

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.946 of 2015**

Arising Out of PS. Case No.-33 Year-2005 Thana- DARIYAPUR District- Saran

1. Awadhesh Rai Son of Dihurai @ Brajkishore Rai
2. Arvind Rai Son of Rajeshwar Rai
3. Manoj Rai Son of Late Nanda Rai
4. Mukesh Rai Son of Sambhu Rai
5. Shyama Rai Son of Late Nanda Rai
6. Rameshwar Rai Son of Late Sipahi Rai All residents of Village - Ibrahimpur,
P.S. - Dariyapur, District - Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 993 of 2015

Arising Out of PS. Case No.-33 Year-2005 Thana- DARIYAPUR District- Saran

Sanjay Rai Son of Suresh Rai, Resident of Village- Ibrahimpur, P.S.-
Dariyapur, District- Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 946 of 2015)

For the Appellant/s : Mr. Shyameshwar Kumar Singh, Adv.

For the Respondent/s : Mr. A. Sharma APP

(In CRIMINAL APPEAL (DB) No. 993 of 2015)

For the Appellant/s : Mr. Ajay Thakur, Adv.

Mr. Shyameshwar Kumar Singh, Adv.

For the Respondent/s : Mr. G.P. Jaiswalapp, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 09-02-2022



Both the appeals arising out of the common judgment and order dated 9.9.2015 passed in Sessions Trial No.105A of 2007 by the learned 2nd Additional District and Sessions Judge, Saran, Chapra have been taken up together and are being decided by this common judgment.

The appellants Awadhesh Rai, Arvind Rai, Manoj Rai, Mukesh Rai, Shyama Rai and Rameshwar Rai have preferred Cr. Appeal no.946 of 2015 and Sanjay Rai has preferred Cr. Appeal no.993 of 2015 against the judgment of conviction dated 9.9.2015 and order of sentence dated 10.9.2015 passed by the learned 2nd Additional District and Sessions Judge, Saran, Chapra in Sessions Trial no.105A of 2007 (arising out of Dariyapur P.S. Case no.33 of 2005) whereby the accused Sanjay Rai was convicted under sections 302 and 307/34 of the Indian Penal Code and section 27 of the Arms Act and sentenced to undergo life imprisonment under section 302 of the Indian Penal Code, R.I. for 10 years under section 307/34 of the Indian Penal Code and R.I. for 7 years with a fine of Rs.30,000/ under section 27 of the Arms Act, with a further order to undergo S.I. for one year in case of default in payment of fine. The other accused namely Awadhesh Rai, Arvind Rai, Manoj Rai, Mukesh Rai, Shyama Rai and Rameshwar Rai were convicted under sections



302/34 and 307/34 of the Indian Penal Code and sentenced to undergo life imprisonment under section 302/34 of the Indian Penal Code and R.I. for 10 years and fine of Rs.30,000/ for the sentence under section 307/34 of the Indian Penal Code, with further order to undergo S.I. for one year in case of default in payment of fine.

Dariyapur P.S. Case no.33 of 2005 was registered on 4.5.2005 on the fardbeyan of Amod Kumar Gupta (P.W.1) recorded by S.I. Sanjay Kumar, Police Station Dariyapur District Saran at Chapra on 4.5.2005 at 15.00 hours wherein he alleges that about a week ago accused Ajay Rai came as a customer at the jewelry shop of his uncle Ram Chandra Sah (PW3) in Dariyapur Bazar. In course of purchase of jewelry, he asked for a loan. On not agreeing to give a loan there was altercation which turned into a fight. The fight was settled between the parties. However on the same day after about 2-4 hours Mithilesh Kumar was taken away from the shop and beaten up with slaps. At the time Sipahi Rai and Rajeshwar Rai reached and threatened the jewelers of the area that they would be killed and destroyed. It is alleged that belonging to the business class, not much attention was paid to the threats. On 4.5.2005 at about 1 pm accused persons riding on about 4-5



