

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.317 of 2005**

1. Jai Ram Prasad, Son of Late Dharam Singh Mahto, Resident of Village-
Lakshu Bigha, P.S. Nagarnausa, District- Nalanda.
2. Mahan Gope, Son of Late Banke Gope, Resident of Village-Lakshu Bigha,
P.S. Nagarnausa, District- Nalanda. Appellant/s

Versus

The State of Bihar. Respondent/s

Appearance :

For the Appellant/s : Mr. Binay Kumar, Advocate

For the Respondent/s : Mr. APP

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

Date : 20-09-2025

The present appeal preferred by appellants/convicts against judgment of conviction and order of sentence dated 21.05.2005 passed by Syed Md. Nasimuddin, learned 1st Additional Sessions Judge, Hilsa in Sessions Trial No. 433 of 94, whereby and whereunder appellants/convicts have been convicted for the offences punishable under Section 307 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for five years. Appellant/convict No. 1, namely, Jai Ram Prasad has also been convicted for the offences under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for one year. Both sentences shall ordered to run concurrently. No fine was imposed by the learned trial court.

2. The crux of prosecution, as it appears from the written information of the informant/PW-5 namely, Rambilash Prasad is that on 01.01.1994 at about 6 P.M the informant heard



that the accused persons caught his elder brother Hari Narayan and on that when the informant rushed towards Dalan of accused Jai Ram Prasad and so when he reached near Khatuhan, the accused/petitioner no. 1 Jai Ram Prasad shot upon him by his licensee gun, which hit on his left leg. Upon hearing sound of firing, the villagers came there, the accused/petitioner no. 2 Mohan Gope ordered to fire, upon which the accused Jai Ram Prasad again fired from his gun, upon which the villagers Sadhu Sharan and Satenyendra sustained firearm injuries. It is further alleged that the brother of the informant also came there from dalan (courtyard) of the accused, where he was caught hold by the accused persons but when co-villagers gathered there, the accused persons fled away making firing. It is further alleged that the accused Jai Ram is the agnate of the informant, who wanted to grab the property of the informant forcibly and for said reason present occurrence took place.

3. On the basis of aforesaid written information, as pressed by the informant/PW-5, namely, Rambilash Prasad, Chandi P.S. Case No. 01 of 1994 was lodged on 02.01.1994, after completion of investigation police submitted charge-sheet against accused persons under Sections 341, 324 and 307/34 of Indian Penal Code (In short 'IPC') and Section 27 of Arms Act.



4. Learned Jurisdictional Magistrate after taking cognizance of the case and making compliance of Section 207 of the Cr.P.C., committed the present case to the Court of Session under Section 209 of the Cr.P.C. for its trial and disposal.

5. To established its case before the learned trial court, the prosecution altogether examined total of eight witnesses, namely, **PW-1** Rajendra Prasad, **PW-2** Gopal Krishna, **PW-3** Sadhu Sharan Prasad, **PW-4** Harinarain Prasad, **PW-5** Ram Bilash Prasad (Informant), **PW-6** Anirudh Prasad Mishra (formal witness).

6. At this stage, it would be apposite to mention that while this matter was taken up for bail, this Court after exercising power under Section 319 of the Cr.P.C. directed learned trial court vide order dated 07.07.2005 to examine the investigating officer and doctor in present case, as the conviction was recorded without examining the doctor and investigating officer. Whereafter doctor of this case, namely Dr. Ram Briksh Prasad was examined as **PW-7** and I.O. of this case, namely, Suresh Prasad Singh was examined as **PW-8**.

7. The prosecution also exhibited following documents during the trial to substantiate its case which are as:-

Exhibit-1 - Signature of Ram Bilash Prasad



(PW-5/Informant) on fardbeyan.

Exhibit-1/1 Signature of Ram Bilash Prasad (PW-5/Informant) on protest petition.

