

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.885 of 2015**

**(Against the judgment of Conviction, dated 12.8.2015 and order of Sentence, dated 18.8.2015 passed by Shri Janardan Tripathi, IIIrd Additional District & Sessions Judge, Bhagalpur in Sessions Trial No. 222 of 1992, arising out of Sanhaila (Sanokhar) P.S. Case No. 87 of 1991)**

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Madan Kumar Singh, son of Late Nitya Nand Singh, resident of Village- Dhanokhar, Police Station- Sanokhar, District- Bhagalpur.

**.. .... Appellant**

***Versus***

1. The State of Bihar
2. Ramakant Singh
3. Raghvendra Singh @ Tuntun Singh
4. Gopal Singh
5. Ratan Kumar Singh, All SI No.2 to 5 are sons of Late Sadanand Singh, Resident of Village- Dhanokhar, Police Station- Sanokhar, District- Bhagalpur.

**.... .... Respondents**

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**Appearance :**

For the Appellant :Mr. Indeshwari Prasad Mandal, Advocate

For the Respondent No.1 :Mr. D. K. Sinha, A.P.P.

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

**Date: 03-02-2016**

Under the judgment, dated 12.8.2015, passed, in Sessions Trial No. 222 of 1992, by the 3<sup>rd</sup> Additional Sessions Judge, Bhagalpur, while the respondent Nos. 2 to 5 have been acquitted of the Charge, under Section 302 of the Indian Penal Code, they have been convicted of the charges, under Sections 304 (Part II) read with



Section 149 of the Indian Penal Code, and further under Sections 147 and 323 read with Section 149 of the Indian Penal Code. Under the order, dated 18.8.2015, in consequence of their conviction, under Sections 304(ii) read with Section 149 of the Indian Penal Code, the respondent Nos. 2 to 5, were sentenced to suffer rigorous imprisonment of six months along with a fine of Rs.500/- each and, in default thereof, to suffer further imprisonment for ten days. For their conviction for the offences, under Sections 147 and 323 read with Section 149 of the Indian Penal Code, the respondent Nos. 2 to 5 have been sentenced to suffer rigorous imprisonment for one month. Both the sentences were directed to run concurrently.

2. The prosecution's case, as made out in the *written report* of the informant Nityanand Singh, recorded by the Officer-in-Charge, Sanokhar P.S., District Bhagalpur on 2.10.1991 is, in short, as follows:

3. In the morning of 2.10.1991, at about 5 A.M., the informant, along with his two brothers, namely, Dayanand Singh and Permanand Singh, had gone south of the village for answering call of nature. While they were on their way back, all sons of Sadanand Singh, namely, Ramakant Singh, Raghvendra Singh @ Tuntun Siugh, Gopal Singh, Ratan Singh, along with their father, Sadanand



Singh, variously armed with *lathi*, spade, *garasa*, gun and pistol, surrounded and started assaulting them. On the order of Sadanand Singh, his son, Gopal Singh, opened fire from his gun, at the informant with an intention to kill him. In course of assault, the informant and his brother, Dayanand Singh, received grievous injuries. On the basis of written report of the informant, Nityanand Singh, Sanhaila P.S. Case No.87 of 1991, under Sections 147, 148, 149, 307, 324 and 323 of the Indian Penal Code and Section 27 of the Arms Act, 1959, was registered. After more than a month, the informant, Nityanand Singh, succumbed to the injuries on 5.11.1991 and, consequently, Section 302 of the Indian Penal Code was added to the *First Information Report*.

4. The Police, upon investigation, submitted *charge sheet*, where after cognizance of offence was taken and the case was committed to the Court of Sessions for trial. Charges were framed under Sections 147, 148 and 302 read with Section 149 of the Indian Penal Code and Sections 323, 324 and 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, to which the accused pleaded not guilty and claimed to be tried.