motorcycles, i.e Sipahi Rai, Rajan Rai, Arvind Rai, Sanjay Rai, Mukesh Rai, Mahesh Rai, Shailesh Rai, Awadhesh Rai, Manoj Rai and other unknown persons came variously armed with *katta*, pistol, carbine and bomb. Reaching the shop of Kishori Sah they resorted to firing as a result of which Shivnath Sah died on the spot. Seeing the occurrence Pancham Prasad entered into his house. It is stated that thereafter the accused persons resorted to firing at the door of Dina Sah followed by Tribhuwan Sah, the shop of Shivpujan Sah and the door of Madan Sah. Madan Sah sustained bomb injuries in his leg and fell down. Thereafter the accused persons proceeded to the shop of the Amod Kumar Gupta (informant) where Rajeshwar Rai struck the informant with the butt of his pistol on his forehead as a result of which he sustained injuries. On the son of the informant namely, Vivash Kumar @ Sonu (P.W.4) coming there, he was shot by Rajeshwar Rai with the pistol. The shot hit him in his hand as also his chest and he was seriously injured. On the younger brother of the informant namely, Chhathi Lal Gupta coming there, it is alleged that on the orders of Rameshwar Rai, Shailesh Rai fired hitting Chhathi Lal Gupta in his chest as a result of which he died on the spot. It is further alleged that firing was also carried out in the shop of Mithilesh



Sah as also on the shops of Subash Prasad and Dayanand Sah. The informant states that Sanjay Rai shot Shivnath Sah as a result of which he died in the shop itself and injured Madan Prasad Postmaster, Vikash Kumar @ Sonu (PW4) were referred to PMCH, Patna for treatment. The informant was treated at the Primary Health Centre, Dariyapur. The accused persons escaped in north direction.

On the basis of the aforesaid oral statement of the informant, a formal F.I.R. was registered on 4.5.2005 at 16.30 hours and investigation was taken up. After completion of investigation chargesheet was submitted under section 302 and other sections of the Indian Penal Code and section 27 of the Arms Act against accused Mahesh Rai and a supplementary chargesheet was submitted under section 302 and other sections of the Indian Penal Code, section 27 of the Arms Act and section 3/4 of the Explosive Substances Act against the accused Sipahi Rai, Shailesh Rai and Sanjay Rai.

So far as the seven appellants herein are concerned, final form was submitted for lack of evidence against them. By order dated 5.8.2005 in connection with the supplementary chargesheet submitted on 9.4.2007, cognizance of the offence was taken and on commitment of the case Sessions Trial no.105



of 2007 was registered for the trial of Shailesh Rai, Rajeshwar Rai and Sipahi Rai. Shailesh Rai having absconded, Sessions Trial no.105 of 2007 proceed against Rajeshwar Rai and Sipahi Rai. In course of trial, by order dated 26.6.2008 summons were issued under section 319 of the Code of Criminal Procedure ('Cr.P.C.' in short) against the seven appellants herein. The trial of the seven appellants were split and registered as Sessions Trial no.105 A/2007.

The learned trial Court framed charges against the appellants under sections 302/34 and 307/34 of the Indian Penal Code and section 27 of the Arms Act. In order to establish the charges the prosecution examined seven witnesses, they being P.W.1 Amod Kumar Gupta, the informant as also an injured witness P.W.2, Mohan Prasad, eye witness to part of the occurrence, P.W.3 Ram Chandra Sah, eye witness to part of occurrence, P.W.4 Vikash Kumar son of the informant as also an injured witness, P.W.5 Mithilesh Kumar Gupta, eye witness to part of the occurrence, P.W.6 Dr. Akhileshwar Kumar, who examined the injured and P.W.7 Kameshwar Ram, Investigating Officer of the case.

P.W.1 Amod Kumar Gupta in his deposition states that he is the informant of the case as also an injured eye witness to part



of the occurrence. He supports the genesis of the occurrence of Ajay Rai having come to purchase jewelry at the shop of his uncle Ram Chandra Sah (PW3) and altercation having started on refusal of loan being asked for by Ajay Rai. The matter was settled.

