

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.251 of 1993

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

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Dinanath Singh, son of Badudeo Singh, resident of village & P.S. Masrakh, District
Saran at Chapra. Appellant.

Versus

The State of Bihar. Respondent.

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Appearance :

For the Appellant : Mr. Bindhyachal Singh, Adv.
Mr. Satya Prakash, Adv.

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 30-08-2017

This criminal appeal has been filed against the judgment & order of conviction dated 26.08.1993 and order of sentence dated 27.08.1993, passed by the learned 6th Additional Sessions Judge, Patna in Sessions Trial No.170 of 1981 (Chapra)/Sessions Trial No.544 of 1993 (Patna), arising out of Masrakh P.S. Case No.16 (11)80, whereby the learned trial Court acquitted the accused-Prabhunath Singh from all the charges levelled against them under Section 302, 302/114 and 307/34 of the Indian Penal Code and Dinanath Singh under Section 302 and 302/114, while convicted the accused-Dinanath Singh for the offence punishable under Section 307 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years.

2. The factual matrix of the case is that Masrakh P.S. Case No. 16 (11)80 was instituted under Section 307/326 of the



Indian Penal Code and Section 27 of the Arms Act against Prabhu Nath Singh and Dina Nath Singh on the basis of fardbeyan of one Ramdeo Singh, M.L.A., son of Ram Khelawan Singh, resident of village Gangauli, P.S. Masrakh, District Saran at Chapra, recorded by Sub Inspector Lakhan Mehra at 5:45 PM at the residence of Dr. Mahadeo Prasad Singh of State Dispensary, Masrakh with the allegation in succinct that in the course of returning from his wood shop along with Parma Singh & his servant when he reached ahead of the shop of Sampat Prabhunath Singh and Dinanath Singh resorted firing which hit on his back and sustaining injury he fell down. He was rushed to hospital for according treatment. The bone of contention is said to be grudge between the parties.

3. The aforesaid case was investigated by the police and on conclusion of investigation the I.O. submitted chargesheet under Section 307/326 of the Indian Penal Code and Section 27 of the Arms Act against accused Prabhu Nath Singh and Dina Nath Singh showing accused Sheobaresi Noniya, Arjun Singh & Tuntun Singh as not sent up.

4. On perusing the case diary and chargesheet, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions. After commitment, the case was transferred to the Court of 2nd Additional Sessions Judge, Chapra for



trial and, subsequently, it was transferred to the Sessions Division, Patna vide order dated 05.08.1993 passed by this Court in Cr. Misc.7420 of 1993 and finally came in seisin of learned 6th Additional Session Judge, Patna for trial.

5. Charge against both the accused persons was framed under Section 307/34 of the Indian Penal Code. Accused Prabhunath Singh was further charged under Section 302/114 of the Indian Penal Code, whereas accused Dinanath Singh was further charged under Section 302 of the Indian Penal Code. Charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. To substantiate its case, the prosecution has examined altogether 14 prosecution witnesses. It has also filed several documents in support of its case.

7. Statements of the accused persons were recorded under Section 313 of Cr.P.C. The case of the defence is complete denial of the occurrence and claiming themselves to be quite innocent. In buttress of its case in ocular evidence, the defence has also examined five witnesses. In documentary evidence, the defence has filed several documents.

8. After hearing the parties and perusing the record, the learned trial Court passed the impugned judgment and order of



conviction and sentence, as detailed in earlier paragraph.

9. At the outset of the argument, it has been submitted by the learned counsel for the appellant that the accused Dinanath Singh was juvenile at the time of occurrence and he has also been declared juvenile by the Juvenile Justice Board, Chapra in compliance of order of this Court dated 23.12.2016 passed in this appeal. As the trial of the juvenile was conducted by the aforesaid Sessions Court and he was convicted, hence the entire trial stand vitiated and, being juvenile, he must be tried by the Juvenile Justice Board and not by the Sessions Court. As, the entire trial stands vitiated hence impugned judgment and order of conviction and sentence is liable to be set aside and the case be remitted to the Juvenile Justice Board, Chapra for its fresh trial.

10. Learned A.P.P. has also endorsed the aforesaid submission of learned counsel for the appellant.

11. From perusal of the record, it appears that vide order dated 23.12.2016, this Court had directed the Juvenile Justice Board, Chapra to ascertain the age of the appellant in terms of relevant Rule of the Juvenile Justice (Care and Protection of Children) Act, 2015 on the basis of the submission of learned counsel for the appellant and perusing the matriculation certificate of the appellant filed by him. In compliance of the order of this Court, the Juvenile



Justice Board, Chapra made enquiry and vide order dated 24.01.2017 declared the accused Dinanath Singh juvenile. The said order of Juvenile Justice Board has not been assailed by the prosecution. Hence, it has become final.

12. As the appellant, Dinanath Singh was juvenile at the time of occurrence, he is liable to be tried by the Juvenile Justice Board and not by the Sessions Court hence trial of said juvenile by learned lower Court having inherent lack of jurisdiction stands vitiated.

13. In view of the aforesaid facts and circumstances of the case, the impugned judgment & order of conviction dated 26.08.1993 and order of sentence dated 27.08.1993, passed by the learned 6th Additional Sessions Judge, Patna in Sessions Trial No.170 of 1981 (Chapra)/Sessions Trial No.544 of 1993 (Patna), arising out of Masrakh P.S. Case No.16 (11)80, is set aside in respect of appellant-Dinanath Singh only and his case is remitted to the Juvenile Justice Board, Chapra for trial in accordance with law.

14. Accordingly, this appeal stands disposed of.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
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