

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.744 of 2017**

Arising Out of PS. Case No.-29 Year-2014 Thana- ATRI District- Gaya

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Arun Ram S/o Gulab Chand Ram, R/o Vill- Tausa, P.S.- Atri, Distt- Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Imteyaz Ahmad, Advocate Mr. Bindeshwari Singh, Advocate Mr. Vinod Kumar, Advocate Mrs. Vaishnavi Singh, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 04-03-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code') challenging the judgment of conviction dated 25.04.2017 and order of sentence dated 03.05.2017 passed by learned Additional District and Sessions Judge, 1st, Gaya in Sessions Trial No. 415/2015 (S.J.)/28/2017 arising out of Atri P.S. Case No. 29 of 2014 whereby the concerned Trial Court has convicted the present appellant for the offences punishable under Section 302 of the Indian Penal Code, Section 27 of the Arms Act and sentenced him to undergo



rigorous imprisonment of life with fine of Rs. 10,000/- (Ten Thousand) under Section 302 of the Indian Penal Code and on default of payment of fine, he shall further undergo rigorous imprisonment for one year and sentenced to 7 years rigorous imprisonment with fine of Rs. 10,000/- under Section 27 of the Arms Act and on default of payment of fine, he shall further undergo rigorous imprisonment for one year.

2. The brief facts leading to filing of the present appeal are as under:-

2.1 The *fardbeyan* of the informant Anita Devi was recorded on 31.01.2014 at 20:30 hrs. in which she has stated that, on 31.01.2014 at about 10:00 am, in Teusa Bazar Atri Road, her labourers were digging foundation to construct building. Then, Suryamani Ram came and asked her labourers as to why they were working for her and threatened them to work at another place. Then he stated that, in the evening, he will kill Jageshwar Ram and his son Upendra Ram and only then then it will get resolved permanently. This information was shared to her by her labourer. On the very same evening, at about 06:30 pm, she was having bonfire with her husband Upendra Ram, her father-in-law Jageshwar Ram and her younger son Jaunson Kumar at the door when 1. Prakash Ram,



2. Sunil Ram, 3. Anuj Ram, 4. Arun Ram, 5. Chintu Ram, 6. Surendra Ram, 7. Mahendra Ram, 8. Shri Chand Ram, 9. Suryamani Ram, 10. Tara Mani Ram and 11. Guddu Kumar all unanimously equipped with arms and ammunitions arrived at her door. Then Prakash Ram said to shoot at which Arun Ram shot at the temple of her husband with a pistol and killed him. All these people also attempted to kill her and her father-in-law, Jageshwar Ram and her son but they fled inside the house and saved their life. Hearing the sound of the bullet, many people gathered there. Seeing gathering of people, all of them fled towards the south.

2.2. On the basis of the said *fardbeyan*, formal F.I.R. came to be registered on 31.01.2014. After registration of the F.I.R., the Investigating Officer started the investigation and during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Case No. 415/2015 (S.J.)/28/2017.

3. Before the Trial Court, the prosecution has



examined 15 witnesses. Thereafter, further statement of the accused came to be recorded under Section 313 of the Code. After conclusion of the trial, the Trial Court passed the impugned judgment and order against which, the present appeal is filed.

4. Heard learned counsel Mr. Ajay Kumar Thakur assisted by Md. Imteyaz Ahmad, Mr. Bindeshwari Singh, Mr. Vinod Kumar and Mrs. Vaishnavi Singh for the appellant and Mr. Sujit Kumar Singh, learned A.P.P. for the Respondent-State.

5. Learned counsel Mr. Ajay Thakur for the appellant, at the outset, submitted that there are major contradictions in the deposition of the prosecution witnesses and, more particularly, in the deposition given by the informant Anita Devi. It is submitted that, in the *fardebayan*, the informant had made allegation against 11 accused with further allegation against accused Prakash Ram that he gave the order to kill Upendra Ram i.e. the husband of the informant, pursuant to which, the accused Arun Ram (appellant herein) fired a shot from his pistol near the temple and, in the said incident, the husband of the informant died. It is submitted that, however, while giving deposition before the Court, PW-10 Anita Devi had



made allegation against two accused i.e. one Chintu that he gave the order to kill the husband of the informant and, therefore, the present appellant was shot at the temple of this forehead. Thus, there is a major deviation in the deposition of the informant and, therefore, it is unsafe to rely upon such witness.

