

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.295 of 2003**

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Lal Bahadur Rai, Son of Ram Sakhi Rai Resident of village - Baldiha, P.S. -
Jamo Bazar, Distt. - Siwan

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr. Naresh Prasad, Advocate

For the Respondent/s : Mr. A.M.P. Mehta, APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 09-11-2023

The present appeal has been filed by the appellant-convicts under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction and order of sentence dated 13.05.2003 passed by learned *Ad hoc* District & Sessions Judge-cum-Presiding Officer, 1st Addl. Fast Track Court, Siwan in Sessions Trial No.302 of 1988/442 of 2002 arising out of Jamo Bazar P.S. Case No.4 of 1988 whereby the concerned Trial Court has convicted the appellant under Section 324 of the Indian Penal Code (for short 'IPC') and sentenced him to undergo rigorous imprisonment for two years.

2. The brief facts of the prosecution case as it springs from the written information of Surendra Rai (PW-5), who is the son of injured Bachcha Rai, recorded on 01.02.1988 at about 11:50 hours by Sub Inspector of Police, Md. Shamim,



Officer-in-charge of Jamo at State Dispensary, Jamo that while he was sitting by the side of wood fire at his door on 01.02.1988 somewhere between 7-8 PM, he heard public alarm (*hulla*) that his father had fallen in injured condition. On said information, as he received through public alarm, he went to the place of occurrence and found that his father is lying in injured condition and also noticed that he had sustained sharp-cut injuries on his head and on his neck. The father of informant was lying in injured condition in the field, which belonged to one Manager Rai. When he inquired from his father as to how he had sustained injuries, it was replied that appellant Lal Bahadur Rai had not done good thing by inflicting injuries on his person, where he further narrated occurrence while he was returning from market, the appellant-convict Lal Bahadur Rai, son of Ram Sakhi Rai inflicted injuries on his person by sharp-cut weapon. The reason of occurrence is certain previous enmity and differences surfaced between injured Bachcha Rai and appellant-convict Lal Bahadur Rai. The informant/PW-5 further stated through his *fardbeyan* that his father/injured had finalized a deal to purchase five kathas of land but, same was purchased by appellant-convict Lal Bahadur Rai few days prior to the occurrence for which an altercation was also taken place. His



father was also sustained injuries by appellant-convict Lal Bahadur Rai.

3. On the basis of aforesaid *fardbeyan*/written information, which is Exhibit-3, formal FIR, which is Exhibit-2 was registered as Jamo Bazar P.S. Case No.4 of 1988 under Sections 307 and 324 of the Indian Penal Code.

4. After completion of investigation, charge-sheet was submitted by the police under Sections 307 and 324 of the Indian Penal Code against appellant-accused and co-accused Sheojee Rai, who also faced trial along with appellant/convict but, the trial court has acquitted him.

5. To substantiate its case, the prosecution has examined altogether nine witnesses. They are:- Rampravesh Rai (PW-1), Munni Devi Kunwar (PW-2), Wakil Rai (PW-3), Sakaldev Rai (PW-4), Surendra Yadav (PW-5), Dr. Haliwant Singh (PW-6), Dhruv Prasad (PW-7), Mohar Rai (PW-8) and Md. Shamim (PW-9), who is Investigating Officer of this case.

6. Apart from the oral evidence, the prosecution has also proved the following documents in order to prove the charges:-

Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-1	Injury report of injured Bachcha Rai
2.	Exhibit-2	Formal FIR.



3.	Exhibit-3	<i>Fardbeyan.</i>
4.	Exhibit-4	Requisition for injury report.
5.	Exhibit-5	Case diary.

7. No witness was examined on behalf of the defence.

8. The statement of the appellants-accused were recorded under Section 313 of the Code after stating them incriminating evidences/circumstances as surfaced during the trial, which they denied and shows their complete innocence.

9. After conclusion of the trial, the Trial Court after acquitting co-accused Sheojee Rai from all charges, convicted the appellant-accused for the offence punishable under Section 324 of the Indian Penal Code for a period of two years. The accused-appellant was acquitted from the charge of Section 307 of the Indian Penal Code by learned Trial Court. Against which, the appellant has preferred this appeal, which was admitted and now the same is taken on board for final hearing.

10. Hence, the present appeal.

11. It is submitted by learned counsel appearing on behalf of the appellant/accused that PW-5, Surendra Yadav, who is the informant of this case and son of the injured is not the eye-witness of the occurrence and the injured namely, Bachcha



Rai was not examined during the trial, as it appears from the deposition of PW-5 that injured Bachcha Rai died in the year 2001 only. It is further submitted that PW.-2, Munni Devi, who is widow of injured Bachcha Rai, is also not the eye witness of the occurrence. Learned counsel further submitted that PW-9 Md. Shamim, who is Investigating Officer of this case, failed to collect the blood-stained soil from the place of occurrence and to send it for forensic examination. It is further pointed out that Investigating Officer of this case failed to recover the alleged knife by which injuries were inflicted to father of informant/PW-5 and in view of same, it cannot be said that prosecution has established its case beyond all reasonable doubt before the learned Trial Court and, therefore, the order of conviction as recorded by learned Trial Court is bad in the eye of law and same deserves to be set aside.

