

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.472 of 1992

Arising out of PS.Case No. -1 Year-1979 Thana –Civil Lines District-GAYA

Sanjay Kuamr Singh @ Sanjay Kumar, son of Sri Rai Bahadur Singh, resident of
Village Bakhtiyarpur, Police Station Simri Bakhtiyarpur, District Saharsa

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Mr. Prabhat Ranjan, Amicus Curiae

For the State : Dr. Mayanand Jha, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-01-2015

An unfortunate incident occurred on 2.8.1979 in the Gaya Degree College (Rampur), PS Civil Lines, Distt. Gaya. English class was being taken for final year B.A. (Hons.) students in room no. 53. In the context of sitting, in the row immediately after the benches that were made for girls there was a scuffle between the male students and led to stabbing; right in the school room. The Professor, by name Dr. Alok Sarkar, submitted a report to the Principal (Ext.A) about the incident. Based upon that, the Principal submitted a complaint to the Station House Officer, Gaya (Ext.A-1). It ultimately turned out that Sanjay, the appellant herein then a student of B.A.(Hons.) final year was the victim of stabbing.

Shortly thereafter, an incident occurred nearby the gate of the college, wherein, when another student by name Nagendra



Kumar was stabbed to death. One Arbind (PW 5), another student, is said to have taken Nagendra Kumar to the Pilgrim Hospital, Gaya, in a rickshaw. After he reached the hospital, one student by name Ramjee Sharma PW 9 who too is said to have witnessed the incident but ran away out of fear, came to the hospital. His statement was recorded by the Sub Inspector of Police. Nagendra was declared dead in the hospital. The statement of PW 9 was to the effect that Sanjay the appellant herein stabbed the deceased when he was about to get into the rickshaw to go to his house. Further investigation was taken up by PW 11. Thereafter a charge-sheet was filed alleging that the appellant herein committed the murder of the deceased. The court of 6th Additional Sessions Judge, Gaya, tried the case in Sessions Trial No.10 of 1991/321 of 1982. Altogether 11 witnesses were examined on behalf of the prosecution and some documents were filed. On behalf of the defence, PW 1 to PW 5 were examined.

Through its judgment dated 5.12.1992, the trial court convicted the appellant herein for the offence punishable under Section 302 of the Indian Penal Code and imposed the sentence of imprisonment for life. Hence this appeal.

Since there was no representation on behalf of the appellant, we requested Sri Prabhat Ranjan, Advocate, to assist the Court. He acceded to our request and argued the case. He submits that there are number of contradictions in the case of the prosecution and there was no basis for the trial court, to convict and sentence the appellant herein. He submits that PW 5, who is an important prosecution witness, was not truthful. He contends that though PW 5 was a student of the institution and was in the college when the stabbing incident took place, he feigned ignorance of the same, but in the cross-examination admitted that it was he to inform the incident to



PW 2 and PW 3. Learned counsel further submits that even according to the PW 11 the Investigating Officer and DW 3 the doctor of the Gaya Pilgrim Hospital; the appellant herein is the person who received stab injury in the class room and he was admitted in the hospital at 2.45 PM on that day. He contends that neither PW 5 nor PW 9 has spoken about the factum of the appellant receiving injury in the class room and it is just unbelievable that a person with serious injuries would commit the murder of his classmate immediately after the injuries. Another contention of the learned counsel is that the record clearly discloses that the deceased was himself an accused of serious crime, including one of possessing unlicensed arms and it is not at all safe to rely upon the vague and weak evidence to convict the appellant.

Dr. Mayanand Jha, learned APP, on the other hand, submits that though there are certain minor variations in the depositions of PW 5, PW 9 and PW 11, they were consistent as regards the basic facts. He submits that the trial court has analyzed the evidence of the witnesses in a perfect manner and arrived at the conclusion that it was the appellant who caused the murder of the deceased. He further submits that, even if it is to be assumed that the appellant received injuries in the class room, the gap between the incident in which the deceased died and the time at which the incident occurred in the class room, is sufficient for one, to reach that place.