With reference to the occurrence the witness states that at about 1 pm the accused persons including the seven appellants herein came on different motorcycles. This witness saw Sanjay Rai shoot Shiv Nath Sah in his chest leading to his death. Rajeshwar Rai struck P.W.1 with the butt of his pistol on his forehead leading to him being injured and on his son Vikash Kumar @ Sonu (P.W.4) coming there, Rajeshwar Rai fired hitting the son of this witness in his chest. Further on the orders of Rameshwar Rai, Shailesh Rai shot Chhathi Lal Rai with the pistol who having sustained bullet injury in his chest died on the spot. In his cross examination this witness admits to pendency of title suit between the parties. He further states that he is not an eye witness to the part of occurrence which took place at the shop of Kishori Sah and the door of the Madan Sah.

P.W.2 Mohan Prasad in his deposition states himself to be an eye witness to part of occurrence and supports the case of the prosecution against the accused persons. He states that on



hearing the sound of bomb and pistol he came out of his house. He saw his brother running having sustained injury as a result of bomb blast. He supports the allegation of Rajeshwar Rai having assaulted P.W.1 with the butt of his pistol and further of him having shot P.W.4 in his chest. With respect to the cause of occurrence he states about the genesis of the occurrence being the refusal of PW-3 to give loan over purchase of jewelry to Ajay Rai, the altercation over the same turning into a fight which was settled by separating the parties. He further states about an occurrence having placed 3-4 hours later on the same day when Mithilesh, son of PW-3 was beaten up. The accused had threatened to teach them a lesson in his cross examination. This witness states about coming out of his house on hearing the sound of bomb and pistol and of having seen his brother running, having sustained injuries in his legs from the bomb blast. He was taken to the hospital. The witness states that the accused persons including the seven appellants herein had come variously armed with bomb pistol etc. on five motorcycles.

P.W.3 Ram Chandra Sah states that on 4.5.2005 at about 1 pm while he was at his door, he saw the twelve accused persons on about 4-5 motorcycles. The accused persons were variously armed with *katta*, bomb, carbine and included the



seven appellants herein. He states that he went on the terrace of his house and saw Sanjay Rai shoot Shiv Nath Sah. Subsequently, he learnt about the assault on Mandan PW-1 and PW-4 as also the death of Chhathi Lal Rai. He states about the motive of occurrence being the altercation which had taken place between him and Ajay Rai and subsequent to which on the same day, the accused persons namely, Sipahi Rai, Rajeshwar Rai, Arvind Rai and Sanjay Rai had forcibly taken away his son Mithilesh on the road and had beaten him up. In his cross examination this witness states that on the date of occurrence, on hearing bomb blast he had gone on the terrace of his house and having hidden himself had seen the occurrence from there.

P.W.4 Vikash Kumar @ Sonu besides being the son of the informant of the case also happens to be an injured witness. In his deposition he states that while he was coming to have bath, on hearing the sound of bomb and pistol he came and saw the accused person including the seven appellants herein. He states that Rajeshwar Rai struck with butt of his pistol on the forehead of his father (PW-1) On this witness attempting to run away, Rajeshwar Rai fired as a result of which he sustained firearm injury. On Chhathi Lal Rai coming to their rescue he states that Shailesh Rai fired on him as a result of which he fell down and



died. Both Chhathi Lal Rai and Shiv Nath Sah died on the spot. He denies their being any land dispute between the parties.

P.W.5 Mithilesh Kumar Gupta states that accused persons including the seven appellants herein came on motorcycles with arms. They shot dead Chhathi Lal and Shiv Nath, Sonu Kumar and Vikash Kumar (PW-4) sustained firearm injury, Madan Prasad Gupta sustained bomb injury while Amod Kumar (PW-1) was assaulted with the butt of the gun on his head. He states about the cause of occurrence was Ajay Rai demanding jewelry on credit which was refused. Subsequently the accused persons had beaten up Mithilesh. On intervention of others the accused persons had gone away threatening that they would be taught a lesson.