12. *Per contra*, learned APP appearing on behalf of the State submitted that PW-6, Dr. Haliwant Singh, who has examined the injured Bachcha Rai, the father of the informant/PW-5 has found seven sharp-cut injuries upon him.

13. I have heard learned counsel for the parties and from perusal of the lower court records as well the materials available on record, it appears that PW-1 Rampravesh Rai, PW-



3 Wakil Rai, PW-4 Sakaldev Rai and PW-8 Mohar Rai were declared hostile during the trial and, as such, their testimony is of no worth of discussion. On their cross-examination by State, nothing appears as to corroborate the case of prosecution *qua* another witnesses who supported the occurrence and were not declared hostile by prosecution.

14. PW-7, Dhruv Prasad is formal witness and he has nothing stated about the occurrence rather he only identified the signature of SHO over formal FIR.

15. PW-2 and PW-5 are wife and son of injured Bachcha Rai. They are not the eye-witness of the occurrence and they came to place of occurrence after receiving the public alarm (*hulla*). They did not find even accused/appellant near to the place of occurrence. It appears from their deposition that they found only injured Bachcha Rai lying at the place of occurrence. PW-2 stated that her husband stated to her that it was accused-appellant, who caused injuries on his person and, as such, he had not done right thing.

16. PW-6, Dr. Haliwant Singh, who had examined the injured Bachcha Rai and found the following injuries upon his person:-

“(i) Sharp-cut injury in the mid line of head extending posterity from the occipital region



to the interior 2/3 of head size 4.5" x 1/4" x 1/6".

(ii) Sharp cut injury on posterior half of head on left side 3.5" above from left ear size 1.5" x 1/4" x 1/6".

(iii) Sharp cut injury on posterior half of head on left side 1/2" above from left ear size 2" x 1/4" x 1/4".

(iv) Sharp cut injury on left side of neck before the left ear size 1.25" x 1/4" x 1/4".

(v) Sharp cut injury just before the left mandible size 1" x 1/4" x 1/4".

(vi) Sharp cut injury on left mandible size 1.5" x 1/4" x 1/4".

(vii) Sharp cut injury just above the left eye."

17. PW-9, Md. Shamim, who is the Investigating Officer of the case has visited the place of occurrence and found the sign of blood there, but the same was not collected by him.

18. It would be apposite at this stage to reproduce Para-15 of the legal report of Hon'ble Supreme Court as reported in the matter of **State of U.P. and Another vs. Jaggo @ Jagdish and Ors**, reported in **1971 (2) SCC 42** for better understanding of the case, which is as under:-

"15. This Court in *Habeeb Mohammad's case* (supra) referred to the observation of Jenkins, C.J., in *Ram Ranjan Roy v.*



Emperor [AIR 1915 Cal 545(C)] that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a public prosecutor is to represent the administration of justice so that the testimony of all the available eye-witnesses should be before the Court. Lord Roche in *Stephn Senivaratne v. The King [AIR 1936 PC 289 (B)]* referred to the observations of Jenkins, C.J. and said that the witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution. That is why this Court in *Habeeb Mohammad's case* (supra) said that the absence of an eye-witness in the circumstances of the case might affect a fair trial. ...”

19. It would be also apposite to reproduce Para-11 of the legal report of Hon'ble Supreme Court as reported in the matter of **Habeeb Mohammad vs. State of Hyderabad** reported in **AIR 1954 SC 51** for better understanding of the case, which is as under:-

“11. ... This view so widely expressed was not fully accepted by their Lordships of the



Privy Council in AIR 1936 PC 289 (B), that came from Ceylon, but at the same time their Lordships affirmed the proposition that it was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution, is essentially based and that the question depended on the circumstances of each case.”

20. In view of the aforesaid discussions, it appears that none of the witnesses examined during trial are eye-witness of the occurrence even PW-2 and PW-5, who are wife and son of the injured are not the eye-witness of the occurrence. It is admitted position that injured Bachcha Rai was not examined during the trial and in view of non-examination of injured, it cannot be said that the prosecution has established its case beyond all reasonable doubts because he appears most important witness as to unfold the case of prosecution. Moreover, with same set of evidence, appellant acquitted for the charge under Section 307 of the Indian Penal Code.

21. Accordingly, the appeal stands allowed.

22. The impugned judgment of conviction and order of sentence dated 13.05.2003 passed by learned *Ad hoc*



District & Sessions Judge-cum-Presiding Officer, 1st Addl. Fast Track Court, Siwan in Sessions Trial No.302 of 1988/442 of 2002 arising out of Jamo Bazar P.S. Case No.4 of 1988 is quashed and set aside.

23. The appellant, above-named, is acquitted of the charge levelled against him. Since the appellant is on bail, he is discharged from the liabilities of his bail bonds.

24. Office is directed to send back the lower court records along with a copy of the judgment to the court below.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.11.2023
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