doctor has opined Injury No. II and III on the person of Katchery Singh to be grievous. The doctor has found all the injury of Ranjeet Kumari to be simple in nature. Doctor has mentioned that all the injured have sustained injury by fire arm.

Injury No.II on the person of the informant is one circular, margin inverted, pea shaped, bleeding wound, scalp deep over right side forehead. Similarly, Injury Nos. II and III on the person of Kachhari Singh is one puncture, circular, margin everted skin deep wound, pea shaped over left side chest wall, skin deep-bleeding present, and one circular, pea shaped, margin everted, bleeding wound muscle deep on right side chest below nipple.

The word 'grievous' has been described in Section 320 Indian Penal Code. None of these injuries come in the category of word 'grievous' as described under Section 320 Indian Penal Code.



Therefore, this Court after perusing the evidence of all the injured and the Doctor as well as Injury Report of all the injured, is of the view that conviction of the Appellants under Section 307/34 Indian Penal Code is not in accordance with law.

Accordingly, conviction and sentence of the Appellants for the offence under Section(s) 307/34 is hereby set aside. However, conviction of the Appellants for the offence under Section(s) 341, 323, 324 Indian Penal Code and Section 27 of the Arms Act is upheld and confirmed.

So far as sentence of the Appellants is concerned, keeping in view the fact that this case is of the year 2003, period already undergone by them would be sufficient. Accordingly, sentence passed against the Appellant Nos.2 to 8 is modified to the period already undergone by them.

The Appellants Nos.2 to 8 are not required to go to custody any more.

This Criminal Appeal is, accordingly, allowed in part with modification in conviction and sentence as ordered above.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29-04-2018
Transmission Date	29-04-2018

