

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.994 of 2008

=====

Tripurari Raut, son of Sri Gorakh Raut @ Gorakhnath Raut, resident of
village Mai, P.S. Rahui, district – Nalanda

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with
Criminal Appeal (DB) No. 955 of 2008

=====

1. Gorakh Raut @ Gorakhnath Raut , son of late Budha Raut @ Kishun Raut
2. Satyendra Raut, son of Gorakh Raut @ Gorakhnath Raut
Both resident of village Mai, P.S. Rahui, district Nalanda

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

Appearance :

(In Criminal Appeal (DB) No. 994 of 2008)

For the Appellant/s : Sri Shailendra Kumar Sinha, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 955 of 2008)

For the Appellant/s : Sri Shailendra Kumar Sinha

For the Respondent/s : Sri Ajay Mishra, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 01-11-2018

1. In both the Appeals aforesaid three appellants were
convicted and sentenced in a common trial in Sessions Trial No. 1
of 2008 and as such both the Appeals were taken up together and
are being disposed of by this common judgment.



2. Tripurari Raut, sole appellant in Cr. Appeal (D.B.) No. 994 of 2008 by judgment dated: 03.07.2008 was convicted for commission of offence under Section 302 and 307 of the Indian Penal Code , 1860 [hereinafter referred to as the “I.P.C.”] and Section 27 of the Arms Act. Remaining two appellants, namely- Gorakh Raut @ Gorakhnath Raut and Satyendra Raut in Cr. Appeal (D.B.) No. 955 of 2008 by the same judgment were convicted for offence under Section 302 /34, 307/ 34 of the I.P.C. By order dated - 08.07.2008 appellant /Tripurari Raut under Section 302 of the I.P.C. was sentenced to under go rigorous imprisonment for life and to pay a fine of Rs. 25000/-. In case of default in payment of fine he was directed to further undergo rigorous imprisonment for three months. Under Section 27 of the Arms Act he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5000/- . In case of default in payment of fine he was directed to further undergo rigorous imprisonment for one month. Under Section 307 of the I.P.C. he has been directed to undergo rigorous imprisonment for ten years and to pay fine of Rs. 5000/-. In case of default in payment of fine he was directed to further undergo rigorous imprisonment for one month. Appellant / Gorakh Raut and Satyendra Raut in Cr. Appeal (DB) No. 955 of 2008 by the same order i.e. order dated



08.07.2008 were sentenced to undergo rigorous imprisonment for life under Section 302/34 of the I.P.C. and to pay fine of Rs. 25000/- each. In case of default in payment of fine they were directed to further undergo rigorous imprisonment for three months. Under Section 307 / 34 of the I.P.C. both were sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 5000/- each. In case of default in payment of fine they were directed to further undergo rigorous imprisonment for one month. The appellants were convicted and sentenced by Sri Radha Krishna, learned Sessions Judge, Nalanda, Bihar Sharif (hereinafter referred to as the “trial judge”) in Sessions Trial No. 1 of 2008 (arising out of Rahui P.S. Case No. 69 of 2007).

3. Short fact of the case is that on 26.04.2007 at 16.20 Hours [4.20 P.M.] Sub Inspector of Police Sri Anil Kumar P.W. 8 of Rahui Police Station recorded fardbyan of Chandradeep Ravidas / P.W. 3, son of- Amrik Ravidas and resident of village – Mohiuddinpur, P.S. – Rahui, District - Nalanda. The said fardbyan was recorded near the door of Gorakh Raut/ appellant no. 1 in Cr. Appeal (D.B.) No. 955 of 2008 just near the dead body of Ravikant Kumar Pandey @ Rinku Pandey. In the fardbyan the informant stated that about 10-11 days back Satyendra Raut / appellant no. 2 in Cr. Appeal (DB) No. 955 of 2008 , S/o -