5. During the trial, co-accused, Sadanand Singh, died and his name was deleted from the array of the accused. The



prosecution examined altogether seven witnesses in support of its case. P.W. 1, Santosh Kumar Singh, is not an eye witness to the occurrence. P.W. 4, Vivek Kumar Singh, turned hostile. P.W. 2, Pratap Singh, P.W. 3, Sajjan Kumar Singh, P.W. 6, Madan Singh, P.W. 7, Ashok Kumar Singh, have supported the prosecution's case claiming to be eye witnesses of the occurrence. P.W. 5 is Dr. H.I. Ansari, who conducted *post mortem* on the dead body of the informant. Accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, all the accused denied that they had committed the offence, which was alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

**6.** Having, however, arrived at the finding that the charge under Section 302 of the Indian Penal Code was not proved against the respondent Nos. 2 to 5, the learned trial Court acquitted them of the charge under Section 302 of the Indian Penal Code, but having reached the finding that respondent Nos. 2 to 5 have been proved guilty of the charges under Section 304 (Part II) read with Section 149 of the Indian Penal Code and, further, under Sections 147 and 323 read with Section 149 of the Indian Penal Code, the

learned trial Court convicted them accordingly. Following their conviction, sentenced have been passed against the convicted persons as mentioned above.

7. Aggrieved by the judgment and order aforementioned, this appeal, as indicated above, has been preferred by the son of the informant (since deceased).

8. We have heard Mr. Indeshwari Prasad Mandal, learned Senior Counsel, appearing on behalf of the appellant, and Mr. D. K. Sinha, learned Additional Public Prosecutor, appearing on behalf of the State.

9. The learned Counsel for the appellant submits that the learned trial Court failed to appreciate that P.W.1, P.W. 3 and P.W. 5 have supported the prosecution's case as eye witnesses of the occurrence. Further-more, P.W.2, though not an eye witness, has also corroborated the prosecution's case. Learned Counsel for the appellant also submits that three eye witnesses consistently stated that the accused persons, variously armed, intercepted Nitya Nand Singh and his two brothers and assaulted them. Accused Gopal Singh even fired from his gun at them. Further-more, learned Counsel for the appellant points out that the informant has sustained injuries on his head and left parietal region, which would also establish that the

accused persons had the intention to kill his father.

**10.** On the other hand, learned Additional Public Prosecutor, appearing for the State, has justified the impugned judgment and order.

**11.** On perusal of the materials on record, we are of the considered view that the learned trial Court has not erred, in law or in fact, in acquitting the accused persons under Section 302 of the Indian Penal Code. It is the prosecution's case that all the five accused persons were variously armed with *lathi*, spade, *garasa*, gun and pistol, whereas the informant and his two brothers, who were returning after answering the call of nature, were unarmed. We are in agreement with the view of the learned trial Court that had the accused intended to kill the informant, nothing prevented them from doing so. In fact, P.W. 2, in his evidence, has deposed that accused Gopal Singh opened fire only to threaten the prosecution's side. P.W. 4 has not even supported the prosecution's case.

**12.** We, thus, find that the learned trial Court, upon due consideration of the materials on record, has rightly come to the conclusion that the accused had no intention to kill the informant and, as such, acquitted them of charge under Section 302 of the Indian Penal Code and convicted them under Sections 304(ii) read

with Section 149 of the Indian Penal Code and under Sections 147 and 323 read with Section 149 of the Indian Penal Code.

**13.** Learned Counsel for the appellant next submits that the accused persons made assault with deadly weapons with full knowledge that the same would cause death. We are unable to agree with the submission of learned Counsel for the appellant. It would appear from *post mortem* report that the deceased sustained one bruise each, on two sides of the head, close to each other of the ½” x ½” dimension. Further-more, the other injuries, sustained by the deceased, were all bruises on chest, hand, arm and foot. It is, thus, evident that the intention of the accused was only to inflict some injuries on the person of the deceased and not to cause grievous hurt, much less death. Thus, the plea that the accused persons assaulted the informant with the knowledge that such injuries would cause death is devoid of merit and is accordingly rejected.

**14.** The appellant, alternatively, argued that the sentences awarded are too lenient and not commensurate with the offences committed by the accused. The submission of the appellant is, again, only to be noticed to be rejected. We have already noticed that the injuries, sustained by the deceased (informant), were all bruises and none of them were grievous in nature.

**15.** In the above view of the matter, the punishments, awarded by the learned trial Court, cannot be said to be unreasonable.

**16.** Situated thus, and in view of the forgoing reasons, we do not find any merit in this appeal against acquittal.

**17.** This appeal is, therefore, not admitted and shall accordingly stand dismissed.

**(I. A. Ansari, ACJ)**

**(Samarendra Pratap Singh, J)**

**Md.Jamaluddin Khan**

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