IN THE HIGH COURT OFJHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 171 of 2005

[Against the judgment of conviction dated 20.01.2005 and sentence dated 25.01.2005 passed by the learned Addl. Sessions Judge, F.T.C., Rajmahal in Sessions Case No. 14 of 2004 arising out of Rajmahal P.S. Case No. 35 of 1999 corresponding to G.R. No. 70 of 1999.]

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1. Rafique Sk., S/o. late Hajrat Sk.
2. Saheb Sk., S/o. late Hajrat Sk.
3. Islam Sk., S/o. Gaudar Sk.
4. Palu Sk., S/o. Gaudar Sk.
5. Bhopal Sk., S/o. Bhogu Sk.
6. Gondar Sk., S/o. late Hajrat Sk.
7. Bhogu Sk., S/o. late Hajrat Sk.

All are residents of Village- Bengdubbi, P.S.- Rajmahal, Dist.- Sahibganj. ……Appellants

Versus

1. The State of Jharkhand
2. Jakir Sk., S/o. Imam Ali Sk., R/o. Bengdubi, P.O. & P.S.- Rajmahal, Dist.- Sahibganj. …. Respondents

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PRESENT
CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mr. S. S Choudhary, Advocate
For the Resp.-State : Mr. Azeemuddin, A.P.P.
For the Resp. No. 2 : None

JUDGMENT

CAV On: 16th September, 2026 **Pronounced On: 06/11/2026**

1. Heard learned counsel for the appellants as well as learned A.P.P. However, no one has appeared on behalf of the respondent no. 2.

2. Instant criminal appeal is directed against the judgment of conviction dated 20.01.2005 and order of sentence dated 25.01.2005 passed by the learned Addl. Sessions Judge, F.T.C., Rajmahal in Sessions Case No. 14 of 2004 arising out of Rajmahal P.S. Case No. 35

of 1999 corresponding to G.R. No. 70 of 1999, whereby and whereunder, the appellants have been convicted for the offences punishable under Sections 307, 341 & 148 of the I.P.C. and Section 27 of the Arms Act and sentenced to undergo R.I. for 5 years for the offence under Section 307 of the I.P.C.; further S.I. for one year for the offence under Section 148 of the I.P.C.; S.I for one month for the offence under Section 341 of the I.P.C. and R.I. for 3 years for the offence under Section 27of the Arms Act. All the sentences were directed to run concurrently.

Factual Matrix:-

3. Factual matrix giving rise to this appeal is that on 17.02.1999 at about 7 A.M., the informant was at his field (bathan) situated at 6 no. colony, Jhauwabana Diyara. It is alleged that all the above named accused persons being armed with deadly weapon and firearm came at his field (bathan) and surrounded it. It is further alleged that accused Saheb Sk. instructed his associated to shoot the informant. Thereafter, accused Rafique Sk. took out country made pistol fired at the informant, which slipped. The informant also tried to flee away but the accused persons surrounded him and started assaulting with an intention to kill him. It is further alleged that the accused Rafique Sk. again fired at informant, which hit at the left hand below wrist and bullet thrust out the hand. However, one Saifuddin Sk., who was with him, managed to flee away from there and narrated the occurrence to the villagers. The informant states reason behind the occurrence that he resided at his field (bathan) for the purpose of cultivation but these accused used to destroy the crops and also used to create disturbance in his cultivation.

On the basis of fardbeyan of the informant-cum-injured, F.I.R. (Rajmahal) P.S. Case No. 35 of 1999 dated 17.02.1999 was registered for the offences under Sections 147, 148, 149, 323 & 307 of the I.P.C. and 27 of the Arms Act.

4. After completion of investigation, the charge-sheet was submitted against accused persons and after taking cognizance, charges were framed under Sections 147, 148, 149, 323, 341 & 307 of the I.P.C. and Section 27 of the Arms Act and the case was committed to the court of Sessions, where Sessions Case No. 14 of 2004 was registered.