Gorakh Raut [appellant no. 1 in Cr. Appeal (D.B.) No. 955 of 2008] on the eve of marriage of his younger brother - Tripurari Raut [appellant in Cr. Appeal (DB) No. 994 of 2008] had booked his band party after executing सट्टा (agreement) for an amount of Rs. 2551/-. Out of the said agreement amount, Rs. 500/- was received as an advance. On 26.04.2007 the informant with his “Banjo Party” as per सट्टा [agreement] visited the house of Gorakh Raut Village – Mai, P.S. Rahui at about 3.15 P.M. In the said “Banjo Party” along with informant, Pradeep Ravidas / P.W. 4, Nitish Ravidas { not examined}, Ramprit Ravidas (P.W. 6), Chintu Bind (P.W. 5), Sudhir Ravidas (not examined) and deceased - Ravikant @ Rinku Pandey were members. He stated that deceased – Ravikant @ Rinku Pandey was used to play “Banjo”. It was stated that as soon as they reached with the said “Banjo Party” he was enquired by Satyendra Raut [appellant] as to why they had come at belated stage whereupon it was replied by the informant that only 15 minutes delay had occurred. Thereafter Gorakh Raut, Satyendra Raut [appellants], Ajit Raut and Tripurari Raut (appellant) started abusing them and Satyendra Raut asked them to remain stayed there since he was going to perform दहपुजी [one of the rituals]. About 3.40 P.M. all the aforesaid accused persons



returned back after performing the said rites and all of them again started abusing and were to start assaulting him. Then deceased Ravikant @ Rinku Pandey told that it was late only for about 15 minutes and requested him to allow to play music. In the meanwhile Tripurari Raut entered inside house and carrying pistol came out and fired one shot in air. The informant became frightened and then deceased Ravikant @ Rinku Pandey requested not to fire and he asked as to whether they would be killed. Thereafter Satyendra Raut exhorted and using filthy language said to kill, then Tripurari Raut from his pistol which he was carrying in his hand fired on the left cheek of the deceased from close range whereupon Ravikant Pandey fell down and died. He further stated that one son of Naresh Yadav had also received injuries. The said fardbyan was read over to him and after finding it correct the informant put his signature. As a witness to the fardbyan one Sudhir Ravidas [not examined] also signed.

4. On the basis of the said fardbyan on the same day i.e. on 26.04.2007 a formal F.I.R. vide Rahui P.S. Case No. 69 of 2007 was registered at 21.00 Hours [9.00 P.M.] for the offence under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act , 1959 [hereinafter referred to as the “Arms Act”] against : (1) Gorakh Raut, (2) Satyendra Raut, (3) Ajit Raut [his case has



been separated since he was *absconder*] and (4)- Tripurari Raut. After registering F.I.R. Police investigated the case. During investigation accusation against all the four F.I.R. named accused persons was found true and as such on 31.07.2007 charge -sheet was submitted against all the four F.I.R. named accused persons showing one of the accused namely Ajit Raut as absconder. Thereafter on 07.08.2007 learned Chief Judicial Magistrate, Nalanda took cognizance of the offence. After completion of formalities under Section 207 of the Code of Criminal Procedure , 1973 [hereinafter referred to as the “Cr.P.C.”] on 18.12.2007 the case was committed to the court of Sessions and as such it was numbered as Sessions Trial No. 1 of 2008. After commitment on 08.01.2008 charge was separately framed against appellant – Tripurari Raut under Sections 302 and 307 of the I.P.C. and Section 27 of the Arms Act whereas against two appellants namely: Gorakhnath Raut and Satyendra Raut jointly charge under Section 302/ 34, 307/34 of the I.P.C. was framed.