5.1. At this stage, learned counsel for the appellant would further submit that, admittedly, the information of the occurrence was given to the Police by village people. However, the said information was not registered/recorded in the station diary. The said information is not brought on record by the prosecution. It is also submitted that Inquest Report is also not brought on record by the prosecution. Thereafter, learned counsel for the appellant submits that, as per the deposition given by PW-14, the occurrence took place at the cross-road and not near the house of the informant. Therefore, the place of occurrence is also different. Even the blood-stains which is alleged to have been found by the Investigating Officer at the place of occurrence is not mentioned by him in the case diary. Learned counsel Mr. Ajay Thakur would thereafter submit that the pistol which is alleged to have been used by the appellant was not seized by the Investigating Agency. Even the empty cartridges was not found from the place of occurrence



and there was no sign of bonfire at the place of occurrence. It is also submitted that the Investigating Officer has not collected any blood-stained soil from the place of occurrence.

6. Learned counsel would further submit, after referring the **Modi 'A Textbook of Medical Jurisprudence and Toxicology' Twenty Seventh Edition** and more particularly referred to **Page No. 724** of the said book. Learned counsel has referred the opinion given by the said expert with regard to the injury which can be found if the firing is made from a close range.

7. Learned counsel has placed reliance upon the following decisions in support of his submission:-

(i) **Raja Ram Vs. State of Rajasthan**, reported in **(2005) 5 SCC 272**.

(ii) **Mukhtiar Ahmed Ansari Vs. State (NCT of Delhi)**, reported in **(2005) 5 SCC 258**.

(iii) **Javed Masood and Anr. Vs. State of Rajasthan**, reported in **AIR 2010 SC 979**.

(iv) **Assoo Vs. State of Madhya Pradesh**, reported in **(2011) 14 SCC 448**.

(v) **Virendra Vs. State of Madhya Pradesh**, reported in **AIR 2022 SC 3373**.



8. Learned counsel for the appellant, therefore, urged that when the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt, he may be acquitted by quashing and setting aside the impugned judgment and order passed by the learned Trial Court.

9. On the other hand, learned A.P.P. has opposed the present appeal. It is submitted that the informant, her father-in-law and her two sons as well as one tenant PW-6 Md. Amin Ansari are the eye-witnesses to the occurrence in question. They have supported the case of the prosecution. It is further submitted that the medical evidence also supports the version given by the informant and, therefore, when the prosecution has proved the case against the appellant/accused beyond reasonable doubt, no error is committed by the learned Trial Court while passing the impugned order.

10. Having heard the learned counsels appearing for the parties and having gone through the material placed on record including the paper-book and the documentary evidence led by the prosecution, it would emerge that the prosecution had examined 15 witnesses before the Trial Court.

11. PW-1 Ajay Kumar @ Prasad as well as PW-4 Umesh Chaudhary, who are the independent witnesses,



have not supported the case of the prosecution and they were declared hostile. Similarly, PW-2 Kamlesh Pandit and PW-3 Gorelal Biswakarma have also not fully supported the case of the prosecution. It is pertinent to note that these four witnesses are the independent witnesses. Similarly, PW-7 Birendra Chaudhary, who is also an independent witness and a co-villager, has not fully supported the case of the prosecution. Therefore, the case of the prosecution rests upon the deposition given by the near relatives and interested witnesses. It is well settled that the deposition of the interested witnesses cannot be discarded only on the ground that they are relatives or interested witnesses. However, their deposition is required to be scrutinized carefully.

12. PW-10 Anita Devi is the wife of the deceased and the informant of the present case. In her *fardebayan*, which was recorded at 20:30 hours for the alleged occurrence which took place at about 06:30 pm, she has stated that she had named 11 persons by alleging that all the 11 persons came at the place of occurrence i.e. their house. She has stated that all the persons equipped with arms and ammunitions arrived at her house and one Prakash Ram gave the order to Arun Ram to kill Upendra Kumar and thereafter, the accused



Arun Ram shot at and killed the husband of the informant. She has further stated at that time that her father-in-law Jageshwar Ram and her son Jaunson were present. However, they immediately went inside their house and saved their lives. Thereafter, many people gathered after hearing the sound of firing and, on seeing people gathering, all of them fled away from the place of occurrence.

