

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.279 of 2013**

Arising Out of PS. Case No.-164 Year-2004 Thana- CHARPOKHARI District- Bhojpur

1. Raj Kumar Bhatt @ Raj Kumar and Ors. S/O Late Bihari Bhatt Resident Of Village- Balbanth, P.S.- Charpokhari, District- Bhojpur, Ara
2. Birendra Bhatt S/O Late Brijbihari Bhatt Resident Of Village- Balbanth, P.S.- Charpokhari, District- Bhojpur, Ara
3. Sushil Bhatt @ Nakali S/O Ragho Bhatt Resident Of Village- Balbanth, P.S.- Charpokhari, District- Bhojpur, Ara
4. Surendra Bhatt S/O Late Brijbihari Bhatt Resident Of Village- Balbanth, P.S.- Charpokhari, District- Bhojpur, Ara
5. Ragho Bhatt S/O Late Tribeni Bhatt Resident Of Village- Balbanth, P.S.- Charpokhari, District- Bhojpur, Ara

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 381 of 2013

Arising Out of PS. Case No.-164 Year-2004 Thana- CHARPOKHARI District- Bhojpur

Wakil Bhatt S/O Ragho Bhatt Resident Of Village Balbandh, P.S. Charpokhari, District Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 279 of 2013)

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

For the Respondent/s : Mr. Mukeshwar Dayal, APP

(In CRIMINAL APPEAL (SJ) No. 381 of 2013)

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

For the Respondent/s : Mr. Mukeshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date : 21-11-2024

The present appeals have been filed under
Section 374(2) of the Code of Criminal Procedure, 1973
(hereinafter referred as 'Cr.P.C.')



conviction dated 03.04.2013 and order of sentence dated 05.04.2013 passed by the learned Adhoc Additional Sessions Judge-V, Ara Bhojpur in Sessions Trial No. 326 of 2009 arising out of Charpokhari P.S. Case No. 164 of 2004, instituted for an offence punishable under Sections 341 and 307/34 of the Indian Penal Code and under Section 27 of Arms Act, whereby and where under all appellants have been sentenced to undergo one month simple imprisonment and fine of Rs. 500 (five hundred) for an offence punishable under Section 341 of the Indian Penal Code. In default of payment of fine they are further sentenced to undergo simple imprisonment of fifteen days and they are also sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 10,000/- (ten thousand) each for committing an offence punishable under Sections 307/34 of the Indian Penal Code and in default of the payment of fine, they are sentenced to undergo simple imprisonment for three months and both the sentences shall run concurrently. Appellant namely Wakil Bhatt is also sentenced to undergo three years rigorous imprisonment and to pay fine of Rs. 10,000/- (ten thousand) and in default of payment of fine, he is further sentenced to undergo three months simple imprisonment for an offence punishable under Section 27 of the Arms Act and all the sentences shall run concurrently.



2. Heard Mr. Uday Kumar, learned counsel for the appellant assisted by Mr. Mukeshwar Dayal, learned APP for the State.

3. The brief facts leading to the filing of the present appeal are that as per the *fardebayan* of the informant, on 09.12.2004 at Sadar Hospital, Ara stating therein that on 09.12.2004 at about 06:30 P.M. he along with his *sala* Chandan Kumar had gone to the adjacent shop to purchase articles mere his co-villager Sushil Kumar @ Nakli @ Sariya came and began to abuse and misbehave with his brother-in-law and also began to abuse his *sala* and stated that there is no super Rangdar than him in the village and he also began to assault the informant by hands and fists. On *hulla*, Wakil Bhatt, Raj Kumar Bhatt, Birendra Bhatt, Surendra Bhatt, Ragho Bhatt and his wife came there armed with stones, *Bhala* and Pistol and began to assault him with a view to kill. The informant further alleged that Wakil Bhatt fired upon him by Pistol which hit on his left thigh as such he fell down there on *hulla* a number of persons came there then the appellants fled away. The informant was carried to Sadar Hospital Ara where his treatment was done. The informant said that during *Maar-Pit* his *sala* fled away. The informant claimed that the above-named appellants have assaulted him with a view



to kill as such he became injured.