5. During the trial to establish its case on behalf of the prosecution altogether nine witnesses were examined. Out of nine witnesses, P.W. 3 – Chandradeep Ravidas, P.W. 5 – Chintu Bind and P.W. 7 - Ranjeet Kumar were examined as eye witness to the occurrence. P.W. 7 besides eye witness was also an injured



witness. P.W. 1 / Dr. Ashok Kumar Sinha had conducted post-mortem examination on the dead body of the deceased on 27.04.2007 whereas P.W. 2 / Dr. Ramnandan Prasad on 27.04.2007 was posted as Medical Officer, Sadar Hospital, Biharsharif and he had examined the injuries received on the person of PW. 7 – Ranjeet Kumar. P.W. 9 / Jitendra Kumar Pandey was examined as witness to the inquest report and P.W. 8 -Anil Kumar, Sub Inspector of Rahui Police Station was the Investigating Officer of the case. In the case during the trial P.W. 4 /Pradeep Ravidas and P.W. 6 / Ramprit Ravidas since did not support the prosecution case were declared as hostile witnesses. After completion of the prosecution evidence, on 30.05.2008 evidences and circumstances brought against the accused persons during the trial were explained to them and their statement under Section 313 of the Cr.P.C. was recorded.

6. Sri Shailendra Kumar Sinha, learned counsel for the appellants in both the Appeals after placing entire evidence has argued that prosecution has miserably failed to establish its case beyond all reasonable doubts. He submits that in the case the manner of occurrence has not been established by the prosecution during the trial. The prosecution has also even failed to establish the place of occurrence since from the place of occurrence neither



any pellet was recovered or seized; nor blood stained soil was seized. He further submits that the witnesses who have claimed to be eye witness to the occurrence have given inconsistent evidence and as such relying on such incredible evidence the learned trial judge was not required to pass judgment of conviction and sentence. Sri Sinha, learned counsel for the appellants has argued that injury found on the person of the deceased during post-mortem examination belies the entire prosecution case and demolishes the oral evidence. He submits that size of the entry wound on the cheek of the deceased was wider which was not possible in a case of giving shot of firing from close range. He further submits that injured witness – P.W. 7 in his evidence has stated that bullet which hit the deceased after piercing his face had hit him whereas on examination of the post-mortem examination report i.e. Ext. 1 it is evident that deceased was having only entry wound there was no exit wound rather from the temporal region of the deceased one pellet was found at the time of post-mortem examination and as such it has been argued that in view of evidence of injured witness -P.W. 7 it appears that prosecution case is doubtful. On aforesaid ground it was submitted by Sri Shailendra Kumar Sinha, learned counsel for the appellants that it was a fit case for acquittal and alternatively he



has argued that appellants can be acquitted by way of extending benefit of doubt. Sri Sinha has alternatively argued that even on examination of entire evidence there is nothing to show that appellant no. 1 / Gorakh Raut [in Cr. Appeal (DB) No. 955 of 2008] was having any knowledge of committing murder by his son -Tripurari Raut [sole appellant in Cr. Appeal (DB) No. 994 of 2008]. He submits that only material against appellant no. 1 – Gorakh Raut { in Cr. Appeal (D.B.) No. 955 of 2008} is that after arrival of the ‘Banjo Party’ this appellant was also one of the accused who started abusing for his delayed arrival. Besides evidence of using filthy language there is no other material to show involvement of this appellant particularly in the case of murder of the deceased by Tripurari Raut.

7. Sri Ajay Mishra, learned Additional Public Prosecutor submits that prosecution case is very much specific and learned trial judge has rightly passed the judgment of conviction and sentence. He submits that the fardbyan which has been marked as Ext. 4 depicts that whatever occurrence had taken place was stated by the informant who was examined as P.W. 3 - Chandradeep Ravidas. The fact which was disclosed in the fardbyan was corroborated during the trial by ocular witness i.e. P.W. 3 & P.W. 4 and also corroborated by the evidence of injured witness – Ranjeet



Kumar. He submits that it is true that there is some gap in the evidence of P.W. 7 / Ranjeet Kumar but fact remains that said witness was a minor witness and on the date of occurrence he was aged about only 12 years and at the time of evidence his age was assessed as 13 years. Before recording his evidence the learned trial judge tested his ability to depose and after being satisfied that he was in a position to depose correctly he was examined as P.W. 7 otherwise in his evidence he also suggests that at the time of occurrence he was standing just by the side of the deceased at right hand side and firing on the deceased was made from left hand side and one pellet hit the injured namely -Ranjeet Kumar and as such it has been argued that the learned trial judge has rightly passed the judgment of conviction and sentence and the judgment of conviction and sentence requires no interference.

