

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.701 of 2007

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Kamala Ram, Son of Late Sri Mahadeo Ram, Resident of Village-
Maniyawan, Police Station- Kako, District- Jehanabad (Bihar).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate
	:	Mr. Rajendra Kumar Jain, Advocate
	:	Mr. Ajay Kumar, Advocate
For the State	:	Mr. A. M. P. Mehta, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

Date: 08-08-2025

Heard Mr. Ajay Kumar Thakur, learned counsel
for the appellant assisted by Mr. Rajendra Kumar Jain, Mr. Ajay
Kumar and Mr. A. M. P. Mehta, learned APP for the State.

2. This appeal has been filed under Section
374(2) of the Code of Criminal Procedure, 1973 (hereinafter
referred to as the 'Cr.P.C') against the Judgment of conviction
and order of sentence dated 30.06.2007 passed in Kako P.S.
Case No. 108 of 1989 passed by the learned District and
Sessions Judge-cum-Special Judge, Terrorist and Disruptive
Activities (Prevention) Act, Jehanabad whereby and where-
under the appellant has been convicted for the offences
punishable under Sections 25(1-A) of the Arms Act with
rigorous imprisonment for five years.



3. As per the prosecution case, Madan Mohan Singh, Assistant Sub-Inspector of Darhahaiya Picket Camp Police Station Kako at Maniyawan Miragah Camp has made a written report to the Officer-in-Charge Kako Police Station he was posted Darnshaiya Camp which had been set-up after "DAMOH KHARARI KAND", designed to prevent illegal acts and the police personnel posted there were expected to be Mobile all the time and in that connection he proceeded with other police constable Kaushal Kishore Singh, Subodh Singh, Dershiya Picket and during petrolling, they reached etc from at village Maniyawan Tola, Mir-Jagah at about 98.39 mid night and in front of house of Kamal Ram and Jai Ram 5-7 persons were sleeping, one of them was asked about place of his residence, then initially he stated that it was Maniyawan but on pointed query he divulged that he come from Masaurhi in the night and from his possession on search, some papers concerning "Organization Mazdoor Kishan Sangram Committee" were found and two other persons also got up Police and they were being taken towards when Station for further interrogation suddenly from the door of house of Kamal Ram one bomb was hurled at the and police party simultaneously firing was made from Stenguns and police returned the firing. In the bomb



explosion the left leg of constable Babu Lal Tudu was blown up and from the firing made by the accused persons constable 119 Kaushal Kishore singh, Constable 532, Bal Mukund Sharma Constable 368 Saheb Ram were grievously injured and one constable 38 Subodh Singh died at the spot, further that in firing by police two criminals also sustained injury and fell down and one of them accused persons and carried away by the another remained there the police personnel injured were taken by the police party to the road and with the help of the villager they were taken on Tampo to the Divisional Hospital for treatment and Tampo Driver was asked to inform the head quarter and Constable Sahab Ram and Subodh Singh who had fallen injured put of them Subhod Singh succumbed Constable to Saheb Ram the injuries and another Police Jeep injured were still alive and on the taken for treatment. Thereafter the police personal went to the place of accurrence from where firing had been made and search the was made of the hosue of Kamal Ram and from said house one 303 bore Police Rifle was found and also a change with 18 bullets were present were also seized. cloths Also a bag was seized in which some and some other articles were present. Also a police loaded rifle of Saheb Ram was looted away by the accused. The informant further alleged



that the Members of Mazdoor Kishan Sagram Samittee want only a hacked on the police partu resulting in death of police personal and also injuries to other police constables.

4. Further on the basis of written report investigation proceeded against the accused persons and after completion of investigation chargesheet was submitted by the Investigating Officer. Charges were framed against accused persons as aforesaid and they were tried for the alleged offences.

