

Ram Rai Vs State of Bihar

Court: PATNA HIGH COURT

Date of Decision: Jan. 8, 2018

Acts Referred: [Code of Criminal Procedure, 1973, Section 144](#) - Power to issue order in urgent cases of nuisance or apprehended danger

[Indian Penal Code, 1860, Section 307](#) - Attempt to

Hon'ble Judges: Aditya Kumar Trivedi

Bench: Single Bench

Advocate: Krishna Prasad Singh, Meena Singh, Rakesh Kumar Singh, Abha Singh, Pranaya Shankar Sinha

Final Decision: Dismissed

Judgement

1. Appellant Ram Rai has been found guilty for an offence punishable under Section 307 of the I.P.C. and sentenced to undergo R.I. for 10 years

as well as to pay fine appertaining to Rs. 10,000/- and in default thereof, to undergo S.I. for a year, under Section 27 of the Arms Act and

sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs. 5,000/- and in default thereof, to undergo S.I. for six months,

additionally, with a further direction to run the sentences concurrently vide judgment of conviction dated 20.01.2015 and order dated 21.01.2015

passed by the Additional Sessions Judge-2nd, Benipur, Darbhanga in Sessions Trial No. 79 of 2007.

2. Kailash Rai (PW-9) gave his fard-bayan on 31.10.2004 at about 1.15 a.m. at P.H.C., Kusheshwarsthan in presence of Om Prakash Rai,

Awadhesh Rai and Chandeshwar Rai disclosing therein that in the preceding evening at about 7.30 p.m. while he was returning from toilet, he had

seen 7-8 persons at the darwaza of Ram Rai, which lies South to his house. As soon as, he reached at his darwaza, all of a sudden, Ram Rai,

Kuldeep Rai, Ram Sobhit Rai, Sanjay Rai cordoned him and then, Ram Rai took out countrymade pistol and shot him causing injury over his

stomach. He, even after sustaining injury, rushed towards his darwaza. Till then, so many villagers assembled hearing the sound of firing,

whereupon the accused persons fled away. Motive for the occurrence has been shown as land dispute. It has also been disclosed that he has

arrived yesterday and a Panchayati has been convened on that very score.

3. On the basis of the aforesaid fard-bayan, Kusheshwarthan P.S. Case No. 134 of 2004 was registered followed with an investigation as well as

submission of chargesheet facilitating the trial, which ultimately concluded in a manner, the subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete

denial of the occurrence. Furthermore, deceased might have sustained injuries in different manner at different place, but due to prevailing animosity;

he has been implicated in this false and concocted case.

5. In order to substantiate its case, prosecution had examined altogether 11 PWs, those are PW-1 Chandrashekhar Rai, PW-2 Awadhesh Rai,

PW-3 Anita Devi, PW-4 Rajendra Rai, PW-5 Ram Sewak Rai, PW-6 Om Prakash Rai, PW-7 Shiv Shankar Rai, PW-8 Saraswati Devi, PW-9

Kailash Rai, informant of the case, PW-10 Dr. Umakant Prasad and PW-11, Mithilesh Kumar Jha, I.O. of the case. Side by side, had also

exhibited the documents viz. Exhibit -1 series, signature of informant as well as witnesses over the fard-bayan, Exhibit-2, injury report, Exhibit-3,

fard-bayan, Exhibit-4, formal F.I.R., Exhibit-5, injury report prepared by the police, Exhibit-6, Para-1 to Para-50 of the case diary and Exhibit-

6/1, remaining paragraphs of the case diary. Side by side, defence had also examined one DW viz. DW-1, Manoj Rai as well as had also

exhibited sale deed Exhibit-A, rent receipt Exhibit-B, order passed in Complaint Case No. 512 of 2006 Exhibit-C.

6. While challenging the judgment of conviction and sentence, it has been submitted on behalf of learned counsel for the appellant that the same

happens to be based upon the evidence of interested, partisan, inimical witnesses and that being so, the judgment impugned is fit to be set aside.

