

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.36 of 1993

Arising out of P S. Case No. -517 Year-1991 Thana Saharsa (Bangaon) District- Saharsa

State of Bihar

.... Appellant

Versus

Kanhaiya Mishra, son of, resident of Village- Bangaun, P.S. Saharsa,
District- Saharsa.

.... Respondent

Appearance :

For the Appellant : Mr. Ashwini Kumar Sinha, A.P.P.

For the Respondent : Mr. Abhay Shankar Jha, Advocate.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 05-05-2015

Present Government Appeal is directed against judgment dated 08.04.1993 passed by 1st Additional Sessions Judge, Saharsa in Sessions Case No. 46 of 1992, whereunder sole respondent has been acquitted of the charge under Section 302 of the Penal Code.

2. Prosecution case, as set out in the written report of the informant addressed to Officer-in-Charge, Saharsa Police Station (P.W. 7) is that on 03.12.1991 around 5:00 P.M. respondent accused came to his house, forcibly took his she-goat. Around 6:00 P.M. deceased Shailesh Chandra Khan went to



the house of the respondent asking him to return the she-goat which led to altercation between the two as according to the respondent she-goat had spoilt his vegetable crop, he asked the deceased to pay Rs. 51/- by way of damages, whereafter the she-goat shall be returned. Informant further stated in the written report that altercation between the two became ugly, meanwhile Shashank Shekher Thakur, Amarnath Khan, Ram Khan also came to the house of respondent, saw him assaulting his son with a dagger. Informant also came to the place of occurrence whereafter witnesses told him that his son has been assaulted by the respondent who having assaulted him fled away. Son of the informant was initially taken to Bariyahi Hospital where doctor referred him to Saharsa but in the way son of the informant succumbed to the injuries.

3. In the light of the written report Officer-in-Charge, Saharsa Police Station registered Sasarsa (Bangaon) P.S. 517 dated 03.12.1991 under Section 302 of the Penal Code on 03.12.1991 at 8:00 P.M., directed S.I. Md. Zafar, Officer-in-Charge, Bangaon O.P. to investigate the case and forwarded the First

Information Report to A.C.J.M., Saharsa in the same night through special messenger which was received in the court of A.C.J.M., Saharsa on 06.12.1991. In the light of the contents of the written report inquest on the dead body of Shailesh Chandra Khan was performed on 04.12.1991 at 5:30 A.M. in the premises of Saharsa Police Station in presence of the informant Dinesh Chandra Khan, Amar Nath Khan. After inquest, dead body was sent for post mortem on the same day, was received in the post mortem house at 11:30 A.M., the post mortem commenced at 11:40 A.M. The post mortem report indicates that deceased has suffered multiple dagger injuries. In the light of the contents of the written report, Investigating Officer recorded police statement of the author of the written report and the other eye-witnesses named therein, having found the case true submitted charge-sheet against the sole respondent. In the light of the charge-sheet cognizance was taken, after supply of police paper case was committed to the court of Sessions. Sessions Court framed charges under order dated 19.06.1992 to which respondent pleaded not guilty, claimed to be





tried. In support of the charge prosecution examined as many as 10 witnesses out of whom P.Ws. 1, 2 and 7 have stated about the occurrence. P.Ws. 3,4,5,6 and 10 have been declared hostile. Out of the three witnesses who have deposed about the occurrence P.W.1 has claimed to have seen the respondent making good his escape from the place of occurrence P.W. 2 is the only eye-witness. P.W. 7 is the informant who came to the place of occurrence hearing the alarm, was informed about the occurrence by P.Ws. 1, 2. Learned trial court appraised the evidence of the prosecution witnesses, namely, P.Ws. 1, 2 and 7, concluded that it is only P.W. 2 who has claimed to have seen the occurrence. Trial court, however, disbelieved P.W. 2 on the ground of his being interested witness. According to trial court informant, the father of the deceased at the relevant time was Headmaster in a private school in which P.Ws. 1, 2 were Assistant Teachers, taking note of the said fact the trial court did not feel confident to rely on their deposition as according to trial court their testimony was the testimony of an interested witness.

4. The view taken by the trial court may not inspire confidence in us but considering the passage of time as more than 22 years have passed since sole respondent was acquitted of the charge, we deem it expedient not to interfere in the matter and dismiss the appeal. Sole respondent be discharged of the liability of the bail bond which he executed in the light of Order No. 4 dated 16.09.1993 passed in the instant Government Appeal.

(V.N. Sinha, J)

(Nilu Agrawal, J)

P.K.P.

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