5. On behalf of prosecution altogether 21 witnesses were examined to substantiate the charges levelled against the appellant, who are namely, PW-1 Upendra Sharma, PW-2 Nand Kishor Sharma, PW-3 Surendra Pandey, PW-4 Dr. Atri Sharma, PW-5 Hawaldar Parmeshwar Rai, PW-6 Balmukund Sharma, PW-7 Umesh Mani Tiwari, PW-8 Ram Naresh Sharma @ Bhola Singh, PW-9 Arvind Kumar, PW-10 Bajrangi Singh, PW-11 Bhola Tiwari, PW-12 Kaushal Kumar Singh, PW-13 Saiful Bhagat, PW-14 Dr. Kameshwar Sharma, PW-15 Anil Kumar Gupta, PW-16 Dr. Lallan Chaudhary, PW-17 Madan Mohan Singh, PW-18 Sandeep Kumar Jha, PW-19 Raghuvir Tiwari, PW-20 Baijnath Singh and PW-21 Baijnath. On behalf of defence three witnesses were examined namely DW-1 Brajnandan Sharma, DW-2 Banke Bihari Singh and DW-



3 Guljarilal Nanda. PW-1, 2, 3, 5, 8 and 9 were declared hostile by the prosecution.

6. PW-4 in his examination-in-chief stated that on 18.06.1989 he was posted at Sadar Hospital, Jehanabad and on that very way at about 1:30 am, constable no. 368 namely Saheb Ram was sent for examination and treatment where he examined his injuries and found the following injuries on his body:

- i. A sharp cut wound on the left side of the forehead 3"x2"x1 & ½" deep, grievous.*
- ii. Black discoloration due to blood clot under the skin on the left eyebrow and eyelid, serious and dangerous. All injuries were grievous which was caused by a sharp weapon like a daw or katta (sharp edged metal weapons).*

6.i. He further stated injury no. 2 was caused by a heavy, hard object. The time of injury was within six hours. On the same day, at the same time, Constable Balmukund Sharma was sent for examination and he found following injuries on him:

- i. Cut and bleeding wound on the buttock, 2"x1/2"*
- ii. Cut and bruised wound on the left arm 1"x1"x1/2"*
- iii. Cut wound on the back and swelling and abrasion on various parts of the back 1"x1/2"*

6.ii. He further submitted that all injuries were caused by bomb fragments and simple injuries time within six



hours. Both injuries report are in my handwriting and signature which is marked as exhibit-2 and 2/1. In his cross-examination he stated that both the injured persons were sent via demand letter dated 17.06.1989. The police station mentioned in the demand letter is not specified. The time of injuries was determined by looking at the color of the injury and he has not described the color of the injury in the injury report. The injury on Saheb Ram's body caused by daw (sharp edged weapon) is also possible with a sword and he has not marked the identification mark on the injured persons.

7. PW-6 in his examination-in-chief stated that on 16.06.1989 he was deputed at dedhsaiya picket and on the same night we went out on patrol with the entire party. Our officer was ASI Madan Mohan Singh and we reached at Jairam's door which is in the tola of maniyanwan around 12:30 am. We saw three to four people sleeping at his door upon which officer Madan Mohan Singh questioned them, asking who they were and where they came from. During the interrogation, party unity documents were recovered from them and we arrested them. At that very moment, extremists started firing from the houses of Jairam and Kamal Ram and in that firing police officer Subodh Sharma and Saheb Ram were hit by



bullets at the spot and died there itself. He further stated that other police officials namely Kaushal Singh, Hawaldar Parmeshwar Rai, Babu Lal Tuddu and Balmukund Sharma also got injured. Upon seeing the accused persons present in the Court, PW-6 only identified one accused and stated that extremists were hiding in the house of the same accused persons from where the firing started. However, that said accused discloses his name as Siddeshwar Paswan.

7.i. In his cross-examination he stated that Maniyanwan is about 1 to 1.5 kilometers east of Dedhsaiya and he never got a chance to go to picket while he was in Maniyanwan. Further he stated that at the time of alleged occurrence, it was dark night and he fired two rounds of bullet. He further stated that it is not true that he told the sub-inspector that he did not fired due to darkness. It is also not true that he did not tell the sub-inspector that a diary was seized and he did not tell the sub-inspector about identifying any accused.