8. Besides hearing learned counsel for the parties we have minutely examined entire evidence on record. Before proceeding it would be necessary to examine as to what the informant / P.W. 3 has deposed during the trial. The informant in the case was examined as P.W. 3 and in his evidence he stated that occurrence had taken place on 26.04.2007 at about 3.15 P.M. At that very time he had reached the village of Tripurari (appellant) for playing music. Along with him Sudhir Ravidas [not



examined], Pradeep Ravidas (P.W. 4) , Nitish Ravidas [not examined] and Ramprit Ravidas [P.W. 6], Rinku Pandey [deceased] and Chintu Bind / P.W. 5 were also there. The informant and all those persons as per सट्टा [agreement] for the band party went to the place at about 3.15 P.M. and some delay had occurred. It was delay of only 15 minutes. At that very time Tripurari [appellant], Satyendra Raut (appellant), Ajit Raut [one of the co-accused (case separated)], Gorakh Raut (appellant) were going for offering दहपुजी and all the four of them asked the informant as to why they had arrived belatedly. They also asked the informant and band party to remain stayed there since they were returning back after offering puja. After about ½ hour all the accused persons came back and started using filthy language and also started slapping. Thereafter Tripurari Raut (appellant) went inside the house and from inside the house carrying a pistol he came out and gave a shot of firing in air. The informant was frightened. In the meanwhile Rinku Pandey (deceased) enquired as to whether they would kill them. Then Satyendra Raut (appellant) using filthy language exhorted to give shot of firing and thereafter Tripurari Raut (appellant) from left hand side from close range gave one shot of firing on the left cheek of Rinku Pandey (deceased) after getting such injury Rinku Pandey died



and fell down. This witness further stated that by the same shot of firing one another boy also received injuries however he was not knowing the name of the said injured boy. The informant stated that in band party Rinku Pandey [deceased] was used to play banjo. Thereafter at the place of occurrence police arrived and recorded his fardbyan over which he put his signature. He identified his signature on the fardbyan which was marked as Ext 3. In the dock he also identified all the accused persons who were present in court . In paragraph 6 of his cross -examination he stated that for about 4-5 minutes some altercation took place. Villagers tried to intervene but it went in vain. In air firing was made by Tripurari however the informant did not flee away. After about 2 minutes from air firing , firing was shot on the deceased. After half an hour police arrived and recorded his fardbyan. Despite the fact that this witness i.e. informant was cross -examined at length but on examining his entire evidence we do not find any material to consider the evidence of P.W. 3 as doubtful rather the informant has almost stated the same thing which was stated by him in his fardbyan.

9. P.W. 5 / Chintu Bind is one another eye witness. He too stated that on the date of occurrence at about 3.15 P.M. he had gone to the village for playing music. Along with him there were



Rinku Pandey (deceased), Sudhir, Nitish, Ramprit and Chandradeep. Some delay had occurred in reaching for which Gorakh Raut, Ajit Raut, Sundar Raut, Satyendra Raut and Tripurari Raut started abusing . They were going to offer some Puja and asked him to remain present there. After returning they again started abusing. Rinku Pandey [deceased] said that he had come for playing music not to listen abusive word however Satyendra Raut exhorted to shoot him down. Thereafter Tripurari Raut from inside house brought a pistol and gave shot of firing on the cheek and Rinku Pandey fell down and died instantaneously at the place of occurrence. In paragraph 2 he further deposed that after half an hour police arrived and enquired from him also . He too identified the accused persons in the dock. He too was cross- examined at length. In paragraph 7 of his cross -examination he deposed that he had stated before the police that Rinku Pandey had said that he had come for playing music not to hear abusive language then Satyendra Raut exhorted and thereafter Tripurari Raut brought a pistol from the house. Firstly he shot firing in air and thereafter on left side of the cheek he gave shot of firing on Rinku Pandey whereupon he fell down and died. In paragraph 9 of his cross-examination he clarified that deceased was shot from a distance



of about 2 hands. In his evidence also we do not find any fact to consider his evidence with any doubt.

