

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1222 of 2011

Arising out of P.S. Case No. -24 Year- 2008 Thana –Asthawan, District- NALANDA
(BIHARSHARIFF)

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Munna Sao, S/o Raghunandan Sao, R/o-Village- Jiyar, P.S.- Asthawan, District-
Nalanda.

The State of Bihar

Versus

.... Appellant

with

.... Respondent

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Criminal Appeal (DB) No. 1151 of 2011

Arising out of P.S. Case No. -24 Year- 2008 Thana –Asthawan, District- NALANDA
(BIHARSHARIFF)

- =====
1. Raghunandan Sao, S/o- Sita Sao, R/o-Village- Jiyar, P.S.- Asthawan, District-
Nalanda
 2. Jagdish Sao, S/o Sita Sao, R/o-Village- Jiyar, P.S.- Asthawan, District- Nalanda

The State of Bihar

Versus

.... Appellants

.... Respondents

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Appearance :

For the Appellants : Mr. Ramakant Sharma, Senior Advocate.
Mr. Prem Kumar, Advocate.
For the State : Mr. A.K. Sinha, A.P.P.
Mr. S.N. Prasad, A.P.P.
For the Informant : Mr. Sunil Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 22-04-2016

Heard learned counsel for the Appellants, State and the
Informant.



2. These appeals are directed against the judgment of conviction dated 25.11.2011 and order of sentence dated 29.11.2011 passed by 5th Additional Sessions Judge, Nalanda at Bihar Sharif in Sessions Trial No. 527 of 2008, arising out of Asthawan P.S. Case No. 24 of 2008, whereunder all the three Appellants have been convicted for the offence under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life with fine of Rs. 5,000/- each, in default of payment of fine, to undergo two months further Rigorous Imprisonment. Appellant Jagdish Sao has further been convicted for the offence under Section 324 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for two years. However, all the sentences have been directed to run concurrently.

3. The prosecution case is based on the dying declaration of Guddar Sao who, in his fardbeyan, recorded in the Operation Theatre Room of Referral Hospital, Asthawan, has stated that on 12.04.2008 when his daughter-in-law Manju Devi had gone to throw garbage on her own land, the present appellants objected on some ground and started to assault and abuse her. When he intervened, Appellant Munna Sao fired at him causing gun-shot injury on his neck, whereas Appellant Jagdish Sao assaulted Manju Devi with *Gandasa* on her hand. Thereafter, they were removed to the hospital where his statement was recorded by Sub

Inspector Subhash Prasad, S.H.O., Asthawan Police Station (P.W. 10).

4. During trial, the prosecution examined 10 witnesses. P.W. 1 Nandey Sao, P.W. 2 Ramashish Sao and P.W. 3 Umesh Sao have deposed as eye-witnesses and supported the case of the prosecution, inasmuch as, Nandey Sao has stated that when his wife had gone to throw garbage, the Appellants came variously armed and when his father asked the Appellants not to abuse his wife, they became enraged and Jagdish Sao assaulted his wife with *Gandasa* and Appellant Munna Sao fired at him. The two injured were thereafter removed to the hospital where the statement of his father was recorded. His attention was drawn to the earlier statement recorded under Section 161 Cr.P.C. that he had not stated about the manner of occurrence to the Investigating Officer. When attention of the Investigating Officer Rama Shankar Roy (P.W. 6) was drawn to the statement of this witness, he stated that he had not deposed as an eyewitness.

5. Similarly, P.W. 2 Ramashish Sao, has no doubt, deposed as eye-witness, but his attention was drawn to the earlier statement that he was not an eyewitness, which fact he denied but P.W. 6 Rama Shankar Roy, the Investigating Officer asserted that this witness had not earlier given an eyewitness account of the occurrence.

6. P.W. 3 Umesh Sao, the next eyewitness, who is the son of

the deceased, is also discredited for the same reason since the Investigating Officer stated that this witness had earlier stated that while the occurrence was taking place he was at home.

7. P.W. 4 Sunita Devi is the sister-in-law (Devrani) of Manju Devi and the daughter-in-law of the informant. She has stated that on the date of occurrence while she was in the passage of her house and Manju Devi (P.W. 5) had gone to throw the garbage, the Appellants came armed and started to browbeat her. An altercation ensued in which the deceased came and attempted to intervene but he was shot at by Appellant Munna Sao. Jagdish Sao is said to have assaulted P.W. 5 Manju Devi with *Gandasa* on her hand. There is nothing substantial in her cross-examination.

8. P.W. 5 Manju Devi, the most material witness named in the First Information Report as an injured, has stated that at about 6:00 P.M. when she had gone to throw the garbage, the Appellants forbade her to do so on some pretext. When she protested, they started to abuse her. Her father-in-law Guddar Sao, the deceased, intervened but Appellant Jagdish Sao assaulted her with a *Gandasa*, whereas Appellant Munna Sao fired at her father-in-law on account of which both of them became injured. They were taken to Asthawan Hospital for treatment and from there to Patna where her father-in-law died a few days later.

In cross-examination several questions were put to her about the arrival of witnesses but there is nothing which would discredit her evidence given in Examination-in-Chief.

9. P.W. 6 Rama Shankar Roy stated that on 12.04.2008 he was posted at Asthawan Police Station and assumed investigation after instituting the First Information Report which he proved as Exhibit-1. He stated that thereafter he examined the witnesses named above, inspected the place of occurrence and submitted charge-sheet. He proved the Inquest Report, which is Exhibit-3. In cross-examination, his attention was drawn to the statement of P.Ws. 1, 2 and 3, the purported eyewitnesses, which has already been discussed above.