8. PW-7 in his examination-in-chief stated that he was posted as Dedhsaiya Guard about ten years ago and at that time he had gone with A.S.I. Madan Mohan Singh and other armed force police men in night patrolling. He do not remember the name of tola and when they reached near the house of



Kamal Ram they found 4-5 unknown persons sleeping at his door. Jamadar awakened them and started asking question from time. In the meantime, someone threw a bomb from the inside of the house of Kamal Ram. The police Babu Lal Tuddu got serious injury on his left leg and firing continued for a long time from the inside of the main gate of the house of Kamal Ram. He further stated that other police officials namely Hawaldar Parmeshwar Rai, Bal Mukund Sharma, Kaushal Kishore Singh, Saheb Ram and Subodh Singh got injured in that firing. Later Subodh Singh died there itself. He stated that two persons died from the seven rounds firing of bullet from them and one became injured. They saw 10 to 11 persons escaping from the place of occurrence among them he identified Kamal Ram, Jai Ram and Ramvriksh Mochi. All three were carrying guns in their hands and he identified them in the moonlight. He could not identify the accused persons present in the dock.

8.i. In his cross-examination he stated that he cannot identify any accused present in the dock. He had not seen the house of Kamal Ram earlier and he came to know that the house belonged to Kamal Ram through persons. He did not know any of the accused including Kamal Ram, Jai Ram and Ramvriksh Mochi before alleged occurrence and he could tell



their names on being told by other persons.

9. PW-10 in his deposition stated that the alleged occurrence took place about 15 years ago and he did not see the occurrence himself. Further, he had heard that one or two police personnel were killed and the same numbers were injured. He further stated that his village has about 200 houses.

10. PW-11 in his examination-in-chief stated that on 17.06.1989, he was posted at police line Jehanabad and on the same day he came to know from the major that extremists were firing bullets on the police personnel of Maiyanwan police camp during patrolling. In that firing, constable Subodh Singh died and three other constables got injured. He went to P.M.C.H., Patna as one of the peon of the injured namely Saheb Ram. After his death, Police Officer for pirbahor police station came to P.M.C.H., Patna and prepared Saheb Ram's inquest report on which he had signed and which is marked as exhibit-3. In his cross-examination he stated that the inquest report on which he identified his signature is a carbon copy of the original inquest report.

11. PW-12 in his examination-in-chief stated that on 16.06.1989 that he was posted as Dedhsaiya picket. On that day he went out on night patrolling with other police personnel



and when they reached Mirjagah, they saw some people lying in a suspicious state near Jairam's house. A.S.I. Madan Mohan Singh questioned them and they said that they were Jairam's relatives but when Jairam's was called out from his home questioned he denied any connection or relationship with them. They wanted to bring those people to the Police Station for questioning when suddenly firing started from one side of a house. In that firing he was hit by bullets on his left chest and left thigh and he also had a bullet wound behind his testicles. Besides him Balmukund Sharma, Parmeshwar Rai, Babu Lal Tuddu, Saheb Ram and Subodh Sharma were also hit by bullets and Subodh Sharma died on the spot due to bullet injury. From there, he came to the Superintendent of Police, Jehanabad and informed him about the alleged occurrence. He was sent to Sadar Hospital, Jehanabad for treatment and from Sadar Hospital, Jehanabad they were sent to P.M.C.H., Patna for treatment, where he along with other injured persons were treated. During their treatment, Police Officers from Pirabahor Police Station came and recorded his statement and founding the same to the correct he signed the same and put his signature on it which is marked as exhibit-4. He further stated that as it was dark night at the time of alleged occurrence he could not



identify any of the accused persons. In his cross-examination he stated that the distance from Dedhsaiya picket to the place of occurrence is about four kilometers and he does not know that if there are any cremation ground in Mijagah. Further, he had no acquaintance with the people of the surrounding villages of Maniyanwan.