Furthermore, it has been submitted that right from inception of the prosecution, there happens to be specific assertion that appellant was not at all

inclined to allow the informant to possess a chunk of land and that happens to be reason behind false implication of the appellant. Enmity is a

double edged sword and so, the learned lower court should have considered the impropriety visualizing from the evidence of the prosecution

witnesses, who apart from being partisan, inimical were not at all competent enough to depose against the appellant as not being an eye witness to

occurrence. To justify the same, it has also been submitted that it was the month of October and being remote area, darkness fallen down earlier to

the places where electricity is found. Apart from this, as prosecution has not disclosed the source of light on account thereof, informant would not

have been in a position to identify his assailant nor the witnesses had any occasion to identify and that being so, identification of the appellant as the

sole assailant is not at all found appreciable, recognizable in the eye of law. It has also been submitted that objective finding of the I.O. did not

support the case of the prosecution. Furthermore, it has also been submitted that informant though claimed to have got treatment at different

places, but failed to support the same with legal evidence and that being so, falsity is found in his testimony making the same unreliable. That being

so, the cumulative effect did not justify the finding recorded by the learned lower Court.

7. On the other hand, learned Additional Public Prosecutor controverting the submission made on behalf of appellant has submitted that the

accused persons were not at all stranger and that being so, absence of light is not going to adversely affect upon the testimony of the witnesses.

Furthermore, there happens to be consistency amongst the evidence of the PWs, whereupon the judgment of conviction and sentence recorded by

the learned lower Court happens to be based upon proper appreciation of the evidence and is accordingly fit to be confirmed.

8. PW-10 had examined the victim on 31.10.2004 at 12.35 a.m. and found the following:-

1) One lacerated wound $\hat{A}1\frac{1}{2}$ " lateral to middle line near epigastria region with multiple charring wound blackening spot over upper abdomen

$\hat{A}\frac{3}{4}$ " diameter.

II) One lacerated wound over back left side near left lumbar region $\hat{A}\frac{1}{2}$ " diameter.

Age of injuries within six hours. Nature of injuries and weapon used-grievous caused by firearm (exhibited). Considering the condition of the

injured, he was referred to D.M.C.H. During cross-examination, it is evident that he has not been demolished with regard to nature of injury as

well as the weapon that means to say the firearm. A question mark has been put over authenticity of the carbon copy of the injury report under

Para-11 of his deposition, whereupon he had stated that date is not specified thereupon. However, during his examination-in-chief, he has

reiterated that he had prepared injury report in carbon process over which there happens to be no cross-examination and that being so, in terms of

Section 63 of the Evidence Act, the same happens to be admissible in the eye of law.

9. PW-9 is the informant/victim himself. He had stated that on the alleged date and time of occurrence while he was returning from toilet and

reached 2-3 steps west to his darwaza, he saw Ram Rai, Kuldeep Rai, Sanjay Rai, Ram Sobhit Rai, out of whom, Ram Rai began to abuse his

mother, whereupon he objected and said that tomorrow is the Panchayati. Whatever would be resolved in the Panchayati, he is ready to accept.

During midst thereof, Kuldip Rai caught hold his left hand while Sanjay and Ram Sobhit Rai caught his right hand and Ram Rai, after disclosing that

he is going to decide the matter finally today, fired. He sustained injury below the chest and above, umbilicus (navel) and the cartridges passed

through. He had shown the scar mark before the Court. After firing, all the accused persons fled towards eastern direction. Then had stated that he

raised alarm and then, lied down over Chauki kept at darwaza. His elder brother Om Prakash Rai was present there since before, who assisted

him. 3-4 women came, who tied his injury with towel. Till then, large number of persons assembled, who lifted him on cot to P.H.C.

Kusheshwarthan where he was given first aid. Police was informed whereupon, police came and recorded his fard-bayan in presence of

witnesses Om Prakash Rai, Awadhesh Rai and Chandeshwar Rai (exhibited). Then thereafter, considering his condition, he was referred to

D.M.C.H. where he was operated upon. After stay of eight days, he was referred to P.M.C.H. Then thereafter, he was referred to AIIMS, Delhi

and then to Safdarganj Hospital, Delhi. He was also treated at Govind Ballav Pant Hospital. He was operated upon at so many times. He had

further stated that land dispute is prevailing with the accused persons and on account thereof, he was shot at. He had further stated that the

accused persons also threatened that if he is going to depose against them, then in that circumstance, he will be murdered. During cross-

examination at Para-7, he had denied the suggestion that it was dark night. He had further stated that generator of Ganga Prasad was in operation

as a result of which, there was lightening. In Para-8, he had stated that land dispute with accused persons is coming since before. Khesra number

of aforesaid land happens to be 1873. Earlier a proceeding under Section 144 of the Cr.P.C. was initiated. The aforesaid land lies 20-25 lagga

away from his house. The aforesaid land is under possession of the accused persons on the basis of Kewala. In Para-3, he had stated that he

reached at his village a day prior to the occurrence. He had talked with Panches. Panchayati was to be held on following day. At Para-10, he had

