

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1182 of 2010**

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Rajeshwar Rai, son of Late Nandlal Rai, resident of village Ibrahimpur, P.S.
Dariyapur, District - Saran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : M/s S. K. Lal,
Shyameshwar Kumar Singh, Advocates
For the Respondent/s : Mr. D.K.Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PARTHA SARTHY**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 09-02-2022

The appellant no. 1 Sipahi Rai having died during pendency of the instant appeal, the instant appeal is confined to the appellant Rajeshwar Rai.

The appellant has filed this appeal against the judgment of conviction dated 7.9.2010 and order of sentence dated 15.9.2010 passed by the learned 3rd Addl. Sessions Judge, Saran at Chapra in Sessions Trial no. 105 of 2007 (arising out of Dariyapur P.S. Case no. 33 of 2005) whereby the appellant was convicted under sections 302/149, 148 and 307/149 of the Indian Penal Code and under section 27 of the Arms Act and sentence to undergo RI for life for the offence under section



302/149 of the Indian Penal Code, RI for 3 years for the offence under section 148 of the Indian Penal Code, RI for 10 years under section 307/149 of the Indian Penal Code and RI for 7 years under section 27 of the Arms Act and further sentenced to pay a fine of Rs. 25,000/- for the offence under section 307/149 of the Indian Penal Code and in default in payment thereof to further undergo RI for one year, with all the sentences having been directed to run concurrently.

Dariyapur P.S. Case no. 33 of 2005 was registered on 4.5.2005 on the fardbeyan of Amod Kumar Gupta (PW-1) recorded by SI Sanjai Kumar, P.S. Dariyapur, District Saran at Chpara on 4.5.2005 at 1500 hours wherein he alleges that about a week ago the accused Ajay Rai came as a customer at the jewelry shop of his uncle Ram Chandra Sah (PW-5) in Dariyapur Bazar. In course of purchase of jewelry he asked for credit. On Ram Chandra Sah not agreeing to give credit there was altercation which turned into fight between the parties, however the same was settled. On the same day after about 2-4 hours Mithilesh Kumar was taken away from the shop and beaten with fists and slaps. At the time Sipahi Rai and Rajeshwar Rai threatened the jewellers of the area that they would have to face the consequences. It is sated that belonging



to the business class, not much attention was paid to the threats. On 4.5.2005 at about 1 pm with three accused persons on each motorcycle, the accused Sipahi Rai, Rajan Rai, Arvind Rai, Sanjay Rai, Mukesh Rai, Mahesh Rai, Shailesh Rai, Awdhesh Rai, Manoj Rai and other unknown accused persons came on motorcycles variously armed with katta, pistol, carbine and bomb. Reaching the shop of Kishori Sah, they resorted to firing as a result of which Shivnath Sah died on the spot. Pancham Sah concealed himself in the house. Thereafter, the accused persons resorted to firing at the door of Dina Sah followed by Tribhuwan Sah, shop of Sheo Pujan Sah and door of Madan Sah. Madan Sah sustained bomb injury in his leg and fell down. The accused persons proceeded to the shop of Amod Kumar Gupta (informant) (PW-1) where Rajeshwar Rai (appellant) struck the informant with butt of his pistol on his forehead as a result of which he sustained injuries. On the son of the informant, namely, Vikash Kumar @ Sonu (PW-2) coming there, he was shot by Rajeshwar Rai (appellant) with a pistol. The shot hit him in his hand as also his chest and he was seriously injured. On the younger brother of the informant, namely, Chhathilal coming there, it is stated that on the orders of Rajeshwar Rai (the appellant), Shailesh Rai fired hitting



Chhathilal in his chest as a result of which he died on the spot. Firing was also carried out in the shop of Mithilesh Sah as also in the shop of Subhash Prasad and Dayanand Sah. The informant sates that Sanjay Rai shot Shivnanth Sah as a result of which he died in the shop itself while the injured Madan Prasad, Vikash Kumar @ Sonu (PW-2) were referred to P.M.C.H., Patna for treatment. The informant was treated at Primary Health Centre, Dariyapur. The accused persons escaped in north direction.