4. On the basis of the *fardbeyan* given by the informant, a case was registered as Charpokhari P.S. case no.164 of 2004 on 10.12.2004 under Sections 341, 323, 324, 307 and 34 of the Indian Penal Code and Section 27 of the Arms Act and investigation was taken up and after investigation charge sheet was submitted under Sections 323, 324, 307, and 34 of the Indian Penal Code and Section 27 of the Arms Act and there after cognizance was taken up and case was committed to the court of Session.

5. The prosecution examined altogether 5 prosecution witnesses in this to substantiate the charges against the appellants persons, out of them PW-1 Hare Ram Bhatt, PW-2 Ramchandra Bhatt, PW-3 Anjani Kumar, PW-4 Pawan Kumar, PW-5 Rajesh Kumar Bhatt (informant), PW-6 Dr. Rambhawan Singh, PW-7 Shiv Shankar Rai (Investigating Officer). It is necessary to mention here that Sanjay Bhatt (Shopkeeper) has not been examine during the trial.

6. P.W.1 Hare Ram Bhatt in his examination-in-chief stated that the occurrence is of 09.12.2004 at about 06:30 P.M. He had been at his door. Rajesh Bhatt and Chandan Bhatt had gone to the shop to purchase articles and when there was



delay in the return he went to see and there he saw Raghu Bhatt, Wakil Bhatt, Raj Kumar Bhatt, Virendra Bhatt, Surendra Bhatt, Sushil Bhatt and w/o Raghu were assaulting Chandan Bhatt and Rajesh Bhatt and had stones and bricks in their hands while Raghu had a *Bhala* and Wakil had pistol. In the meantime, Wakil Bhatt fired from pistol at informant's left leg as a result thereof informant felt injured. Then they took him to Ara, Sadar Hospital where he was treated. In his cross- examination at para 5 he states that when he reached the place of occurrence, he saw the signs of injuries. He further stated that when he for the first time saw Rajesh Bhatt, he saw him lying and saw in conscious state. In para 6 he stated that the blood was there on the place of occurrence. In para 9 he stated that the occurrence which took place at the shop belongs to Sanjay Bhatt. In para 11 he stated that he tied with *Gamcha* the place from where informant was bleeding. In para 12 he stated that his shirt and pants also had blood stains but did not show to the police. In para 15 he stated and described the place of occurrence as the *Khatian* land of Sanjay Bhatt. In para 19 he has corroborated the identity of the place of occurrence by giving the boundary of the place of occurrence.

7. PW-2 Ramchandra Bhatt in his examination-



in-chief stated that the occurrence is of 09.12.2004 at about 6-7 PM in the evening, he had been at his door. Rajesh Kumar along with his brother-in-law (*saala*) had gone to purchase articles at the nearby shop where Nakli Bhatt was sitting and began to misbehave with Chandan. In the mean while committing scuffle they reached near *Gaushaala* of Santosh Rai. Thereafter they reached there and saw that Rajesh Kumar, Wakil Bhatt, Raju Bhatt, Birendra Bhatt, Surendra Bhatt, Raj Kumar Bhatt & Nakli Bhatt @ Sushil Kumar were assaulting Chandan. They also persuaded not to commit such act but they paid no attention and many of the villager gattered there. Raju Bhatt shouted to kill all and in meantime Wakil Bhatt fired which hit left thigh of Rajesh who fell down. He was carried to Sadar Hospital, Ara where Rajesh recorded his statement before the police. In his cross-examination at para 5 he stated that the place where the occurrence began is the shop of Sanjay. The shop of Sanjay was opened. He further describes the boundary of the place of occurrence, as east- open place and road, west- house of Jwalabhadd, north- *Gaushaala* of Santosh Rai, again says south- *Gaushasla* and north- house of Shyam Bihari. In para 6 he stated that the occurrence took place at 7 PM in the evening. In para 8 of his cross-examination he stated that when he reached there