disclosed the house of appellant Ram Rai lying at a distance of 50 yards west from his house. House of none other lies in between. Then had stated

that his residential house is adjacent to his darwaza. His house and darwaza lies in the middle of the village. In Para-11, he had shown boundary of

his darwaza, North-house of Vasudev Rai, South-Madan Patel, East-Pond as well as barren land, West-house of Kailash Rai. He had shown the

boundary of the P.O., North-house of Ram Sobhit Rai and Shankar Rai, South-cow shed of Fulo Rai, East-pond, West-his own darwaza. He had

further stated that even after sustaining firearm injury, he was conscious. He did not become senseless. After sustaining firearm injury, he rushed

towards his darwaza by pressing his stomach. His darwaza lies four lagga away from the place where he sustained injury. Blood had fallen down

on the ground at a place where he sustained injury. Blood had fallen down drop by drop. There was blood at his darwaza also, but he is unable to

say the exact area. There was no bed over the Chauki. Blood had fallen over Chauki also. At that very time, he was wearing vest and Lungi. The

vest was soaked with blood. The aforesaid vest was shown to the police. One health centre is available in his village at a distance 10-15 steps

from his house, but doctor is not at all available, therefore, he was not taken to the aforesaid centre. Kusheshwarsthan P.H.C. is eight kilometers

away from his house. He had reached at the P.H.C. at about 11.15 p.m. On that night itself, he was referred to D.M.C.H. He proceeded there

from at about 1.30a.m. to 2.00 a.m., he had not gone to police station rather police had come to the hospital. He had not met with anybody at the

hospital. He stayed at D.M.C.H. for eight days and then thereafter, at P.M.C.H. He stayed there for 1-1½ months, his statement was not taken

during course of presence at P.M.C.H. Then thereafter, he was referred to AIIMS, Delhi. He was under treatment at Delhi for at about one and

half year. Then thereafter, he returned back to his village. Then, there happens to be contradiction under Para-12. In Para-13, there happens to be

suggestion that it is not a fact that no such type of occurrence had taken place rather only to grab the land, this false case has been instituted.

10. PW-11 is the Investigating Officer. He had deposed that on 30.10.2004, he was Officer-in-charge of the Kusheshwarsthan Police Station. On

that day, he had recorded fard-bayan of informant while he was admitted at P.H.C. Kusheshwarsthan in an injured condition on 31.10.2004 at

about 1.15 a.m. (exhibited). Also exhibited formal F.I.R. Issued injury report (exhibited), took up investigation on his own, recorded statement of

witnesses, further statement of the informant and then, proceeded to place of occurrence, inspected the same, received injury report from P.H.C.

Kusheshwarsthan, recorded statement of other witnesses and then thereafter, submitted chargesheet after completing investigation. Then had

exhibited the case diary. During cross-examination at Para-10, he had stated that after receiving O.D. Slip from the hospital, he had gone to

hospital where recorded fard-bayan. After inspecting body of the injured, issued injury report. At that very moment, he had found only one injury.

At that very time, informant was in semi-conscious state. He had further stated that in the fard-bayan, informant had not stated with regard to his

apprehension by Ram Shankar Rai, Sanjay Rai and Kuldeep Rai. In likewise manner, he had not spoken in the fard-bayan regarding assault as

well as presence of unknown persons, but had stated that at the darwaza of Ram Rai, 7-8 persons were present, who were gossiping. He had

stated that he has got land dispute with Ram Rai and on account thereof, the aforesaid occurrence has been committed. In Para-11, he had stated

that during course of investigation, he had not gone over disputed plot. He had further stated that although the time is not disclosed in the case

diary, but he had visited the place of occurrence at 6.00 a.m. He had recorded statement of Rajendra Rai, Sunita Devi, Shiv Shankar Rai, Ram

Sewak Rai, Gita Devi, Saraswati Devi. Then there happens to be contradiction regarding Sunita Devi, Rajendra Rai at Para-10 and 11. He had

further stated that he had not found blood at the P.O. Neither he had seen blood stain cloth nor seized the same. P.O. is the place east to darwaza

of Kailash Rai intervened by a road. He had not mentioned presence of darwaza of Ram Rai in its boundary. He had not mentioned the residential

house of the informant, its location and distance from the alleged P.O. In Para-12, he had stated that he received injury report on 28.01.2005.