It is rather unfortunate that such a ghastly incident has taken place in an educational institution leading to the death of a student. That Mr. Nagendra Kumar died in the incident, is beyond any pale of doubt. The only question as to who had caused his death.

Three persons were projected as eye-witnesses, namely, PW 5, PW 7 and PW 9. All of them have stated that when the

deceased and PW 9 were about to get into a rickshaw, to go to their houses, the appellant came to that place; and after accosting the deceased as to where he is going, caused serious stab injury. However, what happened thereafter, is spoken to, differently by different persons. While PW 9 is said to have fled away out of fear, PW 5 is said to have taken Nagender Kumar, with stab injuries, to the hospital in a rickshaw. PW 7 came a bit later to the hospital.

Though PW 5 was first to arrive the hospital accompanying the injured, his statement is not found in the record. In his deposition, PW 5 stated that soon after he reached the hospital, his statement was recorded, and that was the earliest, in point of time. However, that did not form part of the record. It is only the statement, said to have been recorded from PW 9; who came later; that is made part of the record. In fact, that constituted the basis for investigation. The failure of the prosecution to explain as to what happened to the statement recorded from PW 5 is not only a flaw but a matter of serious consequence.

In case the evidence of PW 5 is otherwise reliable, the lapse pointed out above can be ignored to a certain extent. However, we find that the evidence of PW 5 cannot be taken as truthful. In the cross-examination, he was asked as to whether he was aware of the incident of stabbing that has taken place in the class room. He feigned total ignorance of it. In further cross-examination, it was elicited from him that it was he, who informed about the incident to PW 2 and PW 3. That there occurred a stabbing incident in the class room, is evident from the deposition of PW 11, the Investigating Officer. He stated that the Principal of the institution submitted a complaint (Ext.A) to him, on the basis of a report (Ext. A-1) submitted by the teacher who was taking the class, i.e. Alok Sarkar, PW 2. A perusal of Ext.A and Ext.

A-1 and deposition of PW 2 and PW 1 discloses that stabbing incident had taken place in the class room and the appellant herein suffered stab injury. The appellant was taken to the hospital. DW 3 the doctor of the hospital stated that he admitted the appellant at 2.45 PM on 2.8.1979 with stab injury. It was also stated that minor surgery had to be performed on the appellant. The description of other injuries were also furnished.

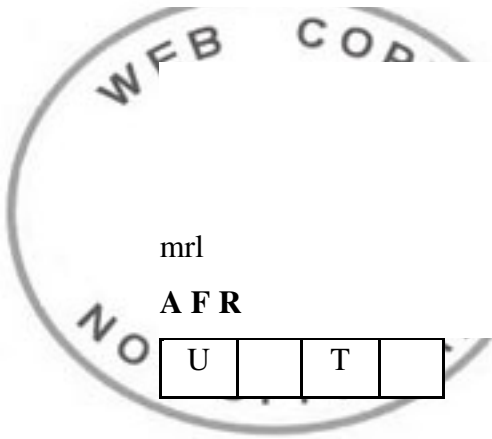
Neither PW 5 nor PW 9 have spoken about sustaining of injury by the appellant herein. In a given case, a person who has already suffered injuries may commit another crime, as retaliation. However, the person who is said to have witnessed the incident can be believed, if only he speaks about the factum of the assailant himself being injured and he in turn caused injury to other victim. This is not the case here.

One serious contradiction is noticed in this case. It makes the very presence of PW 5 at the scene of occurrence, doubtful. In his evidence, PW 11 stated that when he was recording statement of PW 9, the latter stated that on hearing cries when the incident took place PW 5 came running from class room. This is totally at variance to the evidence of PW 5. The theory of PW 5 being eye-witness fails. The fardbeyan, or statement recorded from him becomes untrustworthy. It is not at all safe to rely upon such evidence to rest the conviction and sentence, against the appellant.

We, therefore, allow the appeal and set aside the conviction and sentence ordered against the appellant. The bail bonds on the basis of which the appellant was released on bail shall stand cancelled.

We place on record the service rendered by Sri Prabhat Ranjan at our request. The High Court Legal Services Authority shall

pay him the prescribed fee by treating him as a Panel Advocate.



(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)