12. PW-13 in his examination-in-chief stated that the occurrence took place about 13 years ago and at that time he was posted at Dedhsaiya picket. Further he was out on night patrolling with other constables namely Madan Mohan Singh, Birendra Singh and Kaushal Singh etc. During the patrolling we reached near Maniyanwan and when we arrived in-front of Jairam and Kamal Ram's house we found 5-6 people lying there and during interrogation due to their appearance Jamadar Saheb told us to detain them. At the same time, someone from besides that house hurled a bomb at us and as a result of the same Babu Lal Tuddu got injured and his leg was severely damaged. After the blast, the militants started firing at us with Sten guns and as a result of the same five constables got injured namely Parmeshwar Rai, Babu Lal Tuddu, Balmukund Sharma, Subodh Singh, Saheb Ram and Kaushal Singh. Those militants snatched Subodh Singh riffles and fled away. He further stated that he



had identified accused persons among the militants. As the alleged occurrence took place a long time ago, so he is unable to recognize the accused persons present in the Court.

12.i. In his cross-examination he stated that Dedhsaiya picket is located about two kilometers to the east of the place of occurrence and he was posted at Dedhsaiya picket for more than one month before the alleged occurrence. He did not remember the names of any of the residents and during his posting, he used to go out only on night patrolling. Mirjagarh Tola is located secluded place and among the militants, Jairam and Kamal are residents of Mirjagarh. Before the alleged occurrence he had seen Kamal Ram at the school and Jairam at the tea shop, 2-3 days before the alleged occurrence and did not see either of them for several days. He further stated that Jamadar Saheb told him that these houses belonged to Jairam and Kamalram.

13. PW-14 in his examination-in-chief stated that on 17.06.1989 he was posted as Civil Assistant Surgeon at Sub-Divisional Hospital, Jehanabad and on that very day he conducted postmortem examination on constables Subodh Singh and found following antemortem injury:

(i) 1/3" x 1/3" (about) lacerated wound just 1" posterior to left ear which was wound of



entry.

(ii) Lacerated injury about 1 ½" x 1 ½" on front of head in upper part with part of brain material drained out which was wound of exit.

(iii) 1/3"x1/3" lacerated wound on the middle part of back which was a wound of entry.

(iv) About 1"x1" lacerated wound on front of abdomen just at the margin of lower part of middle of chest which was a wound of exit.

(v) About 1/3"x1/3" lacerated wound at medial side of back of upper part of thigh on the left side which was a wound of entry.

(vi) Lacerated wound 1"x1" on front of medial side of left thigh just by side of lower part of left side of Hydrosile which was a wound of exit.

(vii) Lacerated wound about 1"x1" on lower part of back of Hydrosile which was a wound of entry.

(viii) Lacerated wound 1"x1" on front of left side of lower part of Hydrosile which was a wound of exit.

(ix) About 1/3"x1/3" lacerated wound at back of lower part of right thigh which was a wound of entry.

(x) About 1"x1" lacerated wound on front of right thigh with fracture of right femur on lower part which was a wound of exit.

13.i. On dissection he found left parital bone

fracture. He found brain lacerated, left perital and frontal bone was fractured at its union. He also found blood and blood clots in the brain cavity. He further found multiple lacerated wound in the intestine, stomach lacerated, lever lacerated. He found right femer at its lower part fracture. He found heart empty with all vessels pale. He also found partly digested food in the stomach.



Injury no. 1 was communicating to injury no. 2, Injury No. 3 communicating to Injury No. 4, Injury No. 5 communicating to injury no. 6, Injury no. 7 communicating to Injury No. 8, Injury No. 9 communicating to Injury No. 10.

13.ii. Nature of Injury: In his opinion all the injuries caused by fire arms and those injuries were sufficient to cause death in normal course of human life. The time elapsed since death, in his opinion was 24 hours. In his opinion death was due to shock and haemorrhage, caused by aforementioned firearm injury. The postmortem report is in his handwriting and bears my signature which is marked as Ext.5. On the day itself he had conducted postmortem on the dead body of Vinay Prasad, Son of Jagdish Prasad, village-Shaidpur, P.S. Kako, District-Jehanabad. On postmortem he found the following antemortem injuries on the dead body.