11. PW-1 is Chandrashekhar Rai. He had stated that on the alleged date and time of occurrence, he was at his shop. Customers were present,

who have disclosed that there happens to be some sort of commotion at north side and people were saying somebody has been shot at. He came

out from his shop and then, perceived that Kailash Rai has been shot at. After sometime, people carried him to hospital including he himself, who

have disclosed that Ram Rai had shot at. On account thereof, he was declared hostile. During cross-examination, he had stated at Para-6 that it

was dead of night. Informant as well as accused are on strained relationship on account of land dispute. He had not seen occurrence. In Para-8, he

had further stated that both the parties are on litigating term due to land dispute. In Para-9, he had stated that his shop lies 100-150 yards away

from the place of occurrence intervened by houses of so many persons. He is not remembering, who had disclosed regarding Ram Rai to be an

assailant of informant Kailash Rai.

12. PW-2 is Awadhesh Rai, who had deposed that on the alleged date and time of occurrence, he had gone to meet nature's call and during

course thereof, heard sound of firing, whereupon he had gone to the darwaza of Kailash Rai and found him in an injured condition having firearm

injury at his stomach and was unconscious. He had not seen the assailant. He had not seen anybody fleeing there from. Later on, he heard Ram Rai

to be author of the injury. Then thereafter, they took Kailash Rai to hospital where police came and recorded fard-bayan of Kailash Rai. At that

very time, he was not present and so, he was declared hostile. During course of cross-examination, he had stated that it was a dark night. He had

not seen anybody indulged in firing nor he had stated before the police claiming to have witnessed the assailant during course of firing. In Para-9,

he had stated that till his presence, Kailash Rai was unconscious and was not in a position to make a statement.

13. PW-3 is Anita Devi, wife of informant, who had stated that her husband had come from Kolkata. On the alleged date and time of occurrence,

he had gone to meet nature's call. At that very time, she was at her darwaza. When her husband returned from lavatory and gone to hand-pipe in

order to wash hands and legs. At that very moment, Ram Rai, Kuldeep Rai, Sanjay Rai, Ram Sobhit Rai came near her husband and out of them,

Kuldeep Rai, Sanjay Rai and Ram Sobhit Rai caught hold her husband while Ram Rai shot at causing injury over his stomach. Then thereafter, all

the accused persons escaped there from towards northern direction. Her husband rushed by pressing his stomach and lied down over a Chauki

kept at darwaza. Large number of persons assembled there, who took her husband to Kusheshwarthan Hospital. On the following day, police

had come to the village and also took her statement. Her husband was referred to D.M.C.H. After stay of a week, he was referred to P.M.C.H.

where he remained for one and half month and then, to AIIMS, New Delhi, Safdarganj and then, G.B. Pant Hospital approximately covering two

years. During cross-examination at Para-4, she had stated that she has got land dispute with the accused. She is unable to disclose its Khata,

Khesra, boundary, but it lies in south direction. In Para-5, she had stated that Om Prakash Rai happens to be her Bhainsur while Chandrashekhar

Rai happens to her Jout, Rajendra Rai is her father-in-law. Ram Sewak Rai her Jout, Geeta Devi and Saraswati Devi are Jethani. In Para-6, she

had stated that it was not a dark night. Nine houses lies at a distance of three laggi west from the place of occurrence. Main door happens to be in

east front. At the time of occurrence, only three persons were available in her house. Pond lies east to her house. Her house and darwaza are

contiguous to each other. At Para-7, she had shown the boundary of the P.O., North-Ram Raj Rai, South-cattle shed of Fulo Patel, East-Pond

and his own land and West-her darwaza. There is no house in between her darwaza and lavatory. Hand-pipe is at a distance of two laggi west to

the lavatory. In between, there happens to be barren land. The hand-pipe is State owned, which is opened from all side. That hand-pipe lies three

laggi away from her house. In Para-8, she had stated that when she reached at her darwaza, Om Prakash Rai, Rajendra Rai and Saraswati Devi,

Geeta Devi were present since before. At that very time, none of the villagers were present. After firing, villagers arrived, but she is unable to say

exact number. At that very time, she was to serve food to her husband at her house. She had arrived at the darwaza before firing. She met with

Saraswati and Geeta and others at the darwaza. She is unable to say how much time, she stayed at the darwaza. She had gone to the place where

her husband was shot at from the darwaza. At that very time, her husband was conscious. He sustained injury below chest above to umbilicus. Her

husband was speaking. He said that he should be taken to hospital at once. She became unconscious seeing the condition of her husband. She

regained sense on the following day at about 5.00 a.m. She had gone to meet her husband on the following day at about 8.00 p.m. Till then, her

husband was already operated upon. There was bandage. His lungi and vest were soaked with blood. Then thereafter, she remained with her

husband till his got completely cured, but she is unable to disclose the exact date. In Paras-10 and 11, there happens to be contradiction, which is

found corroborated with PW-11, Para-10 to some extent.