10. P.W. 7 / Ranjeet Kumar is the injured witness. Before his examination the learned trial judge had tested him as to whether he was competent to depose or not and after being satisfied he recorded his evidence. In his evidence he too stated the date and time of occurrence as was stated by other witnesses. He is a resident of the same village i.e. village of the appellants namely: Mai, P.S.- Rahui, District – Nalanda. In paragraph - 1 of his evidence he deposed that in the occurrence Satyendra asked Tripurari to fire and thereafter Tripurari went inside the house and carrying rifle which was in the size of about 6-8 inch and gave one shot of firing in air. Thereafter Rinku Pandey [deceased] enquired as to whether he would be killed on which Satyendra [appellant] asked to shoot him. On the order of Satyendra, Tripurari Raut gave shot of firing on the cheek of Pandit Ji (deceased). Same pellet after piercing the deceased hit his right hand. This witness during the trial had shown injuries mark to the learned trial judge which was noticed by the trial judge. In paragraph 1 of his evidence itself this witness further stated that after such injury he fell down and thereafter he was carried to hospital. Regarding Rinku Pandit he said that he had already



died. In paragraph 6 of his cross examination he stated that at the time of occurrence he was standing just right side of the deceased. He further clarified that he was at a distance of half of the hand from the deceased. The deceased was fired from the left side. He further reiterated that same pellet which hit the deceased had hit him. He received fire arm injury on his hand. He further stated that blood had fallen in the radius of 2-3 hands. In paragraph 7 of his cross- examination he stated that he remained in hospital for about 2 months and his statement was recorded by the police in hospital itself and on second occasion his statement was recorded in the police station. In paragraph 10 of cross examination he further clarified that he was not having any animosity or dispute with the accused persons.

11. P.W. 4 / Pradeep Ravidas and P.W. 6 / Rampriti Ravidas were declared hostile however their attention was drawn to their previous statement recorded during investigation. Accordingly there is no need to emphasize on the evidence of those witnesses.

12. P.W. 9 / Jitendra Kumar Pandey had put his signature on the inquest report and inquest report was also marked as Ext. 7.

13. Dr. Ashok Kumar Sinha / P.W. 1 on 27.04.2007 was posted as Medical Officer, Sadar Hospital, Biharsharif. He



deposed that on the same day at about 8.25 A.M. dead body of Ravikant Pandey , aged about 26 years was brought to the hospital and on the same day at 11.30 A.M. he conducted post- mortem examination on the dead body and found anti- mortem injuries as well as noticed the following facts:-

1) External injury no. 1 lacerated wound over left side of face 3/4" in diameter cavity deep. Margin inverted and charred (2 c.m. lateral to angle of mouth) point of entry.

On dissection- there is fracture of left maxilla and left temporal bone. Blood and blood clots found in subcutaneous tissue and facial muscle. A metallic pellet found embedded and impacted in left temporal bone.

Heart – both chamber of heart is empty.

Stomach – one ounce semi digested food found.

Urinary bladder – empty. All other viscera are found pale and intact.

Cause of death - due to shock and haemorrhage caused by fire arm such as pistol. Time elapsed since death – within six to thirty six hours.

These injuries are sufficient to cause death."

This witness deposed that post -mortem report was in his pen and signature and it was marked as Ext. 1. In his cross-examination he clarified that charred margin indicates that firing would have been made from close distance. On examination of the evidence of P.W. 1 as well post –mortem report it is evident that firing was made from very close range and said fact has come during ocular evidence. Meaning thereby that ocular evidence has been corroborated by the medical evidence.



14. P.W. 2 / Dr. Ramnandan Prasad on 27.04.2007 was posted as Medical Officer in Sadar Hospital, Biharsharif and he had examined the injured- Ranjeet Kumar / P.W. 7, aged about 12 years and noticed the following injuries on the person of the injured:-

“ i) Lacerated wound 3” x 4’ in diameter oval margin inverted over upper right fore arm medially situated (point of **entry**).

ii) Lacerated wound 1” in diameter oval margin everted oval distal third of right arm on lateral aspect. Age of injury within six hours.