- i. *Lacerated wound about 1/2" x 1/2" on front of left side of chest just below nipple which was a wound of entry.*
- ii. *Lacerated wound about 3"x3" on right side of back on upper part which was wound of exit.*

13.iii. On dissection he found left and right lungs lacerated, lower part of hear lacerated, ribs on upper part of back fractured, partially digested food on stomach, Blood and blood cloth were found thoracic. He found the Injury No. 1



communicating to Injury no. 2. He found the heart empty. Above mentioned injuries have been found to had been caused by fire arms. In my opinion time elapsed since death was within 24 hours. Above mentioned injury is sufficient to cause death in course of life. This postmortem report is in my handwriting and under my signature marked as Ext.5/1. On the same day at about 3:30 PM conducted postmortem on the dead body of unknown man and found the following antemortem injury on the dead body:

- i. Lacerated wound about 1/2"x1/2" on the back hand near right ear which was wound of entry.*
- ii. Lacerated wound about 3"x3" on the side of face near left ear which was wound of exit.*
- iii. Lacerated wound about 1/3"x1/3" on the left side of waist (buttuck) which was wound of entry.*
- iv. Lacerated wound about 3"x3" on front of lower part of abdomen with loop of intestine procured out words which was a wound of exit.*

On dissection he found following injuries:

- i. Temporal bone fractured.*
- ii. Maxillary bond fractured.*
- iii. A part of brain drained out word.*
- iv. Blood and blood clot in the brain cavity.*
- v. Fracture of left hip bone on upper part.*
- vi. Multiple laceration on G.I.T. (Gastro Intestinal Track)*
- vii. Partially digested food in stomach.*
- viii. Blood and blood clots in abdominal cavity.*

13.iv. He found Injury No. 1 communicating to



injury no. 2 and injury no.3 communicating to injury no. 4. In my opinion death was due to shock and haemorrhage caused by aforementioned fire arms injury. In his opinion time elapsed since death was within 24 hours. In his opinion the above mentioned injuries sufficient to cause death in normal course of life. This postmortem report is in his handwriting and bears in my signature marked as Ext. 5/2. In his cross-examination he stated that the injuries found by him on the three dead bodies are possible by firing from a distance of more than 10 feet. In given case it may even from a close range. Normally in a firing from close range there would be charring and blacking near the injury. He have not opined about the effect of particular injury in relation to death of the deceased.

14. PW-15 in his deposition stated that he has typed the sanction order and the signature on the same is of Shri Shakti Kumar Negi, District Magistrate which he identify and is marked as exhibit-6. He further stated that he is working as daily wage assistant-cum-typist at the collectorate and the draft of this letter was prepared by assistant on the orders of District Magistrate which he typed after seeing it.

15. PW-17 in his examination-in-chief stated that on 16/17.06.1989 he was working as Assistant Sub-Inspector at



Dedhsaiya Picket and on the same day he went out on patrolling with his constables at around 10 pm. During that night patrolling when they reached Maniyanwan, they saw 5-6 people sleeping outside the house. During interrogation a bomb was hurled from Kamal Ram's house at the police force which hit Babulal Tudu legs. After that there was firing from stengun. Many constables got injured and two criminals were also hit by police firing. He found a bag and some cloths at the place of occurrence and he does not remember what was there in the bag. At the time of alleged occurrence, all the constables had torches and he identified it the accused persons among the militants. There were 20-25 militants and Subodh Singh's riffle was taken away by the militants. A Test Identification Parade was also conducted where he identified some of the militants in connection with the alleged occurrence.