On the basis of the aforesaid oral statement of the informant a formal FIR was registered on 4.5.2005 at 1630 hrs. and the investigation was taken up. After completion of investigation chargesheet was submitted under section 302 and other sections of the Indian Penal Code and section 27 of the Arms Act. A supplementary chargesheet was submitted against the appellant and others. Cognizance of the offence was taken on 5.8.2005 and the case was committed to the court of sessions on 8.2.2007.

The learned trial court framed charges against the appellant under sections 302, 307, 145, 148 and 149 of the Indian Penal Code, section 27 of the Arms Act and section 3/4 of the Explosive Substance Act.



In order to prove their charges the prosecution has examined a total of ten witnesses while five witnesses have been examined on behalf of the defence. The witnesses on behalf of the prosecution are PW 1 Amod Kumar Gupta (informant), PW 2 Vikash Kumar (son of PW 1), PW 3 Sheo Pujan Sah, PW 4 Pancham Prasad Gupta, PW 5 Ram Chandra Sah, PW 6 Dayanand Sah, PW 7 Om Prakash Gupta, PW 8 Dr. Akhileshwar Kumar, PW 9 Kameshwar Ram (I.O.) and PW 10 Dr. Jay Prakash Singh.

PW 1 who is the informant himself in his examination has stated that a week before the occurrence Ajay Rai came to the shop of his uncle Ram Chandra Sah (PW 5) and in course of purchase of jewelry asked for credit which led to altercation and fight between them. After a few hours, the five named accused persons including the appellant herein took away Mithilesh Kumar and beat him up with fists and slaps. The matter was settled but the accused went away giving threats that the goldsmiths would be taught a lesson. He further states that the accused persons came on about five motorcycles with three accused persons on each motorcycle. He names eleven accused persons including the appellant herein whom he identified. They came to the shop of Kishori Sah where Sanjay Rai killed



Shivnath Sah using a firearm. Thereafter, they exploded bomb and came to his shop where the appellant assaulted him with the butt of a pistol on his forehead. On his son Vikash trying to save him, the appellant opened fire causing injury on his son's arm and chest. On his younger brother Chhathilal coming there, on the orders of the appellant to kill him, Shailesh fired upon him as a result of which he died on the spot. Thereafter, the accused persons went to the shop of Madan Prasad and as a result of the bomb hurled by them and firing which took place a number of persons sustained injuries. The injured were taken to the Primary Health Centre, Dariyapur who were further referred to the PMCH, Patna. Two persons died in the occurrence.

PW 2 Vikash Kumar @ Sonu who happens to be the son of the informant (PW 1) has stated that on hearing the sound of bomb blast and firing, on coming out he saw the accused persons coming and the appellant assaulting his father on his forehead with the butt of a pistol. The appellant pointed the pistol towards him and on his trying to flee away, the appellant opened fire causing injury on his left arm and chest. He fell down. On his uncle Chhathilal coming to his rescue, his uncle was shot at by Shailesh Rai as a result of which he fell down and died.



PW 3 Sheo Pujana Sah in his examination-in-chief has stated that the twelve accused persons came on 4-5 motorcycles armed with bomb, pistol, carbine etc.. He identified the accused. Sanjay Rai opened fire on Shivnath Sah who died on the spot. As a result of the bomb exploded by the appellant, Madan Sah sustained injuries in his leg. Thereafter, the accused persons went to the shop of Amod Kumar Gupta (PW 1) where the appellant caught hold of him and assaulted him with the butt of a pistol causing injury on his forehead. On his son coming there, the appellant opened fire on Vikash Kumar @ Sonu (PW 2) causing injury on his arm and chest. On Chhathilal Sah, the brother of PW 1 and uncle of PW 2 coming to their rescue, he states that on the orders of the appellant, Shailesh Rai opened fire as a result of which Chhathilal died on the spot.