14. PW-4 is the father of the informant, he had deposed that on the alleged date and time of occurrence, he was sitting at his darwaza over cot.

Elder son Om Prakash Rai was also sitting. Occurrence took place 8-9 hands there from. His son Kailash Rai while was proceeding ahead

towards hand-pipe after coming from lavatory, Ram Rai came and called his son by name as a result of which, Kailash Rai stood. During midst

thereof, Kuldeep Rai, Sanjay Rai, Ram Sobhit Rai came and caught hold his hand. Then thereafter, on an order of Kuldeep Rai, Ram Rai shot at

causing injury over his stomach having exit from backside. He, out of nervousness, fell down from the cot. His elder son Om Prakash Rai rushed

towards Kailash Rai. Om Prakash caught hold Kailash Rai and then, brought him to darwaza and got him lied down over Chauki. At that very

time, Anita Devi, Saraswati Devi were also present. Then thereafter, Kailash Rai was taken to P.H.C. Kusheshwarthan where his fard-bayan was

recorded. Police had arrived on the following day and during course thereof, had recorded his statement. He had further stated that Kailash Rai

had purchased three kattha of land which the accused persons forcibly possessed and on account thereof, there happens to be strained

relationship. He had further stated that his son was referred to D.M.C.H. then, to P.M.C.H. then, to Delhi where he had undergone treatment for

one and half years. During cross-examination at Para-7, he had admitted that land dispute is prevailing amongst both the parties. But he is unable

to disclose Khata, Khesra, boundary of the disputed land. In Para-11, he had stated that P.O. happens to be his darwaza. Its length and breadth

happens to be 4-5 lagga. It has got tiled roof. It is adjacent to the main residential house. Hand-pipe lies four lagga away from the eastern wall. He

had further stated in Para-13 that there happens to be one hospital in village also, but doctor is not available there. Only on Friday, there happens

to be presence of doctor. Kusheshwarsthan P.H.C. lies at a distance of 2-2½ kosh (five mile). He, on the alleged date of occurrence, had not

accompanied Kailash to Kusheshwarsthan hospital. He met after three days at D.M.C.H. His son was unconscious. How many days he remained

unconscious, he is unable to say as he returned back there from. He had sustained only one injury. He had further stated at Para-15 that in the

background of the land dispute in the month of February, 2007, there was an altercation in between Kailash as well as accused. He had further

stated that his son Kailash Rai had purchased three kattha land from Gangadhar Poddar, some area has also been purchased by Ram Rai. In

Para-18, there happens to be contradiction and same is found corroborated with PW-11 under Para-11.

15. PW-5 is Ram Sewak Rai, who had stated that on the alleged date and time of occurrence, he came to know that Kailash Rai had sustained

firearm injury, but he is unable to detail. He had further stated that when Kailash Rai returned from Patna then he had seen scar mark injury at his

inter-coastal region. In Para-3, he had state that he had made meager statement before the police, whereupon, he was declared hostile. During

cross-examination, he had stated that he had got no personal knowledge with regard to the assailant.

16. PW-6 is Om Prakash Rai, brother of the informant. He had deposed that on the alleged date and time of occurrence, he was at his darwaza.

At that very time, Kailash Rai was returning from lavatory, which happens to be near about pond. At that very time, four persons came from the

darwaza of Ram Rai at the place in front of his darwaza, out of whom, three persons caught hold Kailash Rai and then, Ram Rai shot at taking out

of countrymade pistol as a result of which, Kailash Rai sustained injury over his stomach. All the miscreants fled away towards northern direction.