Exhibit-1/2 Signature of Ram Bilash Prasad (PW-5/Informant) and Raj Kumar Prasad on protest petition.

Exhibit-2: Injury report of Shailendra Prasad.

Exhibit-2/1-: Injury report of Sadhu Sharan.

Exhibit-2/2 Injury report.

8. After examination of the prosecution witnesses and by taking note of evidences and incriminating circumstances as surfaced during the trial, the statement of appellants/accused persons were recorded under Section 313 of the Cr.P.C., which was denied in totality by showing complete innocence

9. In support of defence, accused persons examined two witnesses, who examined before the learned trial court as **DW-1, namely, Gariban Ram** and **DW-2, namely, Arjun Prasad.**

10. On the basis of aforesaid evidences as surfaced during the trial, the learned trial court convicted the appellants/convicts and passed order of sentences in aforesaid manner, being aggrieved with, appellants/convicts preferred the present appeal.

11. Hence the present appeal.



Submission on behalf of the appellants/convicts

12. Mr. Binay Kumar, learned counsel appearing on behalf of the appellants/convicts submitted that admittedly in terms of testimony of prosecution witnesses, it can be safely gathered that the occurrence was taken place in the background of land dispute, where the informant arrived on the place of occurrence on alarm, suggesting that he is not the actual eye-witness of the occurrence. It is submitted that one of the injured witness, namely, Satyendra Kumar was not examined during the trial. It is also pointed out that PW-1 categorically stated during his cross-examination that he never made statement before the police regarding the occurrence. It is also submitted that PW-2 at the time of occurrence was at his residence and he is also not the eye-witness of the occurrence and he arrived at the place of occurrence hearing the sound of firing. It is further pointed out that PW-3, who claimed to receive gun shot injury during the occurrence deposed that he received injury on his left hand only but upon medical examination, one blister was also found on his left thigh for which he deposed nothing. It is submitted that the nature of injury was simple and it was pea size blisters only, in view of testimony of PW-7 doctor, who examined PW-3. It is submitted that the prosecution witnesses are also the interested witnesses



being close agnates of the informant and, therefore, their testimonies *qua* occurrence not appears reliable. It is also pointed out that the gun shot injury, which caused injury like blisters etc. on the non vital parts is nowhere suggesting that same was sufficient to cause death. It is submitted that the I.O., who examined before the learned trial court as PW-8, categorically stated that he did not find any marks at the place of occurrence, which may suggest that occurrence of firing took place thereof. It is pointed out that in view of aforesaid, it can be said safely that merely on the basis of testimony as some simple blisters injury found upon two injured, the conviction was recorded under Section 307 of the IPC, which makes judgment of conviction questionable as per settled law and, therefore, same be set aside.

13. Arguing further, it is submitted by learned counsel that nature of injury, nature of weapons, pre and post conduct of the appellants/accused *qua* occurrence are certain collective factors, which required to be taken care before making out a case under Section 307 of the IPC. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Jage Ram and Others Vs. State of Haryana*** reported in ***(2015) 11 SCC 366***. Learned counsel *qua* submission of interested witness also relied upon the



judgment of Hon'ble Supreme Court as available through **Nand Lal Vs. State of Chhatisgarh (2023) 10 SCC 470.**

14. While concluding argument, it is also pointed out by learned counsel that the statement of accused/appellants under Section 313 of Cr.P.C. was recorded without explaining the circumstances and evidences in proper manner as it is apparent from the perusal of record. In support of his contention, it is pointed out that appellant/accused, namely, Mohan Gope was asked specifically that he also fired upon Ram Bilash Prasad (informant/PW-5), which is not the case of the prosecution. It is submitted that statement was recorded in a very mechanical manner without putting all incriminating circumstances surfaced during trial against appellants/accused and on this score also this appeal is not sustainable under the eye of law. In support of aforesaid submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Sukhjit Singh vs. State of Punjab [(2014) 10 SCC 270].**

15. Learned APP while opposing the appeal submitted that deposition of the all prosecution witnesses are consistent on the point of firing as alleged to be caused by the appellant no. 1 Jai Ram Prasad. It is submitted that the appellant Mohan Gope was also involved in the occurrence of firing alongwith



appellant/accused Jai Ram Prasad and, therefore, the conviction of Mohan Gope recorded with the aid of Section 34 of the IPC cannot be viewed with doubt.

16. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by the learned counsel appearing on behalf of the parties.

17. As to re-appreciate the evidence, while disposing the present appeal, it appears apposite to discuss the evidences available on record, which are as under:-

18. PW-1 is Rajendra Prasad, who supported the occurrence but categorically stated in his cross-examination that he never made statement before the police regarding this case, it transpires from his testimony as surfaced during the cross-examination that there was land dispute between the parties and a proceeding under Section 144 of the Cr.P.C. was also initiated for said dispute. It also transpired from his cross-examination that the firing was made by appellant/accused Jai Ram Prasad by his licensee gun. It appears from his examination-in-chief that he is the eye-witness of the occurrence but taking note of his cross-examination, it appears that he arrived at the place of occurrence after hearing the sound of firing. It was deposed by him that he



heard the sound of one firing only. He deposed to arrive at the place of occurrence alongwith seven persons i.e. Sadhu Sharan Prasad (PW-3), Gopal Prasad, Budhan Prasad, Arjun Prasad, Satyendra Prasad (injured but not examined) and Krishan Prasad. Bilash Prasad already present at the place of occurrence. He categorically stated that the Ram Bilash, who is the informant of this case and one of the injured, who examined as PW-5 was wearing only *Lungi* and *Ganji* at the time of occurrence and was lying in *Khalihan* (courtyard) after receiving bullet injury. He deposed to saw the injury on the leg of PW-5 and also found blood stained on the soil. The cloths were also stained with blood.

19. PW-2 is Gopal Krishna, As per his oral testimony, he came to know about the occurrence of firing after arrival at the place of occurrence as it transpires from his examination-in-chief itself. In cross-examination also he stated that at the time of occurrence, he was at his home, therefore, he cannot be said as eye-witness of the occurrence of firing.

20. PW-3 is Sadhu Sharan Prasad, who is one of the injured of the occurrence. It appears from his examination-in-chief that he received only one injury, which hit to his palm and another firing hit to the right ankle of Satyendra Prasad, who was not examined before the learned trial court. It appears from the



perusal of record that he was not completely cross examined. It also appears from the testimony of PW-3 that informant/PW-5, namely, Ram Bilash Prasad received any bullet injury. If deposition testimony of this witness be taken into consideration, it categorically suggest that the occurrence of firing was made only after his arrival at the place of occurrence by the appellant/accused Jai Ram Prasad.

21. PW-4 is Harinarain Prasad, who supported the occurrence and stated that Sadhu Sharan (PW-3) and the informant (PW-5) and one Satyendra Raut received bullet injuries during the occurrence. In cross-examination, he denied that he made any statement to police that the bullet fired by Jai Ram (appellant/accused no. 1) hit to Ram Bilash and the bullet fired by Mohan (appellant/accused no. 2) hit to Satyendra Raut. He denied that any firing was made by accused/appellant Mohan. He also admitted the land dispute. It was also stated that appellant/accused Jai Ram also fired on him but he did not received any injury out of that.

22. PW-5 is Ram Bilash Prasad, who is the informant of this case and supported the occurrence and deposed that he alongwith Sadhu Saharan Prasad (PW-3) and Satyendra Prasad (not examined) received bullet injuries during the



occurrence. He categorically admitted that the occurrence took place due to land dispute related with a way. It was stated that appellants/accused is his own uncle. It was deposed by him that he alongwith Sadhu Sharan (PW-3), Satyendra (not examined) arrived at place of occurrence together. The bullet was fired upon him from a distance of 10 "bass" (Bamboo) (approximately 250-300 ft.). He stated that altogether 3-4 firing was made.