This witness further states that all the accused persons including the appellants herein came variously armed with gun, carbine, country made pistol etc. They started to hurl bombs and shot dead Chhathi Lal and Shiv Nath. Sonu Kumar and PW-4 also sustained gunshot injuries while Madan Prasad was injured as a result of bomb blast. This witness saw PW-1 being struck on the head with the butt of a pistol.

P.W.6 Dr. Akhileshwar Kumar is the doctor who examined the injured Vikash Kumar (PW4), Madan Prasad and



Amod Kumar Gupta (informant/PW 1). He has proved the injury reports.

P.W.7 Kameshwar Ram is the Investigating Officer of the case.

Heard learned counsel for the appellant and learned counsel for the State.

It is submitted by learned counsel appearing for the appellant that from the materials available on record it would transpire that the prosecution witnesses had the occasion to meet the police prior to lodging of the present fardbeyan and thus no fardbeyan having been recorded, the earliest version had been suppressed. Further none of the prosecution witnesses can be said to be an eye witness to the occurrence. The appellants were not sent up for trial and it was subsequently that they were summoned for facing trial in the instant case under section 319 of the Cr. P.C. In the connected trial being Sessions Trial no.105 of 2005, coaccused Shailesh Rai having already been acquitted, learned trial Court committed illegality in convicting the appellants and the instant appeal should be allowed.

On the other hand it is submitted by learned counsel for the State that the prosecution witnesses were not only eye witness to the occurrence but some of them are also injured



witnesses. They have been consistent in their case with respect to place and manner of occurrence. Being injured witnesses, their deposition carries much weight as their presence at the place of occurrence cannot be doubted. The learned trial Court has passed a well reasoned judgment and has rightly convicted and sentenced the appellants herein.

The question to be determined is as to whether the prosecution has been able to prove its case against the seven appellants beyond all reasonable doubts?

As per the prosecution case based on the fardbeyan to P.W.1 the genesis of the occurrence is the altercation which took place as a result of PW-3 refusing to give jewelry on credit to the accused Ajay Rai. Although the fight between them was settled, however on the same day a few hours later the accused persons forcibly took PW-5 who also happens to be son of PW-3 from the shop and beat him up on the *chauraha*. On intervention of others they had gone away threatening that they would teach them a lesson. The occurrence is said to have taken place on 4.5.2005 at 1 pm. Although the occurrence took place in continuity one after the other, however, it can be stated that there were three places of occurrence. Firstly, the shop of Kishori Sah, secondly the shop of the informant PW- 1 and



thereafter the door of Madan Sah.

So far as the seven witnesses examined on behalf of the prosecution in the trial are concerned, P.W.6 was Dr. Akhilesh Kumar who examined the injured and P.W.7 Kameshwar Rai was one of the Investigating Officers of the case. Besides these two, P.W.1 was an injured eye witness who also happens to be the father of P.W.4, another injured witness. These two witnesses were with respect to the first place the occurrence which took place at the shop of Kishori Sah. P.W.2 is the brother of injured Madan Sah and this witness is with respect to the occurrence which took place at the door of Madan Sah. Further P.W.3 besides being an eye witness is also the father of P.W. 5 who is also an injured witness. Both P.W.3 and P.W.5 are also witness with respect to the occurrence which had taken place at the shop of P.W.3 a week before the occurrence and which is said to be the genesis of the occurrence. So far as the occurrence which took place about a week ago at the shop of P.W.3 both P.W.3 and his son P.W.5 have in their deposition categorically stated that a week before the occurrence, on refusal of PW-3 to give jewelry on credit there was altercation between PW-3 and Ajay Rai. The fight between the two was settled on the intervention of others, however just a few hours later Rajeshwar



Rai, Sipahi Rai and Ajay Rai forcibly took away P.W.5 and assaulted him with slaps etc. both the witnesses further state that once again on the intervention of others, the accused persons went away threatening that they would teach them a lesson.