10. P.W. 7 Sukar Thathera is a formal witness who proved the Inquest Report (Exhibit-4).

11. P.W. 8 Dr. Jai Prakash Sah stated that on 12.04.2008 he was posted at Asthawan Referral Hospital. At about 8:45 P.M. he had examined the injured Guddar Sao, deceased, and found the following injuries on his person:-

“1. One lacerated wound circular in shape and size of $\frac{1}{4}$ ”x $\frac{1}{4}$ ” communicating deep into soft tissue. Bleeding severely and condition very deteriorating. No blackening and charring surrounding the wound.

2. Lacerated wound $\frac{3}{4}$ ”x $\frac{1}{2}$ ” soft tissue deep over right scapular region on the upper part.”

The doctor has found Injury No. 1 to be grievous in nature and Injury No. 2 simple caused by hard and blunt substance and the age of the injuries was within six hours.

On the same day at about 8:55 P.M. P.W. 8 had also examined P.W. 5 Manju Devi and found the following injuries on her person:-

- “1. Lacerated wound 3”x ½” skin and soft tissue deep over right forearm.
2. Lacerated wound 1½”x ½”x skin soft tissue deep over right forearm.”

The doctor opined that both the injuries were simple in nature and caused by hard and blunt substance. He has proved the Injury Report of Manju Devi, which is marked as Exhibit-6.

As noted in the Examination-in-Chief, we find that he has not mentioned the exact location of Injury No. 1 of Guddar Sao, which he did not clarify when opportunity was given to him in the cross-examination. He also categorically stated that the injury sustained by P.W. 5 Manju Devi was caused by hard and blunt substance.

12. P.W. 9 Dr. Pankaj Kumar performed the *post mortem* of the deceased on 16.04.2008 and found the following injuries on his person:-

- “1. One stitched wound ¾” long on right shoulder area. 1½” below right shoulder tip and 6½” right from mid line. On opening the stitched wound it was found cavity deep forming a track piercing the vessels and nerves of neck region and 7th cervical vertebra was

found pierced and cervica throat joint was found dislocated with injury to spinal chord. The track was found to communicate with a punctured wound ¼"x ¼" on left shoulder area. 2" above left clavicle 4 ½" left from midline"

The doctor has opined that the time elapsed since death is 6 to 24 hours and the injuries were sufficient to cause death.

13. P.W. 10 Subhash Prasad was posted at Asthawan Police Station, who purportedly recorded the dying declaration of the deceased on 12.04.2008. In cross-examination he conceded that he had not taken the certificate of any doctor that the deceased was in a fit mental condition to give statement.

14. It has been argued on behalf of the Appellants that since the Doctor did not certify that the deceased was in a fit mental condition, the First Information Report loses its sanctity. The further submission is that the firing took place in the midst of an altercation and, therefore, at best the Appellants are liable for conviction under Section 304 I.P.C.

15. On a fair appraisal of the prosecution case, in the manner the occurrence took place, the Appellant Jagdish Sao, and Raghunandan Sao cannot be held liable for the independent act of Appellant Munna Sao and we hold them not guilty under Section 302 I.P.C.

16. We also find that the case of the three Appellants stands on three different footings in respect to the manner of occurrence. Where



the case of Appellant Jagdish Sao is concerned, we note that in the First Information Report the informant stated that Appellant Jagdish Sao had assaulted his daughter-in-law Manju Devi (P.W. 5) on her hand with a *Gandasa*. She herself has also stated this fact in her evidence. However, on scrutiny of the evidence of P.W. 8 Dr. Jai Prakash Sah, we find, as noted above, that he had found two simple injuries on her right forearm, both of them caused by hard and blunt substance. In such circumstances, we are inclined to reject the testimony of the witnesses on the anvil of independent evidence and are inclined to give him benefit of doubt where his conviction under Section 324 I.P.C. is concerned.

In the result, Jagdish Sao (Appellant in Cr. Appeal (D.B.) No. 1151 of 2011) is acquitted of all charges levelled against him and is discharged from the liability of his bail bond.

17. As regards Appellant Raghunandan Sao, we find that in the First Information Report, even though the deceased has stated generally that the three accused persons assaulted him and his daughter-in-law, but the daughter-in-law P.W. 5 Manju Devi has not corroborated this fact. The deceased has, no doubt, sustained one lacerated injury, simple in nature, on the scapular region but in the circumstances of the case, his participation cannot be accepted with absolute degree of certitude. In view of such, Raghunandan Sao (Appellant in Cr. Appeal (D.B.) No. 1151 of

2011) is also acquitted of the charges levelled against him and is discharged from the liability of his bail bond.

18. Now, to consider the case of the Appellant Munna Sao, we find that even though the occurrence may have taken place when Manju Devi was reprimanded by the accused and on the deceased's intervention he was shot dead but there is no element of sudden provocation which would lead us to the conclusion that the Appellant Munna Sao had not intended to cause his death or had acted without premeditation which could occur even on the spur of the moment.

19. We also note that the prosecution case was instituted soon after the occurrence at the hospital. The fact that the two injured were in the hospital is corroborated by the evidence of P.W. 8 Dr. Jai Prakash Sah who had examined them at more or less the same time. The doctors, as discussed above, have fully corroborated the statement of the deceased by finding corresponding injury on the neck, leaving no scope for any doubt on the veracity of the prosecution case.

20. The further argument of the Appellant that since the First Information Report had reached the Court two days later, we should discard the prosecution case, is not tenable, inasmuch as, we find ample evidence on record to show that the matter was reported as soon as the injured were removed to the hospital and if any lapse was committed by

the Investigating Officer, the prosecution should not suffer and be fastened with such liability.

21. In the result, the appeal preferred on behalf of the Appellant Munna Sao (Cr. Appeal (D.B.) No. 1222 of 2011) is dismissed and the sentence is upheld.

(Hemant Gupta, J)

(Anjana Prakash, J)

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