Rajesh was being beaten in standing position by hands and fists. In para 9 of his cross- examination he states that when Wakil fired at Rajesh was standing. He further stated that due to gunshot Rajesh Bhatt fell down and began to bleed. In para 12 he stated that the occurrence took place due to Chandan Kumar who was also present at the time of occurrence

8. PW-3 Anjani Kumar in his examination-in-chief stated that the occurrence in of 09.12.2004 at 06:30PM in the evening. He was at his door. His brother Rajesh Rai and his brother-in-law Chandan Rai had gone to purchase salt and oil from the shop and the name of shopkeeper is Sanjay Bhatt. On hearing *Hullah*, he rushed there and saw the accused persons, namely, Wakil Bhatt, Nakli bhatt, Raghu Bhatt, Raj Kumar Bhatt, Birendra Bhatt and Surendra Bhatt and all were beating Rajash Upadhayay. He further stated that Raghu had *bhala* in his hand, Wakil Bhatt had pistol in his hand and when they intervened, Wakil Bhatt shouted to shoot whereupon Wakil Bhatt fired which hit the left thigh of Rajesh and thereafter they all fled away. Rajesh Bhatt fell down and sat there and thereafter he was carried to *Garahani* and from there they went to Ara, Sadar Hospital where he was under treatment for two days. He further stated that occurrence took place due to *saala* Chandan



from whom all were making jest and when they were forbidden Nakli Bhatt began to beat. Regarding these facts Rajesh gave statement to IO which bears his signature (Ext.2). In his cross-examination at para 4 he stated that at the Sadar Hospital, Ara IO recorded his statement and he made his signature on the statement of Rajesh Kumar. In his evidence there is no material contradiction on the point of manner, time & P.O. and the witness corroborated the case of prosecution.

9. PW-4 Pawan Kumar in his examination-in-chief stated that on 09.12.2004 at 7 P.M. he was sitting with his family in his house. His cousin the son of uncle Jawahar Lal Bhatt, namely, Rajesh Kumar Rai along with his brother-in-law Chandan went to the shop to purchase some articles where Nakli Bhatt was present from before who began to ill behave with the *saala*. When Rajesh forbidden him then Nakli Bhatt began to assault Rajesh and dragged him near the *Gaushala* of Santosh Rai, then he saw Wakil Bhatt, Ragho Bhatt, Nakli Bhatt, Surendra Bhatt, Birendra Bhatt, Raj Kumar Bhatt all were beating Rajesh after surrounding him and when they objected Wakil Bhatt shouted to kill and took out a country made pistol and fired at Rajesh hitting in the left thigh. He was carried away to Ara, Sadar Hospital in bleeding condition where he was given



treatment. In his cross-examination at para 3 he stated that his house and the house of Rajesh are the same and the *Gaushala* situated in the south-east corner from his house. The house of Prabhu Bhatt and Dasarath Bhatt situated in between his house and *gaushala*. The house of Raj Kumar situated at east of *Gaushala* of Santosh. Towards west there is the house of Jawala Bhatt, towards north the house of Tinger Bhatt and towards south house of Kamla Bhatt situated. In para 7 he stated that all the six persons had bricks, stones & *bhala* in their hand and were beating. He did not see the injuries of brick-batting nor the injury of hands and face. When he went there Rajesh Bhatt was standing and 10-12 villager were only seeing the occurrence but they did not intervene. He further stated that he accompanied Rajesh to Ara. He further stated that when Rajesh Bhatt was giving him statement, he was present there.