PW 4 Pancham Prasad Gupta is the younger brother of the deceased Shivnath Sah. He states that his brother Shivnath Sah was at the shop. On hearing the sound of firing and bomb blast he came out and saw that his brother had fallen down due to injury. He could not see the accused persons. He was declared hostile by the prosecution.

PW 5 Ram Chandra Sah has stated about the quarrel which took place at his shop one week before the occurrence



and about his son being assaulted. With respect to the occurrence he states that the accused persons came on motorcycles with three accused persons on each. He states that as a result of the sound of firing etc due to fear he went on the roof of his house and saw Sanjay shooting Shivnath Sah as a result of which he died. He further states that the accused persons exploded bombs, opened fire and proceeded towards the house of Chhathilal. Thereafter, Chhathilal was killed and in the bomb explosion Amod, Vikash and Madan sustained injuries.

PW 6 Dayanand Sah states that he heard the sound of firing and bomb blast and closed his shop. He saw some persons fleeing away on a motorcycle whom he could not identify.

PW 7 Om Prakash Gupta states that on hearing the sound of bomb blast and firing he came out and saw 12 persons on 4 – 5 motorcycles firstly come to the shop of Shivnath where they exploded bomb. Thereafter, they came to the shop of Amod Kumar where the appellant gave a blow with the butt of a pistol injuring Amod Kumar. On his son Vikash coming to his rescue, the appellant opened fire causing injuries to his left hand and chest. On Chhathilal coming to save them, on the orders of the appellant, Shailesh Rai opened fire on Chhathilal as a result of



which he died. On his coming out Pancham Prasad informed him that his brother Shivnath had been killed by Sanjay Rai, Madan Prasad also sustained injuries on his leg.

PW 8 Dr. Akhileshwar Kumar states in his deposition that on the relevant date he was posted as a Medical Officer at Primary Health Centre, Dariyapur. He examined Vikash Kumar @ Sonu (PW 2) and found the injuries on him caused by firearm. He also examined Madan Prasad and Amod (PW-1). With respect to the injuries of Madan Prasad he states that the same was caused by explosive material and the injuries of Amod Kumar Gupta, the original injury reports were sent to the police.

PW 9 is the Investigating Officer of the case who has proved both inquest reports of Chhathilal Sah and Shivnath Sah. He has inspected the place of occurrences which are firstly the house of Kishori Sah, secondly the house of Madan Prasad Gupta and thirdly the house of Amod Kumar Gupta. He has also seized residue of bomb etc. He obtained sanction for prosecution under the Arms Act and the Explosive Substance Act.

PW 10 Dr. Jay Prakash Singh conducted the postmortem examination at Sadar Hospital, Chapra on the dead body of Shivnath Sah and Chhathilal. In his opinion the injury



on Shivrath Sah were communicating with each other and the cause of death was haemorrhage and shock due to firearm injuries were within 12 hours. With respect to the dead body of Chhathilal, he found two injuries which were communicating and the cause of death was a haemorrhage and shock due to the firearm injuries.

The witnesses examined on behalf of the defence are DW 1 Upendra Rai, DW 2 Harendar Rai, DW 3 Kuljit Rai, DW 4 Harendra Rai and DW 5 Taiyab Hussain. The witnesses examined on behalf of the defence in their deposition state that the occurrence did take place in the market but the criminals were unknown persons who committed the offence due to previous enmity and the appellants have been falsely implicated in the case.

The question to be determined here is as to whether the witnesses examined on behalf of the prosecution inspire confidence and have been able to prove the case against the appellant beyond all reasonable doubts.

PW 1 who besides being the informant of the case is also an eye witness to a part of the occurrence and also an injured witness. As we have seen, he in his deposition besides stating about the occurrence which took place a week ago at the



shop of his uncle PW 5 (Ram Chandra Sah) which is the genesis of the occurrence, has categorically stated that on the accused persons including the appellant herein coming to his shop, the appellant assaulted PW 1 with the butt of his pistol on his right forehead causing injuries, on his son PW 2 (Vikash Kumar @ Sonu) coming to his rescue, it was the appellant who opened fire causing injury on the arm and chest of his son Vikash Kumar. He has further stated that on his younger brother Chhathilal coming to their rescue, it was on the orders of the appellant that Shailesh fired upon him by means of a firearm as a result of which Chhathilal died on the spot.