All the witnesses i.e P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 name the appellants herein. They categorically state in their deposition that they saw all the accused persons including the appellants herein on the date of occurrence come variously armed with and bombs on five motorcycles. All the witnesses consistently state that the accused resorted to firing at the shop of Kishori Sah leading to death of Shiv Nath Sah on the spot. Thereafter the occurrence took place at the shop of P.W.1 where PW-1 was struck by the butt of a pistol, PW-4 was shot at by Rajeshwar Rai and Chhathi Lal Gupta (brother of PW-1) was shot dead. Thereafter the occurrence took place at the door step of Madan Sah where as a result of the bomb hurled, Madan Sah sustained injuries in his leg and fell down.

So far as the occurrence which took place about a week ago at the shop of P.W.3 is concerned, both P.W.3 and his son P.W.5 have in their deposition categorically stated that a week before the occurrence, on refusal of PW-3 to give jewelry on credit there was altercation between PW-3 and Ajay Rai. The



fight between the two was settled on the intervention of others, however just a few hours later Rajeshwar Rai, Sipahi Rai and Ajay Rai forcibly took away P.W.5 and assaulted him with slaps etc. Both the witnesses further state that once again on the intervention of others, the accused persons went away threatening that they would teach them a lesson.

With respect to the occurrence which took place at the shop of Kishori Sah P.W.1, P.W.3, P.W.4 and P.W.5 all consistently support the case of the prosecution about Sanjay Rai having shot Shiv Nath Sah as a result of which Shiv Nath Sah sustained gunshot injuries and died on the spot. The postmortem report of the said Shiv Nath Sah also confirms the gunshot injury from close range and the doctor has opined the cause of death to be haemorrhage and shock due to firearm injury.

So far as the occurrence which is said to have taken place at the shop of PW-1 is concerned, once again the injured witnesses P.W.1 and his son P.W.4 have consistently stated in their deposition that all the accused persons including the appellants herein came variously armed. Amongst them Rajeshwar Rai struck PW-1 with butt of the pistol causing injuries. Further on P.W.4 coming there, on making an attempt



to escape he was fired upon by Rajeshwar Rai as a result of which P.W.4 sustained gunshot injuries. On hearing the sound, on Chhathi Lal Gupta (brother of P.W.1 and uncle of P.W.4) coming there it is stated that on the orders of Rameshwar Rai, Shailesh Rai shot at Chhathi Lal Gupta hitting him in his chest as a result of which he fell down and died. The aforesaid P.W.1 and P.W.4 were both examined by the doctor i.e P.W.6. who in his deposition has supported the prosecution case.

With respect to the occurrence which took place at the door of Madan Sah. P.W.2 brother of Madan Sah in his deposition has stated that on the date of occurrence he was at his home when had saw the accused persons including the seven appellants herein come variously armed with bomb, pistol etc. on five motorcycles. On the shop of Shiv Nath, Shiv Nath Sah was shot dead followed by the assault on the shop of PW-1 where injuries were caused to him, his son PW-4 and his brother was killed by Shailesh Rai. He supports the occurrence which took place a week ago at the shop of PW-3. He further states that on hearing the sound of bomb blast and firing, on coming out he saw his brother Madan running towards the house having sustained bomb injuries in both his legs. Thus from the deposition of witnesses in course of trial, it transpires that the



witnesses have consistently supported the occurrence at all the three places of occurrence i.e the shop of Kishori Sah, the shop of PW-1 and at the house of Madan Sah. Further the witnesses are eye witness to the occurrence and their deposition inspires confidence. So far as the inconsistencies in the depositions are concerned, the same are trivial in nature and one which would be expected when the witnesses are not tutored.

Thus in the facts of the case as discussed above, the prosecution has been able to prove the manner time and also the place of occurrence. The prosecution having proved the case beyond all reasonable doubts, in the opinion of the Court, there is no illegality in the judgments impugned and thus the conviction and the sentence of the appellants are upheld.

The appeals stand dismissed.

(Partha Sarthy, J)

Ashwani Kumar Singh, J I agree.

(Ashwani Kumar Singh, J)

Bibhash

AFR/NAFR	
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