

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.399 of 1992

Arising Out of PS.Case No.-67 Year-1991 Thana -Siwan Mofassil District- SIWAN

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Dudh Nath Ram, Son of Nageshwar Ram, Resident of Nuruddinpur, P.S. Siwan
Mufassil, District Siwan.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : None

For the State : Shri Dilip Kumar Sinha, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 05-01-2015

The solitary appellant, Dudh Nath Ram, was tried by the learned 2nd Additional Sessions Judge, Siwan in Sessions Trial No. 3 of 1992 after being charged with committing offence under Section 302 of the Indian Penal Code. By judgment and order of sentence dated 07.09.1992, the appellant was held guilty of committing the offence he had been charged with and was directed to suffer rigorous imprisonment for life. The appellant appeals to this Court against the impugned judgment of conviction and order of sentence.

2. The prosecution case in short was that the wife of the informant named Dayamuni Devi had some altercation with the mother of the appellant. The appellant was complained by his mother that the deceased had branded her a *Dain* and, as such, the

appellant had picked up a piece of brick and had hurled it on to the head of the deceased who became injured. She was brought to the hospital and was again brought back to her house, where she died subsequently.

3. Ten witnesses were examined by the prosecution out of whom P.Ws. 1, 2, 3 and 5 were declared hostile on account of not supporting the prosecution case. In fact these witnesses gave a single line evidence that they did not know anything about the occurrence. P.W.4 Arjun Ram was a witness to inquest and he also stated that the document was not prepared in his presence and that was the reason that he was also declared hostile. P.W.6 Mokhtar Mian had not supported the prosecution story, but he was not declared hostile. P.W.7 Sakaldeo Singh was a witness of formal character who proved the writings of the First Information Report. P.W.8 Jhapas Ram the informant does not appear an eye witness and was, as per his evidence, informed by his nephew and further stated that when he came to his house, he found his wife injured and took her to hospital to bring her back to his house where she died subsequently.

P.W.9 Brichha Ram had given an eye witness account of the occurrence by stating that while he was at his *Darwaza* at about 5 p.m., he heard some altercation going on and further found this appellant Dudh Nath Ram coming running from south and on

being asked as to what was it, P.W.9 was told by the appellant to keep silent. The appellant thereafter, hurled the brick on to the head of the deceased as a result of which she became injured. P.W.9 stated that the deceased was taken to Siwan hospital for her treatment and was brought back to her house. During cross-examination P.W.9 stated that the blow, received by the deceased, had caused a severe bleeding injury on her head and further that she died subsequently of the injury. The evidence that the deceased had been inflicted an injury does not get support from the evidence of P.W.10 Dr. Jamshed Ahmed who in fact did not find any external injury. It appears doubtful that P.W.9 could be an eye witness because he had stated that his house was situated to the South and in the back of the house of the deceased and at the time of occurrence, he was very much at his house. The occurrence had taken place at the house of the deceased which was facing north and, as such, it may not be possible for the witness (P.W.9) to have seen the occurrence. Moreover, P.W.9 had admitted in evidence (paragraph-2) that his buffalo was ill and he was busy tending the animal when the occurrence had taken place. If it was that, as appears from paragraph-2 of P.W.9, then the answer to the court question that P.W.9 could have seen the place where the occurrence had taken place appears insignificant. What appears to us is that the witness (P.W.9) does not appear having made statement to the police that he

had seen the appellant running with a brick and hurling the same to give a blow. Attention to those facts with suggestion to the witness that he had not made those statements to the police appears brought on record in paragraph-11 of his deposition and we find that the defence was prejudiced on account of the non-examination of the Investigating Officer because those facts were not corroborated by cross-examining the Investigating Officer.

4. The evidence was of solitary witness and we doubt that he could be an eye witness to the occurrence. In the result, the appeal succeeds and it is allowed by setting aside the judgment of conviction and order of sentence dated 07.09.1992, passed by the learned 2nd Additional Sessions Judge, Siwan in Sessions Trial No. 3 of 1992. The appellant is acquitted of the charge, he had been found guilty of. He is on bail. He shall stand discharged from the liability of his bail bond.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

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