Kailash Rai pressed his stomach and then, ran towards darwaza. So many villagers assembled hearing sound of firing. Then thereafter, Kailash Rai

was taken to a local Dr. Shiv Shankar Rai and then, to Kusheshwarsthan where police was informed, who came and recorded fard-bayan of his

brother. Doctor had referred Kailash Rai to D.M.C.H. Police had also enquired from them. Kailash subsequently been referred to P.M.C.H. from

D.M.C.H. and then thereafter, to Delhi. He had been continuously gone under treatment for one and half year. Then thereafter, he returned back

to his village. During cross-examination, he had admitted that Kailash Rai is full brother while Awadhesh Rai is cousin brother, Rajendra Rai is the

father, Ram Sewak Rai and Chandra Shekhar Rai are co-villagers. They were on strained relationship one year since before the occurrence

relating to the land. He is unable to say whether Section 144 of the Cr.P.C. proceeding was initiated or not. He is unable to disclose Khata,

Khesra number of the disputed land. He has got no share in the land under dispute which lies South to his house. It was not a dark night rather

moonlit night. He along with Kailash Rai has joint darwaza which lies midst of village, which happens to be 5-6 lagga east to his house. Darwaza

lies west to the pond, which is not usable. It belongs to government. The boundary of the P.O. happens to be North-house of Shankar Das,

South-house of Fulo Patel, East-pond, West-his darwaza. In Para-8, he had stated that at the time of occurrence, he along with his father, Bhabhi

Geeta, wife Saraswati, cousin Awadhesh Rai and Anita Devi were present. Occurrence took place two lagga away from his darwaza. Lavatory

lies two lagga away from the P.O. At the time of occurrence, only accused was at the P.O. None of the villagers was present. Within one or two

minutes of the occurrence, villagers assembled after hearing sound of firing. After sustaining injury, Kailash Rai rushed by pressing his stomach and

lied down over Chauki. Accused persons, all of a sudden, caught hold Kailash Rai and shot at. At that very time, Kuldeep Rai had caught hold

Kailash Rai from left side and while Sanjay Rai and Ram Sobhit Rai from right side, Kailash became stunt. He could not speak. Kailash Rai lied

down on Chauki and was in semi-conscious, but was not unconscious. He was speaking and was identifying. In Para-9, he had stated that

Kusheshwarthan Police Station lies 9-10 kilometers away from his village. First of all, they took Kailash to hospital where he was kept for one

and half hour and then thereafter, he was immediately taken to D.M.C.H. where he stayed for 6-7 days. At Para-11, there happens to be

contradiction that has got no relevancy in the background of the fact that PW-11, I.O. has not been confronted.

17. PW-7 is Shiv Shankar Rai @ Netha Babu, who had deposed that on the alleged date and time of occurrence while he was at his house, heard

sound of firing, whereupon had gone near drainage. Then he heard that Kailash Rai has been shot at while he was returning back there from, he

had seen Ram Rai coming out from his darwaza, who was saying that he is not going to obey Panchayat. He had also spoken that he has shot at

Kailash Rai. Then thereafter, he rushed to the darwza of Kailash Rai and had seen him in an injured condition. He had sustained firearm injury

above umbilicus. Blood was oozing out. On account of land dispute amongst the parties, Panchayati was scheduled to be held on the following day

and for that, Kailash Rai had come to village. Police had recorded his statement. Later on, he came to know that Sanjay Rai, Ram Sobhit Rai and

Kuldeep Rai have also been made an accused. Later on, Kailash Rai had disclosed that Sanjay Rai, Kuldeep Rai, Ram Sobhit Rai were also

involved along with Ram Rai. During cross-examination at Para-9, he had stated that when he reached at the P.O. after hearing sound of firing,

there were 200-400 persons present wherein he had identified some of them namely Ram Nath Rai, Yogi Rai, Shankar Das, Jagannath Rai,

Rajendra Rai etc. In Para-10, he had stated that when he reached at the P.O., Kailash Rai was in sense and was speaking. He had seen him at his

darwaza. At that very time, he had talked with Kailash Rai, who had said that immediately he be moved to doctor. He had not talked with regard

to occurrence. When Kailash Rai returned back from Delhi, then he had talked with him and during course thereof, he had stated that Ram Rai had

shot at and at that very time, he had also seen Sanjay Rai, Kuldeep and one more. In Para-13, he had said that it was moonlit night. In Para-15, he

had stated that he had seen blood over the stomach of Kailash Rai, but had not seen the injury.