10. PW-5 is the informant and one of the victims of the case, namely, Rajesh Kumar Bhatt. In his examination-in-chief he stated that the occurrence is of 09.12.2004 at 6 PM. He along with his *saala* (brother-in-law) went to the adjacent shop to purchase salt, oil and Nakli Bhatt was present at the shop who began to abuse his *saala* Chandan Kumar to which he objected whereupon he was assaulted and thereafter dragged him near the



'GAUSHALA' of Santosh Rai where all his family members came there including Radha Bhatt, Raj Kumar Bhatt, Surendra Bhatt, Wakil Bhatt, total six persons and began to stone and bricks-bat. On *Hullah* the members of his family came there. Wakil Bhatt shouted to be away as he in shooting him and took out the pistol and fired at him which hit the left leg. He fell down and began to faint and then his family members drove him to Sadar Hospital, Ara more he was given treatment and his statement was recorded. He has proved his signature (ext.1) and the signature of his brother Anjani Kumar (Ext.1/1). that He recognized that Wakil Bhatt, Birendra Bhatt, Raghu Bhatt and Raj Kumar Bhatt were present. In his cross-examination he stated that the shop where he had gone to purchase articles belonged to Sanjay Bhatt. In para 3 he stated that occurrence took 10-15 minutes in total. In para 49 he stated that the distance between shop of Sanjay and the house of Santosh would be 10'-15'. In para 6 he stated that none of the villager nor the neighbour came there on *Hullah*. After gunshot the members of his Family came there but did not stay at the place of Occurrence. After having received bullet injury he sat holding his leg and was bleeding. He further stated in para 8 that after 1 & 1/2 months he came to home from hospital. In para 11 he



stated that when Santosh dragged him up to his house then he was assaulted by brick chips and stoned chips and his brother-in-law fled away. He further says that he was given three Lathi blows on the back leg and arm. In para 14 he stated that the shooter was 2 & 1/2 hands away from him towards east. The house of the accused is closed to the place where he had fired from his behind the door. No second fire was shot.

11. PW-6 Dr. Rambhawan Singh in his examination-in-chief stated that on 09.12.2004 he had examined the injuries upon the body of Rajesh Kumar Singh at 08:40 PM and found following injuries: -

i.(a) one lacerated wound margin inverted and darkened (wound of entry) over posterior left thigh 1/4" x 1/4" x muscle deep- nature simple caused by tire arms.

(b) Lacerated wound with margin inverted (exit wound) outer lateral, to left thigh 1"x3/4"x muscle simple caused by fire arms

ii. Injury nos. I & II are communicating with each other

iii. Mark of identification till over left size log.

iv. He has proved the injury



*report which has been marked as
ext. 2.*

11.1 In his cross-examination he stated that the injuries were properly proved. There was no blackening but there existed darkening. Darkening can be found only in case of firing from more than 3'. Darkening can be found up to any distance. Darkening can be found in case of injuries by heated bullet. Darkening cannot be found due to gun powder. Darkening cannot be removed by soft & wet clothes.

12. PW-7 Shivshankar Rai the Investigating Officer of the case in his examination-in-chief stated that on 10.12.2004 he was posted as ASI at Charpokhari P.S. On that day he assumed the charge of investigation of Case no. 164 of 2004 from the O/C K D Singh. He went to the place of occurrence and inspected the place of occurrence. He further stated that he recorded the statement of Ramchandra Bhatt and re-statement of Rajesh Kumar Rai who supported the occurrence. He also recorded the statement of Ravindra Bhatt, Anjani Shatt, Pawan Bhatt & Rajesh Kumar Rai. He further stated that he inspected the place of occurrence and place where hot talk took place is the Ration shop of Sanjay Bhatt situated at village Baalbandh and the exit of the shop is north towards vacant land and on the exit, there is steel gate and adjacent to



that share of his mother which is constructed by bricks and tiles and the exit of that house is towards east. The place where fire was shot has the following description - The place in front of the house of Santosh Rai where cattle are tied and is vacant land and *NAAD* is fixed there. The public passes through it and goes ahead. In the boundary- north Ramashray mate south-a house of Santosh, West- Shyam Bihari Bhatt and east the vacant land of Jawala Bhatt in which there is a Neem tree. Towards east of it there is a public hand pump. He further stated that after finding the occurrence to be true, he submitted Charge-sheet against the appellants under Sections 323, 324, 307/34 Indian Penal Code and under Section 27 of the Arms Act.