Mark of identification -scar over left side of forehead.

Nature - for injury no. 1 and 2 X’ ray of right elbow joint including lower arm and upper fore arm A.P. and lateral view done at IGIMS, Sadar Hospital on 26th April 2004 bearing symbol (I) shows supra condylar fracture of right humerus. Hence, injuries serious in nature and caused by fire arm such as pistol.”

It appears that there is some typographical mistake regarding mentioning of the year in the evidence of P.W. 2. Instead of 2007 it appears that it was incorrectly typed as 2004 otherwise date is same i.e. 26th April. This witness proved the injury report which was in his pen and signature and was marked as Ext. 2. In cross -examination he clarified that no blackening or charring was mentioned in the injury report.

15. P.W. 8 / Sri Anil Kumar on 26.04.2007 was posted as Sub Inspector of Police in Rahui Police Station . In his evidence he has proved the fardbyan which was marked as Ext. 4, endorsement on fardbyan marked as Ext. 5, formal F.I.R. marked



as Ext. 6, inquest report marked as Ext. 7. The inquest report was prepared on 26.04.2007 at 4.45 P.M. The dead body was found opposite the house of Gorakh Raut (appellant) in the village -Mai. The dead body was laid on cot. This witness in his evidence has stated that on the date of occurrence while he was on patrolling duty he received information on wireless by the Officer- in -charge to verify as to whether one person was gunned down and enquire as to whether he died or not. The said occurrence was said to occur in the village- Mai, Police Station -Rahui. After getting such information through wireless this witness proceeded towards village- Mai and at 4.00 in the evening he reached and saw that opposite the house of Gorakh Raut dead body of Ravikant was lying . Thereafter he recorded statement of Chandradeep Ravidas [P.W. 3] as informant which was read over to him and thereafter the informant put his signature. He proved the fardbyan which was marked as Ext. 4. On the said fardbyan endorsement was made which was marked as Ext. 5. On the basis of fardbyan Rahui P.S. Case No. 69 of 2007 was registered for the offence under Sections 302/ 34 of the I.P.C. and 27 of the Arms Act. Thereafter formal F.I.R. was prepared by the Officer – in-charge and it was got marked as Ext. 6. The charge of investigation was handed over to him and thereafter he prepared inquest report. The inquest



report was got signed by witness - Jitendra (P.W. 9). The said inquest report was marked as Ext. 7. The dead body was sent to Sadar Hospital, Biharsharif through Constable and Chaukidar. In paragraph 4 of his evidence he deposed that he recorded re-statement of the informant. He clarified that since it was night he could not inspect the place of occurrence and on the next day i.e. 27.04.2007 he inspected the place of occurrence. The place of occurrence was the lane opposite the house of the appellant-Gorakh Raut in the village : Mai. In paragraph 4 of his evidence he clarified that at the place of occurrence he had noticed mark of huge blood. Thereafter he recorded statement of other witnesses and finally after finding the case true he submitted charge- sheet against all the four F.I.R. named accused persons showing accused- Ajit Raut as absconder for the offence under Section 302, 324, 327 of the I.P.C. and 27 of the Arms Act. Contradiction was taken from this witness in respect of statement made by Pradeep Ravidas – P.W. 4 during investigation under Section 161 of the Cr.P.C. in which he stated that Pradeep Ravidas before the Investigating Officer had stated that on the date of occurrence he arrived at the house of Gorakh Raut for playing music, his son-Satyendra Raut enquired as to why delay had occurred. Then the Investigating Officer stated that this witness - Pradeep Ravidas