12.1. However, at this stage, deposition of PW-10 (informant) is carefully seen. She has stated that her another son Raushan and tenant Md. Amin Ansari were also present at the place of occurrence. She has stated that 11 people came from north side, out of which, she could recognize only two persons including Chintu Ram and Arun Ram (appellant). Thereafter, Chintu told to kill Upendra Kumar and, therefore, Arun Ram i.e. the appellant shot her husband with a pistol near his left temple, due to which he fell and, thereafter, died. Hearing the sound of bullet, the villagers came at the place of occurrence. Therefore, accused ran away from the said place. In the examination-in-chief, PW-10 has specifically stated that except Arun Ram and Chintu Ram, she could not recognize anybody and *Darogaji* did not read over the *fardbeyan* to her. She has specifically stated during cross-examination that, in her *fardbeyan* or in her further



statement, that Prakash Ram did not gave order to shoot except two other accused had covered their faces with muffler. She has also stated that, at the place of occurrence, there was a pool of blood.

13. PW-5 Jaunsan Kumar has stated that there was a land dispute between his father, Gulab Chand and Jageshwar Ram. Arun Ram is the son of Gulab Chand. He acknowledged that he had no idea about the case and in which favour was the case. He has further stated that after the incident, Ameen Ansari, his son Fakruddin Ansari and about 40-50 villagers came.

14. PW-6 Md. Amin Ansari has stated that there is a relation of owner and tenant between him and Jageshwar Ram. He has stated that Jageshwar Ram and Anuj Ram are cognates. He has stated that he along with others were warming themselves by bonfire. He did not identify those persons who had covered their faces with towel. He identified some persons but they also had covered their faces with muffler. He has further stated that only one bullet from the gun was fired. The clothe of Upendra was soaked with blood and he fell down on the soil. He did not show the place of occurrence to *Darogaji*. Further he has stated that Chintu ordered to shoot



Upendra and Arun shot him close to the temple. In his cross-examination, he has stated that all the accused persons reside in the village and he could not identify other accused persons except Arun and Chintu.

15. PW-8 Jageshwar Ram has stated that on the day of incidence, he was warming himself by bonfire with other people namely, Upendra Ram, Jaunsan, Raushan, Ameen Ansari and Anita Devi. In his cross-examination, he has stated that, after the incident, Pappu Ram, Ameen Ansari etc. came. They came from the north and shot on the left. After the incident, 10-20-50 people from the village gathered. The names of only 11 accused were not told to the Police. He was there with Anita's statement. Anita told the Police only the names of two accused persons. Both he and Anita told the names of all the 11 accused to the Police.

16. PW-14 Pappu Ram @ Papu Kumar has stated that he was at market cross-road and saw that Upendra Ram had been hit by a bullet on his forehead. He had not heard nor he saw who had shot him. He also identifies the accused who are Arun Ram and Surendra Ram. Further, it is stated that the cross-road was situated at a distance of 5-6 block. It is also stated that Upendra Ram's family members had also come but



no one revealed the name of the killer.

17. PW-15 Raushan Kumar has stated that a total of 11 people came from the north out of which he recognizes two i.e. Arun Ram and Chintu Ram. Chintu Ram challenged Upendra Ram and abused to kill him. Meanwhile, Arun Ram shot at Upendra Ram in the left temple with the pistol which he was holding due to which he died and all the people ran away towards south. The cause of the incident is said to be the land dispute. Further he has stated that he did not recognize the rest of the people as they had covered their faces. Further, it is stated that the fire is said to have been burning for half an hour before the start of the incident.

18. PW-9 Doctor Sunil Kumar Prasad is the Doctor, who was posted at F.M.T. Department, A.N.M.M.C. Gaya, had conducted the *post mortem* of Upendra Ram and found following injuries:-

“Average built body and clothes stained with blood and dust at places. RM = present all over the body. Eyes= closed and white. Mouth= closed, tongue inside.

(1) Firearm entry wound of size 1cm x 1cm cranial cavity deep on left side of lower occipital region near midline 7 cm above T. vertebrae and 3 cm left to midline with inverted and irregular margins with tattooing. The entry wound is communicated with exit wound of size 15 cm x 08



cm x crenial cavity deep from right parietal region to right angle of mandible. Margin of the exits wound is irregular, everted and contused with proclulsion of soft tissue and brain tissue. Path way of the projectile from entry wound is inwards, forward and upwards towards right parieto-temporal region.

On further dissection of Head:-
Scalp= Contused internally on right fronto-parietal and temporal region. With fracture of underlying bones, left lower occipital bone is also fractured.
Brain= Contused and lacerated having blood and blood clots in crenial cavity. No projectile or its parts could be recovered from wound which appears to passed away through exit wound.

Opinion:- (1) Injuries are ante-mortem caused by firearm weapon.

(2) Death is caused by haemorrhage and shock as a result of firearm injury.

(3) Time since death = 06 to 24 hrs. (approx.) since examination time.”