5. The appellants have denied the charges levelled against them and claimed to be tried.

6. In the course of trial, altogether 10 witnesses were examined by the prosecution apart from following documentary evidence:-

I. Exhibit-1: Injury report of injured Jakir Sk.

II. Exhibit-1/1: supplementary X-ray report.

III. Exhibit-2: X-ray report.

IV. Exhibit- 3: Signature of informant on fardbeyan.

V. Exhibit-4: Fardbeyan

VI. Exhibit-5: Endorsement of O/c Ramsobhit Mochi on fardbeyan.

VII. Exhibit-6: Formal F.I.R.

7. On the other hand, the defence has not adduced any oral or documentary evidence.

8. The learned Trial Court after scrutinizing the evidence oral as well as documentary led by the prosecution, arrived at definite conclusion about the guilt of the appellants for the offences under Sections 148, 341 & 307 of the I.P.C. and Section 27 of the Arms Act and sentenced

them accordingly as stated above, which has been assailed in this appeal.

Submission on behalf of appellants:-

9. Assailing the impugned judgment, the learned counsel for the appellants has vehemently argued that admittedly the investigating officer, who investigated the case, has not been examined, which causes serious prejudice to the defence. It is further submitted that during examination of the witnesses, it has not been revealed by the witnesses that there was assemblage of the accused persons at the time of assault to the injured as witnesses are hearsay and heard about the occurrence from the injured. It is also submitted that the injured has sustained injuries by the fire arm but there is no recovery of fire arm bullet. The allegation of fire arm has been levelled against accused Rafique Sk. only. It is also submitted that the doctor, who has been examined as PW-8, has opined the injuries to be simple in nature. The injuries sustained by the injured are not on vital parts of the body. Therefore, the impugned judgment of conviction and order of sentence is fit to be set aside and this appeal may be allowed.

Submission on behalf of State:-

10. Per contra; learned A.P.P. has opposed the aforesaid contentions raised by learned counsel for the appellants and defending the impugned judgment has submitted that the learned Trial Court has very wisely and aptly considered the overall aspects of the case and the testimony of ocular witnesses, who have categorically proved the charges levelled against the appellants beyond all reasonable doubt. The appellants forming an unlawful assembly have acted in concerted manner in

assaulting the injured-cum-informant, due to which the injured sustained injuries. It is further submitted that the evidence of the injured has been fully corroborated by the medical evidence regarding injuries sustained by the injured. The injured has sustained fire arm injuries on his hand and left side ribs. Therefore, there is no reason to interfere with the impugned judgment, which suffers from no illegality or infirmity. This appeal is devoid of merits and fit to be dismissed.

Analysis, Reasons and Decision:-

11. I have gone through the record of the case along with the impugned judgment and order in the light of the contentions raised on behalf of both side.

12. The only point for consideration in this appeal is, ***as to whether the impugned judgment of conviction and sentence suffers from any serious error or law calling for any interference or not?***

13. Before adjudicating the above point, it is pertinent to apprise with the testimony of the witnesses examined during trial specially informant, injured and the doctor who examined the injured.

PW-9 Jakir Sk. is the injured-cum-informant of this case. According to his evidence, on the date of occurrence at about 7:00 A.M., he was at his field (bathan) and saw the accused persons coming towards him and they surrounded his bathan and started abusing him. Thereafter, accused Saheb Sk. ordered to his associates to kill him. Then, the accused Rafique Sk. fired at him by a country made pistol which touched his left side ribs and slipped and thus he received injury on his left side of ribs. Thereafter, he started fleeing away, then all the accused persons surrounded him and started assaulting him with fists

and lathi. Again, accused Rafique Sk. fired at him and the bullet struck at his left hand and came out from the opposite side, as a result of which, there was bleeding from his left hand. He has further stated that on the way, he met with his brother Nazir Sk., who brought him to his house. From house, he came to Rajmahal hospital for treatment. This witness further states that whatever he had given in the fardbeyan, he has stated here also. He has identified his signature on the fardbeyan, which is marked as Ext.-3. Police recorded his re-statement and thereafter, doctor referred him to Malda for treatment.