13. Learned counsel for the appellants submits that as per the F.I.R. and the statement of the witnesses during trial there is specific allegation of firing is against Wakil Bhatt and only allegations against other appellants is that they assaulted the informant by stones but as per the medical report no Injury of stones was found on the body of the informant except fire arms injury which on perusal of the injury report explained in para 13 of the judgement it clears that injury was not on the vital part of the body and the nature of the injury is simple. The injury report also clears that there is no repetition of



firing which clears the intension of appellant and there is much contradictions in the statement of the witnesses during trial regarding time, manner and presence of witnesses on the place of occurrence when the occurrence took place. He further stated that the most important witness namely Sanjay Bhatt has not been examined during trial. It is relevant to state here that as per the prosecution version of the informant he had gone at the shop of Sanjay Bhatt to purchase some articles where the occurrence took place but he has not been examined during trial. He next submits that the appellants are the aged persons and before the present judgement and order of conviction and sentence they have neither been convicted nor involved in any other cases. It is also relevant to state here that the evidences of the prosecution witnesses are self-contradictory and discrepant.

14. On the other hand, learned Additional Public Prosecutor Mr. Mukeshwar Dayal has vehemently opposed these appeals and submits that there is direct allegation against the present appellants, for assaulting the informant. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeals should not be entertained.

15. At this stage, I would like to appreciate the



relevant extract of entire evidence led by the prosecution before the Trial Court.

16. From perusal of the entire evidences and materials available on record, it appears that there are more than one place of occurrence and no eye witnesses from the place of occurrence have been examined during the course of trial who can clearly states that where the incident took place and the investigating officer during the course of investigation also did not find any blood stain, bricks or stone from the place of occurrence which can show prove the prosecution story. Further, it is surprising to note here that as per the prosecution version of the informant he had gone at the shop of Sanjay Bhatt to purchase some articles where the occurrence took place, but he was not made a witness before the Trial Court and has not given his deposition before the Trial Court.

17. Further, all the prosecution witnesses belong to one family and two witnesses, namely, Sanjay Bhatt and Chandan Kumar were not examined during the course of investigation. All the witnesses have stated in their cross-examination that the fight started by the brother-in-law of the injured, Rajesh Bhatt, i.e., Chandan Kumar and in the entire cross-examination of the witnesses, they stated that neither



Sanjay Bhat, the person at shop saw the occurrence taking place nor Chandan Kumar who is the informant-cum-brother-in-law of the victim have been examined, hence the genesis of occurrence has not been proved and which is fatal to the prosecution case and prosecution witnesses have admitted that they belong to the family of the injured-cum-informant, since no one else was there to give evidence hence, they only gave evidence. Hence, this means that all the witnesses are relative while the incident took place in broad-day light and thus the prosecution failed to proved the case and it is further worth mentioning here that the doctor has stated in his deposition before the Trial Court that no injury of stones was found on the body of the informant except fire arms injury which on perusal of the injury report, shows that injury was not on the vital part of the body and the nature of the injury is simple. The injury report also clears that there is no repetition of firing which clears the intension of appellants and there is much contradictions in the statement of the witnesses during trial regarding time, manner and presence of witnesses on the place of occurrence when the occurrence took place, which shows that there are serious and substantive discrepancies in the statement of witnesses. It is also clear from going through the entire trial



Court records that the FIR is not on the record. Further, the FIR has also not been proved by the prosecution.

18. Considering this fact, prosecution has failed to establish this case beyond all reasonable doubt therefore, in such circumstances, it may not be proper to convict the appellants/accused on the materials available on record, the judgment of conviction and order of sentence in this present matter is fit to be set aside.

19. Hence, the impugned judgment of conviction dated 03.04.2013 and order of sentence dated 05.04.2013 passed by the learned trial Court against the appellants are set aside and the appellants are acquitted from the charges levelled against them. As the appellants are on bail, they are discharged from the liability of bail bond.

20. Accordingly, both appeals are allowed.

(Ramesh Chand Malviya, J)

S.Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
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