15.i. In his cross-examination he stated that he got to know about the house from other villagers and he do not remember that which villager told him about the same. He further stated that the entire occurrence lasted about one and half to two hours and at the time of firing he along with other constables were not flashing torches upon the militants. The entire occurrence took place in dark and when they started



running away shouting 'Lal Salaam' slogans we switched on our torches. He further stated that he identified the accused in the torch light of Hawaldar Shankar Rai and Constable Tiwary. He knew the names of all the accused because they use to come and go to the school.

16. After closure of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C where they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated in the present case.

17. Learned counsel for the appellant submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence. He further submitted that it is clear that none of the prosecution witnesses had identified the appellant in the Court and similarly PW-17 has specifically stated that he learn about Kamal Ram's family were residing in village-Maniyanwan from other villagers and he has never visited the house of Kamal Ram. Further, Investigating Office has also stated that through other villagers he got to know that the said house is of Kamal Ram.

17.i. Learned counsel further submits that there



is no legal evidence on record to show that the alleged house belongs to Kamal Ram particularly when the informant himself has admitted that Kamal Ram was residing to his old house and a new house only a cattle were being tied and no such cattle was found at the alleged place of occurrence. He further submitted that as per the description of the palace of occurrence of the said house given by the Investigating Officer shows that none of the room there was any door or window nor any article was found in the said house. He submits that seizure itself is being falsified in view of the statement given by PW-3. It is further evident that the prosecution has miserably failed to prove that the appellant has either fired or has in his possession or carried any prohibited arms or prohibited ammunition in contravention of Section 7 of the Arms Act.

17.ii. Learned counsel further submitted that as this appeal is of the year 2007 and occurrence is of the year 1989, where, the appellant has suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 17-18 years. So, the appellant should have been acquitted from the conviction as sentenced against him.

18. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence



submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellants beyond shadow of all reasonable doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

19. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record as well as given thoughtful consideration to the submissions advanced by both the parties.

20. On deeply studied and scrutinized all evidences, it is evident to note that there are serious inconsistency in the deposition of prosecution witnesses and in the present case none of the prosecution witnesses had identified the appellant in the Court and similarly PW-17 has specifically stated that he learn about Kamal Ram's family were residing in village- Maniyanwan from other villagers and he has never visited the house of Kamal Ram. Further, Investigating Office has also stated that through other villagers, he got to know that the said house is of Kamal Ram. There is no legal evidence on record to show that the alleged house belongs to Kamal Ram



particularly when the informant himself has admitted that Kamal Ram was residing to his old house and a new house only a cattle were being tied and no such cattle was found at the alleged place of occurrence. As per the description of the place of occurrence of the said house given by the Investigating Officer shows that none of the room there was any door or window nor any article was found in the said house.

21. Further, seizure itself is being falsified in view of the statement given by PW-3. It is further evident that the prosecution has miserably failed to prove beyond shadow of all reasonable doubts that the appellant has either fired or has in his possession or carried any prohibited arms or prohibited ammunition in contravention of Section 7 of the Arms Act which creates a material lacuna in the effort of the prosecution to nail the appellant, thereby creating reasonable doubt in the prosecution case and the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence. It is well settled principle of criminal justice system that the prosecution has to established its case beyond shadow of all reasonable doubts but the defense has to



only create the suspicion.

22. Considering this fact, prosecution has failed to establish this case beyond shadow of all reasonable doubts, therefore, in such circumstances, the benefit of doubt inclined in the favour of appellant it may not be proper to convict the appellant on the materials available on record. Hence, the Judgment of conviction and order of sentence dated 30.06.2007 passed in Kako P.S. Case No. 108 of 1989 passed by the learned District and Sessions Judge-cum-Special Judge, Terrorist and Disruptive Activities (Prevention) Act, Jehanabad, is set aside and the accused/appellant is acquitted from the charges leveled against him. As the appellant is on bail, he is discharged from liability of his bail bonds.

23. Accordingly, this appeal is allowed.

24. Office is directed to send back the trial Court records and proceedings along with a copy of this judgment to the trial Court, forthwith for necessary compliance.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	21.07.2025
Uploading Date	08.08.2025
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