18. PW-8 is Saraswati Devi. She had stated that on the alleged date and time of occurrence, while her Dewar was in a way to hand-pipe after

returning from lavatory, at that very time, four persons namely Sanjay Rai, Ram Sobhit Rai, Kuldeep Rai and Ram Rai came, encircled Kailash Rai

and then, Ram Rai took out a weapon and shot at Kailash Rai, which caused injury above umbilicus as well as below chest of Kailash. Kailash Rai

rushed and lied down over Chauki kept at Darwaza. Blood had oozen out. Then thereafter, his injury was tied with a towel and then, he was taken

away to hospital. From Kusheshwar Asthan, he was referred to D.M.C.H. then to P.M.C.H. and then, to Delhi. He had undergone treatment for

about one and half years. Police had recorded her statement, identified the accused. In Para-5, she had stated that it was moonlit night. She had

further stated that on account of land dispute, accused persons have committed this occurrence, but she is unable to disclose Khata, Khesra and

area. She had shown boundary of the land as North-Ram Jiwan Rai, South-Panchayat Bhawan, East-Ram Singh, West-village. Disputed land is

separate from Panchayat Bhawan. She had further stated that at the time of occurrence, Anita Devi, Om Prakash Rai, Geeta Devi, Awadhesh Rai

were present at the darwaza. P.O. happens to be at the distance of 4-5-6 lagga away from the Darwaza. Till her stay at darwaza, she had seen so

many villagrs including Shambhu Rai, Shankar Das, Ram Raj, Fulo Patel and others. She met with Kailwash Rai at hospital about a month after the

occurrence. At that very time, he was unconscious. She had further shown boundary of the P.O. as North-Shankar Sao, South-Fulo Patel, East-

Pond, West-her herself (darwaza). At Para-7, there happens to be contradiction that has got no relevancy as PW-11, I.O. has not confronted.

19. DW-1 has been examined in order to exhibit the sale deed having in favour of Kuldeep Rai and others dated 30.08.2001 and in likewise

manner, rent receipts.

20. From the evidence available on the record, it is crystal clear that informant (PW-9) has sustained firearm injury which PW-10 (doctor) had

substantiated. Informant (PW-9) was not at all specifically cross-examined regarding oozing out of copious blood from the injury and in likewise

manner, PW-10 had also not been. Because of the fact that when a firing from close range is made, blood vessels found completely burnt, chalking

the same, whereupon oozing out of copious blood could not be. Apart from this, there happens to be consistent evidence that wound was tied

down by a towel and then thereafter, injured was shifted to hospital.

21. True it is that informant during course of examination-in-chief had himself stated that he may produce relevant documents relating to his

treatment at D.M.C.H. and onward, but the same has not been filed. However, that has got no relevancy in the background of the fact that his

injury has not been challenged nor treatment having taken at different places.

22. It is also evident that I.O. on the following day had visited the place of occurrence, but had not found blood stain either at the Chauki or

beneath the Chauki or at the place of occurrence and in likewise manner, trailing mark from the place of occurrence to the Chauki where informant

lied down. From evidences of the witnesses, it is apparent that they were not at cross-examined, more particularly, from the inmates of the house

that they ever removed the blood stain and further, on account of non-cross-examination of the PW-10 (doctor) that in the present form of injury

whether there was possibility of the oozing out of copious blood. Apart from this, from the evidence of PW-11, I.O., it is crystal clear that he had

made details of P.O. in cryptic manner and in similar way answered with regard to non-presence of blood at the P.O., though the witnesses have

categorically stated the same.

23. From the evidence of the witnesses, it is evident that some have been declared hostile, but even then they were not questioned over the place

of occurrence as well as condition of the informant Kailash Rai to be injured on account of being shot at. So far villagers are concerned, though

some sort of variance is there which happens to be natural one on account of some sort of over enthusiasm as well as manner of perception in

consonance with elapse of time, but in sum and substance, they happen to be consistent so far manner of occurrence, place of occurrence are

concerned.

24. From the suggestion having been given at the end of the defence to the respective witnesses including informant, it is apparent that he had not

denied that there was no land dispute and by way of examining DW-1, he had admitted the motive that on account of land dispute, they were on

strained relationship. Enmity is double edged sword, it may be a motive for false implication, it may be a motive for a commission of an occurrence.

There happens to be consistent evidence as discussed hereinabove that on account of Panchayati going to be held a day after, informant had come

from Kolkata a day prior to the occurrence and then thereafter, he was shot at, is found consistently substantiated and again on that very score,

defence had not denied that there was no Panchayati.