In his cross-examination at length, he expresses no knowledge as to whether the place of occurrence is situated at Bengal. He has also no any document of the field (bathan) and cannot say the field (bathan) belongs to whom. This witness further states that he received fire arm from the distance of 15 hand. He had shown his cloths to the police, which was not seized rather he was told to keep it for further need. He has further stated that at Maldah hospital, doctor operated the wound. He further admits that he sustained assault of lathi blow on his whole body, which was seen by the doctor but can't tell the name of accused person, as to who had assaulted him. He further denies the fact that he has falsely implicated these appellant and also lodged case due to land dispute.

PW-8 Dr. Satish Kumar Sinha has examined the injured (PW-9) and found the injuries on the person, which are as under:-

1. Lacerated wound oval in shape- 1½" x ½" x 1/8" over left side of chest in mid axillary line.

There are two holes in T-shirt & one hole in ganji which the patient is wearing.

X-ray chest advised.

2. Wound of enterance 2/3" x ¼". Muscle deep in middle of left forearm in medial side oval in shape edges are inverted and ecchymosed.
3. Wound of exit 1" x ½". Muscle deep edges are ragged and torn with multiple haemorrhagic spots in surrounding skin. It is situated in left forearm above wrist.

   For both injuries no. 2 & 3 x-ray left forearm advised both the injuries are attached with one track.
4. Abrasion ½" x ¼" over left upper arm.

   Patient was referred to higher centre immediately for further management.

   Nature:- Opinion reserved for injury no. 1, 2 & 3. Injury no. 4 is simple.

   Cause of injury:- **Injury Nos. 1, 2, & 3 are caused by fire arm. Injury No. 4 was hard and blunt substance.**

   Time:- within 6 hours.

   Mark of identification of the injured:- An old scare mark over left eyebrow.

   He has proved the injury report of the injured marked as Ext.-1. The X-ray report has been given by Modern Diagnostic Centre, Maldah and it has been given by Dr. C.D. Basak. The x-ray report has also been admitted to evidence and it is marked as Ext.-2. The opinion regarding injury of the injured, as per x-ray

report, the nature of these injuries were simple in nature. Doctor has also said that he submitted the 2 x-ray plate with the report to Rajmahal P.S. The supplementary report is Ext.- 1/1.

In cross-examination, this witness has stated that he has not found any injury on the palm of the left hand of the injured, rather he found only two injuries, i.e., injury no. 2 and 3 caused by fire arm. Except that, no other injury caused by fire arm was found in left hand.

PW-1 Anil Choudhary & PW-2 Subodh Choudhary have been declared hostile by the prosecution as they have shown unawareness about the occurrence.

PW-3 Sher Mohammad Sk. @ Sheru Sk. has stated the on the alleged date of occurrence, he was at his home and saw that the injured coming his house. He went to his house, where the injured stated that the accused persons surrounded him and assaulted by firearm. Thereafter, he alongwith other villagers took the injured to hospital.

In his cross-examination, this witness admits that he has not seen the occurrence and stated about the occurrence by hearing.

PW-4 Saifuddin Sk. has stated that on the alleged date of occurrence, he had gone to Diyara for grazing his buffellos and had stayed at this field (Bathan). In the morning, the accused perons surrounded the field (bathan) of the injured accused Saheb Sk. ordered the accused Rafique Sk. to shoot the injured. Thereafter, accused Rafique Sk. fired at the injured with an intention to kill him but it slipped touching the left side ribs. Thereafter, the injured started fleeing away but he was surrounded by the accused persons and they started assaulting with fists and lathi. Again, accused Rafique Sk. fired at the

injured, which hit at the left hand of the injured and it came out from the opposite side. The injured, somehow, escaped and fled away.

This witness has been cross-examined by the defence, where at para-11, he has stated that the injured had sustained only two injuries. One at left side on the ribs and another on left hand. He further states that at the time of incident, he was present at a very short distance. There were accused persons only. He has also seen the country made pistol. He has further stated that he can't tell the date, month and year of the incident.

PW-5 Mukhtar Sk. has also stated that he has seen the injuries on the hand sustained by the injured. He came to know from the injured that he was assaulted and fired by the accused persons.

PW-6 Kuddus Sk. has also stated that he was at his home and saw the injuries on left hand and left side of injured. He asked the injured then he replied that accused persons have assaulted him. Nothing more has been stated by the injured to him.