23. PW-6 is the **Anirudh Prasad Mishra**, who is the formal witness and brought the injury report of the injured before the court. His testimony appears not relevant *qua* actual resources.

24. PW-7 is Dr. Ram Briksh Prasad, who was posted at Chandi as Medical Officer/I/c and on 01.01.94, he examined three injured. Firstly, he examined Sadhu Sharan, aged about 36 years, S/o Sri Nawal kishore Pd. of vill-Lachchu Bigha, P.S. Nagar Nausa, Distt. Nalanda at about 11.05 PM and found following injuries on his person.

1. Two pea size blisters found. One on root of the left index finger and other at left thigh region.

Nature- Simple, caused by some firearms weapon.

Age of the injuries- above six marks of identification- a dip inner angle of right eye.



2. On that very day at about 11:00 PM. He also examined Sailendra Prasad aged about 25 years S/o Sri Hari Rawat of same village & found following injuries on his person.

(i) Two pea size wound found on right leg close to right Knee gaine

Nature- simple, caused by some firearm injuries.

Age- About six hours.

Marks of identification- A scar on the right upper eyebrow.

3. On that very day he also examined Ram Bilash Pd, aged about 28 years S/o Brahamdeo Pd. Of same village, at about 11.10 PM and found following injuries.

(I) A pea Size lacerated wound within 43 blaseming and tattonis found on left by close to left knee.

Nature- Single, caused by some firearms weapon as one pellet was taken out from the wound.

Age- about six hours.

Marks- An old scar on left leg.

4. All the injuries report are written and signed by him. These are the carbon copies which were made with carbon processes together with original. They have already marked as Exhibit- Z to Z/2 respectively.

Cross-examination:-

5. On 01.01.94 he worked for 8 AM to 12 PM and thereafter on call emergency. At my residence a fourth grade employee informed him



about the patient at Hospital. As there was any requisition are not for patient, he do not remember. He saw the injuries were of firearms to which he send information to Chandi P.S., which is not in his presence at present.

(6) Requisitions were sent police M.o. Chandi for treatment.

(7) He deposed to found pellet in the wound by x-ray. He cannot say as to whether the pellet was were the skin or not.

8) He has not mentioned the depth of the wound. He has not mentioned the size of pellet. Sealed pellet which was sent to police by him is not available at present before him.

9.) All the above three injures on three above different persons may be possible by one shot as one Cartridge has multiple pellets.

(10) Injuries found on the persons may not be fatal.

11) Such injuries can be fabricated.

25. PW-8 is Suresh Prasad Singh, who is Investigating Officer of this case and visited the place of occurrence. After completion of investigation he submitted charge-sheet against the appellants/accused. It transpires from his deposition that he visited place of occurrence on the same very day of the occurrence i.e. on 01.01.94, it transpires from his cross-examination that he did not find anything at the place of occurrence which support the occurrence of firing.

26. It would be apposite to reproduce para nos. **12,**



13 & 14 of the judgment of Hon'ble Apex Court in the case of **Jage Ram (*supra*)**, which reads as under for a ready reference:

"12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.

13. In *State of M.P. v. Kashiram* [*State of M.P. v. Kashiram*, (2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40 : AIR 2009 SC 1642], the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under: (SCC pp. 29-30, paras 12-13)

"12. ... '13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in *State of Maharashtra v. Balram Bama Patil* [*State of*



Maharashtra v. Balram Bama Patil, (1983) 2 SCC 28 : 1983 SCC (Cri) 320] , *Girija Shankar v. State of U.P.* [*Girija Shankar v. State of U.P.*, (2004) 3 SCC 793 : 2004 SCC (Cri) 863] and *R. Prakash v. State of Karnataka* [*R. Prakash v. State of Karnataka*, (2004) 9 SCC 27 : 2004 SCC (Cri) 1408] .