25. In *Mukesh and another v. State of NCT of Delhi and others* reported in 2017(3) P.L.J.R. 248 (SC), it has been held:-

79. The injuries found on the person of PW-1 and the fact that PW-1 was injured in the same occurrence lends assurance to his testimony

that he was present at the time of the occurrence along with the prosecutrix. The evidence of an injured witness is entitled to a greater weight

and the testimony of such a witness is considered to be beyond reproach and reliable. Firm, cogent and convincing ground is required to

discard the evidence of an injured witness. It is to be kept in mind that the evidentiary value of an injured witness carries great weight. In

Mano Dutt and another v. State of Uttar Pradesh [(2012) 4 SCC 79], it was held as under:

31. We may merely refer to *Abdul Sayeed v. State of M.P.* [(2010) 10 SCC 259] where this Court held as under:

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been

extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a

witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the

crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an

injured witness." [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881], *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311],

Machhi Singh v. State of Punjab [(1983) 3 SCC 470], *Appabhai v. State of Gujarat* [1988 (Supp.) SCC 241], *Bonkya v. State of*

Maharashtra [(1995) 6 SCC 447], *Bhag Singh v. State of Punjab* [(1997) 7 SCC 712], *Mohar v. State of U.P.* [(2002) 7 SCC 606],

Dinesh Kumar v. State of Rajasthan [(2008) 8 SCC 270], *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477], *Annareddy Sambasiva*

Reddy v. State of A.P. [(2009) 12 SCC 546] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673]

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719] where this Court reiterated

the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly.

He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa

Kallayanappa v. State of Karnataka [1994 Supp. (3) SCC 235] this Court has held that the deposition of the injured witness should be

relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the

reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand [(2004) 7 SCC 629] a similar view has been reiterated observing that the testimony of a stamped

witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to

his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing

can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459]. Thus, we are of

the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is

as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the

witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus,

the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major

contradictions and discrepancies therein.

To the similar effect is the judgment of this Court in Balraje (supra).

26. In Bhagwan Jagannath Markad and others v. State of Maharashtra reported in 2017 (2) P.L.J.R. 174 (SC), it has been held:-

17. Before considering this aspect with reference to the evidence on record, we may advert to the settled principles of law dealing with the

issues arising in the present case. The approach to be adopted by the court generally in appreciating the evidence in a criminal case as also

the approach of the appellate court is discussed in several decisions of this Court, some of which have been cited by learned counsel for the

parties.

18. It is accepted principle of criminal jurisprudence that the burden of proof is always on the prosecution and the accused is presumed to

be innocent unless proved guilty. The prosecution has to prove its case beyond reasonable doubt and the accused is entitled to the benefit of

the reasonable doubt. The reasonable doubt is one which occurs to a prudent and reasonable man. Section 3 of the Evidence Act refers to

two conditions - (i) when a person feels absolutely certain of a fact - "believe it to exist" and (ii) when he is not absolutely certain and thinks

it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence. The doubt which the law

contemplates is not of a confused mind but of prudent man who is assumed to possess the capacity to "separate the chaff from the grain".

The degree of proof need not reach certainty but must carry a high degree of probability[(1990)3 SCC 190]

19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to

keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies

not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant

details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the

evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent

statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the

previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement

but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not

every discrepancy which affects creditworthiness and trustworthiness of a witness. There may at times be exaggeration or embellishment not

affecting credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly

accepted (1999) 9 SCC 525. Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence.

A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit.

The evidence may be closely scrutinized to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of

a "partisan" or "interested" witness may lead to failure of justice. It is well known that principle "falsus in uno, falsus in omnibus" has no

general acceptability (2002)8 SCC 381. On the same evidence, some accused persons may be acquitted while others may be convicted,

depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness

may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of

observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal

discrepancy does not affect the credibility of a witness.

27. In Chandrasekar and another v. State of Tamil Nadu reported in 2017 (4) P.L.J.R. 220 (SC), it has been held:-

10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was

speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to Brahm

Swaroop v. State of U.P., (2011) 6 SCC 288 observing as follows:

28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be

very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his

actual assailant(s) in order to falsely implicate someone.

28. In Krishnegowda and others v. State of Karnataka reported in 2017 (3) P.L.J.R. 145 (SC), it has been held:-

27. It is settled law that mere latches on the part of Investigating Officer itself cannot be a ground for acquitting the accused. If that is the

basis, then every criminal case will depend upon the will and design of the Investigating Officer. The Courts have to independently deal with

the case and should arrive at a just conclusion beyond reasonable doubt basing on the evidence on record.

29. After exercising close and minute scrutiny of the evidences available on the record, it is found that the prosecution has succeeded in

substantiating its case beyond reasonable doubt and that being so, the finding recorded by the learned lower Court along with sentence is hereby

concurred. Consequent thereupon, appeal is dismissed. Appellant is on bail as a result of which, his bail bond is hereby cancelled with a direction

to surrender before the learned lower Court within fortnight, failing which the learned lower Court will proceed against him in accordance with law.