In his cross-examination, this witness admits that he is not any eye witness of the occurrence. He has also not seen any fire arm bullet.

PW-7 Imam Ali Sk. is the father of the injured. He has stated that on the date of occurrence, his son had gone to field (Bathan) and the accused persons surrounded his son and Rafique Sk. on instruction of accused Saheb Sk. opened fire at his son. He has further stated that he has seen the swelling injury on his son and also bullet injury on the left side hand and left side below armpit. There was hole in the ganji which was caused by the bullet. This witness has further stated that his son told him about the occurrence and thereafter he took his son to hospital.

In his cross-examination, this witness admits that he was at his home and has not seen the occurrence. He is not the eye witness of the occurrence. He has further stated the police had recorded the statement of his son, while he was being treated by the doctor at hospital.

PW-10 Gokhul Ansari is a formal witness, who has proved the fardbeyan marked as Ext.-4, endorsement on fardbeyan marked as Ext.-5 and formal F.I.R. marked as Ext.-6.

14. I have given anxious consideration to the overall aspects of the case and the material evidence available on record.

15. From the aforesaid discussion of ocular testimony of witnesses, it is crystal clear that in order to prove an offence under section 307 of I.P.C. the essential *mensrea* to constitute the said offence has to be proved. *Mensrea* can be inferred from the kind of weapon used, nature of injury, force used and part of body etc. The onus lies on the prosecution that the accused has caused an act with intention or knowledge, and under such circumstances that if such act was successful, death was caused, he would be guilty of murder.

16. Further, the Hon'ble Apex Court in the case of ***Jage Ram Vrs. State of Haryana*** as reported in ***(2015) 11 SCC 366***, has held at para-12 that:-

> *"12. For the purpose of conviction under Section 307 I.P.C., 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 I.P.C., it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be 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."

17. In the instant case, the occurrence took place when the injured was at his field (Bathan). The accused persons came there and surrounded him and assaulted by fire arm, upon which the injured sustained injuries on his left hand and left side ribs. PW-8 Dr. Satish Kumar Sinha has examined the injured and opined the injury nos. 1, 2 &3 are fire arm injuries and the injuries are simple in nature.

Injuries sustained by the injured and manner of assault does not indicate that the required intention or knowledge for constituting the offence under section 307 of I.P.C. rather constitute offence under Section 324 of the I.P.C. Since the allegation of gunshot was found against the accused Rafique Sk., therefore, only accused Rafique Sk. is held guilty for the offence under Section 324 of the I.P.C. and rest of the appellants are acquitted from charge under Section 324 of the I.P.C.

18. So far Sections 341 & 148 of the I.P.C. is concerned, the accused persons have restrained the injured by surrounding him and assaulted him. Therefore, offence under Sections 341 & 148 of I.P.C. is upheld.

19. So far Section 27 of the Arms Act is concerned, the injured has specifically taken the name of accused Rafique Sk. for firing upon him. As such, only accused Rafique Sk. is held guilty under Section 27 of the Arm Act and rest of the appellants are acquitted.

20. So far quantum of sentence awarded to the appellants by the learned Trial Court is concerned, the appellant Rafique Sk. has already remained in custody for about six months. The occurrence is of the year

1999 and more than two and half decades have been elapsed and the appellants have also sustained the agony of trial since long. Therefore, period of custody already undergone by them meets the ends of justice.

21. In view of above discussion and reasons, I find that the appellants have sufficiently been punished for their guilt. Accordingly, in the ends of justice, the sentence of the appellants is reduced / modified and they are awarded the sentence of imprisonment already undergone by them.

22. Accordingly, this appeal is **dismissed on merits with modification in sentence** to the extent as mentioned above.

23. Pending I.A.(s), if any, stands disposed of.

24. All the appellants are on bail. As such, appellants are discharged from liability of their bail bonds and sureties are also discharged.

25. Let a copy of this judgment alongwith the trial Court records be sent back immediately to the concerned Trial Court for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand at Ranchi
Dated: 06/11/2026
Rahul- NAFR
Uploaded On: 06/11/2026