* * *

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.’

See *State of M.P. v. Saleem* [*Saleem case*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , SCC pp. 559-60, paras 13-14 and 16.

13. ‘6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.* [*Sevaka Perumal v. State of T.N.*, (1991) 3 SCC 471 : 1991 SCC (Cri) 724] ’ (*Saleem case* [*Saleem case*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , SCC p. 558, para 6)”

14. Having regard to the weapon used for causing the head injuries to Sukhbir, nature of injuries, situs of the injuries and the severity of the blows, the courts below recorded concurrent findings convicting the second appellant under Section 307 IPC. In our considered view, the conviction of the second appellant Rajbir alias Raju under Section 307 IPC is unassailable.”

27. It would be apposite to refer **para Nos. 32 and 33** of the legal report of Hon’ble Supreme Court in the matter of



Nand Lal (supra), which reads as under:-

“32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in Vadivelu Thevar v. State of Madras [1957 SCC OnLine SC 13], has observed thus:

“11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

33. It could thus be seen that in the category of “wholly reliable” witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of “wholly unreliable” witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a “wholly unreliable” witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial.”

28. It would be apposite to reproduce para **10, 11, 12**

& 13 of the legal report of Hon’ble Apex Court in the matter of



Sukhjit Singh (supra), which reads as under:

“10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in **Ranvir Yadav v. State of Bihar [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92]**. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

11. In this context, we may profitably refer to a four-Judge Bench decision in **Tara Singh v. State [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491]** wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30).

“30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or



confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933], Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to



appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

29. From the aforesaid discussion of evidences available on record, it transpires that the witnesses i.e. PW-1, PW-3, PW-4 and PW-5 are not consistent *qua* number of firings. PW-1 and PW-2 also not appears to be the actual witness of the occurrence of firing. PW-3, who is the injured failed to explain his injury as it is apparent from the testimony of PW-7 that he found two injuries upon PW-3 but PW-3 categorically stated that he received only single injury on his palm. Interestingly, PW-3, who is also one of the injured witness in this case nothing stated through his deposition that PW-5, who is the informant of this case received any gun shot injury, which makes the entire prosecution case doubtful on its face as testified by PW-5 before learned trial court. It is also transpires that PW-3 stated that he heard only one sound of firing whereas PW-5/informant said that 3-4 firing was made by the appellant/accused Jai Ram Prasad, which also makes doubtful the version of witnesses *qua* no. of actual firing. The land dispute is the admitted position between the parties as it appears



from the testimony of prosecution witnesses for which the proceeding under Section 144 of the Cr.P.C. was initiated. It also transpires from the testimony of PW-8, who is the investigating officer of this case, who arrived at the place of occurrence on the same very day of the occurrence found nothing at place of occurrence, which also makes occurrence of firing doubtful. It also transpires from the testimony of PW-3 that the blood stained was found at the place of occurrence/ground but no such blood stained was found by I.O.

30. All such evidence, summarized above makes sufficient doubt *qua* the occurrence, which prosecution failed to answer during the course of trial as to established its case beyond all reasonable doubt. Benefit of doubt goes to appellants/accused.

31. Accordingly, both appellants are acquitted from the charges levelled against them, by giving benefit of doubt.

32. Hence, appeal stands allowed.

33. The impugned judgment of conviction and order of sentence dated 21.05.2005 passed by Syed Md. Nasimuddin, learned 1st Additional Sessions Judge, Hilsa in Sessions Trial No. 433 of 94, is hereby set aside. Appellants/accused are acquitted of the charges levelled against them.

34. Appellants are on bail as submitted, Upon



acquittal, their bailor and sureties stand discharged from their respective liabilities.

35. TCR, if any, be sent back to learned trial court along with the copy of this judgment immediately.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.09.2025
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