had stated all the facts regarding the occurrence which has been stated by other eye witnesses. Similarly in respect of P.W. 6/ Ramprit Ravidas contradiction was taken from the Investigating Officer i.e. P.W. 8 and in paragraph 9 of his evidence the Investigating Officer has stated that before him Ramprit Ravidas / P.W. 6 had stated that on the order of Satyendra, Tripurari had given shot of firing on Rinku Pandey. Even in paragraph 16 of his cross -examination he stated that though he had not prepared the seizure list regarding blood soaked soil but he clarified that opposite the house of the accused he had found blood mark. On examination of evidence of the Investigating Officer / P.W. 8 it is evident that immediately after the occurrence he reached the place of occurrence and recorded fardbyan, prepared inquest report. However it is evident that he had committed some error in not preparing seizure list in respect of blood soaked soil but only on the ground that no such seizure was made the evidence which is otherwise reliable can not be over looked. Moreover in the evidence the Investigating Officer is very much specific that at the place of occurrence he had noticed huge blood mark and as such it would be difficult to agree with the submission of learned counsel for the appellants that prosecution in the case during the trial has



failed to establish the place of occurrence. In the case place of occurrence has already been established by the prosecution.

16. On examination of entire evidence there is no reason to interfere with the judgment of conviction and sentence so far appellant / Tripurari Raut and appellant - Satyendra Raut is concerned. So far appellant – Gorakh Raut @ Gorakhnath Raut is concerned we are in agreement with the submission of learned counsel for the appellant that there is some doubt regarding the case of prosecution. It is true that in the evidence it has come that while the banjo party including deceased arrived belatedly they were abused by appellant – Gorakh Raut also along with others but on overall examination of the evidence it is difficult to come to specific conclusion this appellant -Gorakh Raut @ Gorakhnath Raut was having any knowledge that appellant / Tripurari Raut would had use fire arm or there is specific case of common intention against Gorakh Raut. So far appellant no. 2 - Satyendra Raut is concerned consistently it has been established that he instigated – Tripurari Raut to give shot of firing on the deceased and thereafter Tripurari Raut had fired and as such the learned trial Judge has rightly passed judgment of conviction and sentence so far appellant / Tripurari Raut and appellant -Satyendra Raut is concerned. On examination of over all evidence we are of the



considered opinion that benefit of doubt can be extended to one of the appellant namely: Gorakh Raut @ Gorakhnath Raut since against him save and except the fact that it was alleged that he was also one of the members in abusing no other substantial evidence has come to held him guilty for either commission of offence under Section 302/34 of the I.P.C. or Section 307/34 of the I.P.C.

17. Accordingly in view of the facts and circumstances there is no reason to interfere with the judgment of conviction and sentence so far appellant- Tripurari Raut and Satyendra Raut is concerned. Accordingly , Cr. Appeal (D.B.) No. 994 of 2008 and Cr. Appeal (D.B.) No. 955 of 2008 so far appellant no. 2- Satyendra Raut is concerned fails and judgment of conviction dated - 3rd July, 2008 and sentence dated : 08-07-2008 in respect of appellant / Tripurari Raut and appellant / Satyendra Raut is hereby approved and confirmed.

18. The Appeal in respect of appellant- Gorakh Raut @ Gorakhnath Raut succeeds by way of extending benefit of doubt. Accordingly judgment of conviction and sentence dated : 3rd July of 2008 and 08-07-2008 respectively in Sessions Trial No. 1 of 2008 by learned Sessions Judge, Nalanda at Bihar Sharif in respect of appellant no. 1 Gorakh Raut @ Gorakhnath Raut in Cr.



Appeal (DB) No. 955 of 2008 is hereby set aside and Cr. Appeal (D.B.) No. 955 of 2008 is partly allowed in respect of appellant no. 1 - Gorakh Raut @ Gorakhnath Raut .

19. In view of allowing Appeal of Gorakh Raut @ Gorakhnath Raut and the fact that he is already on bail he is discharged from liability of his bail bond.

20. The appellant no. 2 – Satyendra Raut in Cr. Appeal (D.B.) No. 955 of 2008 was allowed bail during pendency of the Appeal and since his Appeal has been dismissed his bail bond too stands cancelled with a direction to him to surrender before the court below forthwith otherwise the learned trial court may take all steps for securing his attendance for serving sentence.

21. Both the Appeals are disposed of.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	06-11-2018
Transmission Date	06-11-2018