PW 8 Dr. AKhileshwar Kumar was the Medical Officer at Primary Health Centre, Dariyapur who examined the injured PW 1 Amod Kumar Gupta, PW 2 Vikash Kumar and Madan Prasad. In his deposition PW 8 with respect to the injuries on PW 1 Amod Kumar Gupta clearly states that he received a lacerated wound 1 cm x 1/3 cm x 1/3 cm on his right eyebrow and the same was caused by hard and blunt substance. He states that he sent the original injury report to the police and he produced the register of injury which was prepared by carbon process with the original and the same also contained his signature. With respect to the injury of PW 2 Vikash Kumar @



Sonu, he found entry wound in the left upper arm, exit wound in the left forearm and entry wound on the left scapula region.

PW 10 Dr. Jay Prakash Singh was posted at Sadar Hospital, Chapra and conducted the postmortem examination on the body of Shivnath Sah and Chhathilal. So far as Shivnath Sah is concerned, he found two communicating injuries caused in chest by a firearm. With respect to Chhathilal, he states that injury no. 1 was lacerated wound on right upper arm with skin deep blackening around the wound margin. With respect to injury nos. 2 and 3, he states that it was a firearm injury in the chest with both these injuries communicating with each other. There was fracture of left 7th rib and the cause of death was haemorrhage and shock due to the said firearm injuries. Both the postmortems were held in his presence of PW-10 and that of Dr. S. K. Sinha who wrote the report and both signed on the same and the same were marked as Ext 7 and 7/A.

PW 2 Vikash Kumar @ Sonu besides being an injured to the occurrence also happens to be the son of the PW 1. In his deposition he has categorically stated about the appellant having assaulted his father, the appellant having fired upon him causing gun shot injury and, thereafter, on the orders of the appellant Shailesh having shot his uncle Chhatilal.



PW 3 Sheo Pujan Sah, also an eye witness to the occurrence has stated about Sanjay Rai opening fire on Shivnath Sah who died on the spot. As discussed above, PW 10 Dr. Jai Prakash Singh conducted postmortem examination of Shivnath Sah and found his death to be as a result of gun shot injury on his chest, both of which were communicating. This prosecution witness has stated about the accused having exploded bomb causing injury on Madan Prasad and has categorically stated about the occurrence at the shop of PW 1 Amod Kumar Gupta where Amod Kumar Gupta was assaulted by the butt of pistol and, thereafter, the appellant opening fire on PW 2 Vikash Kumar. He has also stated that on the orders of appellant, Shailesh Rai opened fire on Chhathilal (brother of PW 1 and uncle of PW 2) as a result of which Chhathilal died on the spot.

PW 4 Pancham Gupta who is the brother of the deceased Shivnath Sah was declared hostile. However, he also in his statements states that he heard the sound of firing and bomb blast and on coming out found that his brother Shivnath had fallen down due to injury caused in his chest.

PW 5 Ram Chandra Sah is an eye witness to the occurrence as also uncle of PW 1 Amod Kumar Gupta. Besides, he is also an eye witness to the genesis of the occurrence which



took place a week before the actual occurrence when the accused had come to his shop to purchase some jewelry and on his refusal to give credit, an altercation had taken place and a few hours of the said altercation the accused persons including the appellant had taken away and beaten up Mithlesh Kumar. This witness states that he went on his terrace and saw Sanjay firing and killing Shivnath Sah. He has further stated that the accused persons who were variously armed with bomb, pistol etc. continued to give effect to the occurrence in which Chhathilal was also killed and Amod, Madan Prasad and Vikash were injured.

PW 6 states that he heard the sound of firing and bomb blast and saw the accused persons fleeing away but did not identify them.