19. PW-12 Hridayanand Ram is the Investigating Officer who was posted at Atari Police Station on 31.01.2014. He has stated that he did not get anything of significance on the spot. He took the statement of the witnesses Jageshwar Ram, Jaunsan Kumar, Sudama Devi. After that, he took the statement of Umesh Chaudhary and Arun Prasad who supported the incident. In his cross-examination, he has stated that S.I. Sumant Kumar Ankit recorded the *fardbeyan*. Further, he has stated that he had investigated this case from 31.01.2014



to 13.03.2014. He went to the village where the incident took place. He did not register *Sanha*. On receiving information about the murder, *Sanha* was registered on return. It has also been stated that there was a lot of blood spilled at the scene of the incident but he has not mentioned about it. No fire or bonfire was found. Even an empty cartridge was not found. No signs of assault were found. The statement of Manoj Ram and Bablu were not taken next to the spot.

20. PW-11 Ram Nagina Paswan is the Investigating Officer who has stated that he filed the charge-sheet against Arun Ram after finding the matter to be true and the incident on others to be false. Further, he has stated that he did not take anyone's statement nor went to the incident site.

21. PW-13 Shashi Kumar Ram was posted in Kodhi P.S. on 13.03.2014. He has stated that the *post mortem* was recorded in the diary. He received the *post mortem* on 05.06.2014.

22. We have re-appreciated the entire evidence. From the evidence led by the prosecution, it can be said that there are major contradiction in the deposition of the prosecution witnesses including the so called eye-witnesses. Though, the informant has stated the name of 11 persons in the



fardbeyan. While giving deposition before the Court, she had given the name of only two persons including Chintu Ram and the present appellant. As observed hereinabove, in the F.I.R., the informant has made allegation against one Prakash Ram that he gave order to kill whereas before the Court, she has stated that Chintu Ram gave the order to kill and thereafter the present appellant shot fire.

22.1. It would further reveal that, in the *fardbeyan*, she has stated that she along with two other persons i.e. her father-in-law and one son Jaunson had seen the occurrence. However, the prosecution has projected another son Raushan and one tenant Md. Amin Ansari as eye-witnesses. However, from the deposition of the aforesaid witnesses, it can be said that they reached at the place of occurrence after the occurrence took place and, in fact, they have not seen the occurrence in question. Further, the independent witness PW-14 Pappu Ram @ Papu Kumar has stated that he had seen the occurrence from the cross-road. However, he has not seen the accused/appellant at the place of occurrence. He has specifically admitted, during cross-examination, that family members of Upendra Ram have come to the place. However, nobody has disclosed the name of the assailants.



23. It is also required to be noted that the Inquest Report of the dead body of the deceased was not brought on record by the prosecution. Similarly, it is admitted position that the unknown person gave the information to the Police about the occurrence. However, the said information was not recorded by the Police Officer in the station diary and the said information was not brought on record by the prosecution. Further, from the deposition of the Investigating Officer, it is revealed that though he has stated that blood-stained soil was found, he did not collect the blood-stained soil nor he has made any reference in the case diary. Even the pistol which is alleged to have been used by the appellant was not seized by the Investigating Agency. Further, the Investigating Officer has not found any empty cartridges at the place of occurrence nor he had found any sign of bonfire though he reached at the place of occurrence immediately. It is a specific case of the defence that the place of occurrence is different i.e. the cross-road, as per the deposition given by PW-14 Pappu Ram @ Papu Kumar, who is an independent witness.

24. At this stage, we would also like to refer relevant commentary from **Modi 'A Textbook of Medical Jurisprudence and Toxicology' Twenty Seventh Edition** by



Jaisingh P. Modi, more particularly, **Page No. 724** of the same enclosed **25.7.1.1**, wherein it has been stated that:-

“25.7.1.1 Distance of the Firearm-

If a firearm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt/partially burnt grains of gunpowder or smokeless propellant powder.”

25. At this stage, we would like to refer the deposition of the Doctor who had conducted the *post mortem* of the dead body of the deceased. PW-9 (Doctor) has stated as under:-

“Firearm entry wound of size 1 cm x 1 cm cranial cavity deep on left side of lower occipital region near midline 7 cm above T. vertebrae and 3 cm left to midline with inverted and irregular margins with tattooing. The entry wound is communicated with exit wound of size 15 cm x 08 cm x cranial cavity deep from right parietal region to right angle of mandible. Margin of the exit wound is irregular, everted and contused with proclulsion of soft tissue and brain tissue. Path way of the projectile from entry wound is inwards, forward and upwards towards right parieto-temporal region.”