PW 7 Om Prakash Gupta who is also an eye witness to the occurrence besides being full brother of PW 1 states that he saw the accused persons come on the motorcycles and has supported the occurrence that took place at the shop of informant PW 1 Amod Kumar Gupta. He has stated about the appellant giving a pistol butt blow on the forehead of PW 1 Amod Kumar Gupta, the appellant opening fire injuring PW 2 Vikash Kumar and on the orders of the appellant, Shailesh Rai



opening fire killing Chhathilal. Thereafter, he states that he was informed by Pancham Prasad about killing of his brother Shivnath. So far as PW 9 the Investigating Officer of the case is concerned, he has proved the inquest report of both the deceased namely, Chhathilal Sah and Shivnath Sah which were marked as Ext. 5 and 5/A. He states about inspecting the three place of occurrences which are at the house of Kishori Sah where Shivnath Sah was killed, the house of Madan Sah where Madan Prasad received bomb injuries in his leg and thirdly the house and shop of PW 1 the informant where PW 1 Amod Kumar Gupta and his son PW 2 Vikash Kumar were both injured and Chhathilal was killed. He further states about the seizure list.

Thus from the deposition of the witnesses examined on behalf of prosecution, it is clear that PW 1 Amod Kumar Gupta and PW 2 Vikash Kumar @ Sonu are clearly eye witness to the occurrence which took place at the shop of the informant Amod Kumar Gupta. They are further supported by eye witnesses PW 3 Shiv Pujan Sah and PW 5 Ram Chandra Sah who are both uncles of the informant and also supported by PW 7 Om Prakash Gupta who happens to be the brother of the informant. The witnesses have categorically stated that they saw all the accused persons including the appellant herein come



variously armed. On coming to the shop of PW 1 Amod Kumar Gupta, the sole appellant herein assaulted the informant with the butt of his pistol causing injuries on his forehead which has been supported by the injury report prepared by PW 8 Dr. Akhileshwar Kumar who examined the informant and produced the register of injury prepared through carbon process, in the court. The witnesses have also supported the appellant having shot at PW 2 Vikash Kumar @ Sonu resulting in firearm injury to PW 2 and in addition to the deposition of PW 2 the injured himself, this is also supported by the injury report of the injured Vikash Kumar who was examined by PW 8 Dr. Akhileshwar Kumar. The prosecution witnesses are also consistent in the deposition that it was on the orders of the appellant that Shailesh Rai fired upon and killed Chhathilal and the allegations being consistent with the cause of death having been found by PW 10 Jay Prakash Singh in the postmortem report of Chhathilal which has been exhibited as Ext. 7. Thus, the statement of the witnesses as also the injured witnesses ie PW 1, PW 2, PW 3, PW 5 and PW 7 making specific allegations against the appellant are consistent with respect to the place and manner of occurrence and inspire confidence of this Court and are also corroborated by the evidences of PW 8 and PW 10, the two



doctors who examined the injured and conducted the postmortem examinations.

With respect to PW 9 the Investigating Officer of the case stating about the witnesses not having stated about the appellant assaulting PW 1 with the butt of the pistol etc. are concerned it has to be kept in mind the witnesses have stated about a protest petition being filed against the Investigating Officer and the same also being placed before the Superintendent of Police, Saran who did not take any action.

Thus, in view of the facts and circumstances stated above and evaluating the deposition of the witnesses examined on behalf of both the prosecution as well as the defence, the Court is of the opinion that the witnesses examined on behalf of the prosecution are consistent and inspire confidence of the Court and the Court sees no reason to disbelieve them. The defence has not been able to raise any doubt with respect to any of the prosecution witnesses specially PW 1 and PW 2 who besides being eye witness are also injured witnesses. Thus, the Court finds that the prosecution has been able to prove the charges against the appellant beyond all shadows of reasonable doubt.

The order of the learned court below is consistent,



well reasoned and the Court sees no reason to interfere in the same.

There being no merit in this appeal, the same is dismissed.

(Partha Sarthy, J)

Ashwani Kumar Singh, J: I agree.

Spd/-

(Ashwani Kumar Singh, J)

AFR/NAFR	
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