25.1. Thus, from the aforesaid observation made by the Doctor, it is revealed that the Doctor has not observed that the surrounding skin of wound of entrance are lacerated and the surrounding skin is scorched and blackened by



smoke and tattooed with unburnt/partially burnt grains of gunpowder. Thus, keeping in view the commentary of **Modi** '**A Textbook of Medical Jurisprudence and Toxicology**', the aforesaid observation of the Doctor is examined. It can be said that the deceased did not receive the gunshot injury from a very close range.

25.2. At this stage, if the deposition given by the so-called eye-witness is examined, it is revealed that it is a specific case of the eye-witness that the appellant/accused shot the husband of the informant near his left temple, due to which, he fell and thereafter died. Hence, it can be said that the medical evidence does not support the version given by the informant.

26. At this stage, it is also required to be noted that while recording the statement of the accused under Section 313 of the Code, the question was asked to the accused that the charge is levelled against the accused that one Prakash Ram gave the order to kill Upendra Ram, as a result of which, Arun Ram (appellant) shot him on his temple. However, it is pertinent to note that while giving the deposition before the Court, the informant has specifically stated that she could recognize two persons including Chintu Ram and Arun Ram and Chintu Ram told to kill Upendra Ram and, therefore, Arun Ram i.e. the



appellant shot her husband with a pistol near his left temple.

27. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Raja Ram (supra)** wherein it has been stated in **Para-9** as under:-

“9. But the testimony of PW 8 Dr. Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in very clear terms that he saw PW 5 making the deceased believe that unless she puts the blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. It did not occur to the Public Prosecutor in the trial court to seek permission of the court to heard (sic declare) PW 8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW 8 is binding on the prosecution. Absolutely no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW 8's testimony can be sidelined.”

28. In the case of **Mukhtiar Ahmed Ansari (supra)**, the Hon'ble Supreme Court has held in **Para 30** and **31** as under:-

“30. A similar question came up for consideration before this Court in Raja Ram v. State of Rajasthan [(2005) 5 SCC 272 : JT (2000) 7 SC 549] . In that case, the evidence of the doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else



she might have to face prosecution. The doctor was not declared "hostile". The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the doctor and it was binding on the prosecution.

31. In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to the police in which the police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, the accused can rely on that evidence."

29. In the case of **Virendra (supra)**, the

Hon'ble Supreme Court has held in **Para-7** as under:-

*"7. Both the courts shifted the burden on the defence. The evidence rendered by the prosecution witnesses was rejected, either as that of indifferent witnesses or as irrelevant evidence. We may note that these are all prosecution witnesses who were not treated as hostile. No attempt whatsoever was made either to treat them as hostile or to re-examine them except that of PW10. Not even a suggestion was put to them on the presence of PW15. In such a scenario, the statement made by the prosecution witnesses in favour of the accused would certainly inure to his benefit. Our view is fortified by the decision of this Court in Raja Ram v. State of Rajasthan, (2005) 5 SCC 272 : (**AIROnline 2000 SC 474**):*

"9. But the testimony of PW8 Dr. Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in very clear terms that he saw PW5 making the deceased believe that unless she puts the



blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. It did not occur to the Public Prosecutor in the trial court to seek permission of the court to heard (sic declare) PW8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW8 is binding on the prosecution. Absolutely no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW8's testimony can be sidelined."

It is reiterated in Javed Masood v. State of Rajasthan, (2010) 3 SCC 538 : (AIR 2010 SC 979):

"20. In the present case the prosecution never declared Pws 6, 18, 29 and 30 "hostile". Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence to rely on their evidence."

Reliance was made on the recovery from the appellant. The fact remains that there was sufficient evidence to conclude that only one shot was fired which could be seen even from the evidence of PW15. While assessing the evidence produced by the defence, courts discarded them without appreciating the fact that it has to be seen only on the degree of probability."

30. Keeping in view the aforesaid decisions, if the facts of the present case as discussed hereinabove are examined, we are of the view that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt, despite which, the Trial Court has recorded the order of



conviction against the appellant herein.

31. The impugned judgment of conviction dated 25.04.2017 and order of sentence dated 03.05.2017 passed by learned Additional District and Sessions Judge, 1st, Gaya in Sessions Trial No. 415/2015 (S.J.)/28/2017, arising out of Atri P.S. Case No. 29 of 2014 is quashed and set aside. The appellant, namely Arun Ram, is acquitted of the charges levelled against him by the learned Trial Court. He is directed to be released forthwith, if not required in any other case.

32. The appeal is, accordingly, allowed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	13.03.2024
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