

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.308 of 1994**

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1. Indradeo Paswan.
2. Balram Paswan, sons of Bhuneshwar Paswan, resident of village Chuan, police station- Khaira, District- Jamui.

... .. Appellants

Versus

STATE OF BIHAR

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Amish Kumar (Amicus Curiae)  
For the Respondent/s : Mr. Ashwani Kumar Sinha, APP

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**  
**and**  
**HONOURABLE MR. JUSTICE S. KUMAR**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE S. KUMAR)**

**Date : 11-11-2017**

Heard the parties.

2. This Criminal Appeal is directed against the judgment of conviction dated 29.04.1994 and order of sentence dated 03.05.1994 passed in Session Case No. 405 of 1991(G.R. No. 1200 of 1989 Khaira P.S. case No. 89 of 1989) passed by 2<sup>nd</sup> Additional Sessions Judge, Jamui by which appellants have been convicted under Section 302/34 of I.P.C. and sentenced to undergo rigorous imprisonment for life.

3. Prosecution case is that on 09.10.1989 there was quarrel between Indradeo Paswan and Gore Lal Paswan after both consumed wine in the morning at about 9.00 AM. It is further alleged that Sukhdeo Paswan and his uncle Mauzi



Dushadh went there to pacify them as they were quarrelling about 20 yds. from their house. His uncle Mauzi Dushadh made effort to pacify both of them Indradeo Paswan and Gore Lal Paswan not to quarrel and meanwhile Balram Paswan assaulted him with Gupti in his stomach which passed through and through as a result of which his uncle fell down and became unconscious. He was brought to Jamui Hospital who referred him to PMCH where he received treatment but on 10.10.1989 at about 5.00 PM he died. Fardbeyan was recorded of the informant in the PMCH and thereafter formal FIR was registered and after investigation police submitted charge sheet against the appellants, upon which cognizance was taken and case was committed to the court of Session. Fardbeyan of informant was also recorded in Jamui Hospital. Charges were framed under Section 302 and 302/34 of IPC and appellants denied the charges and pleaded not guilty and claimed to be tried.

4. Prosecution has examined six witnesses, no witness has been examined on behalf of defence.

5. PW-1 is Suraj Narayan Paswan, PW-2 is Saudagar Paswan, PW-3 is Koyli Devi, PW-4 is Toni Paswan, PW-5 is Sukhdeo Paswan and PW-6 is Dharmendra Kumar Sah formal



witness. PW-1, PW-2, PW-3 and PW-4 have been declared hostile.

6. PW-5 Sukhdeo Paswan (informant) has stated in his deposition that on 09.10.1989 at about 9.00 AM Indradeo Paswan and Gore Lal Paswan were quarrelling after consuming wine near the temple. Sukhdeo Paswan and his uncle Mauzi Paswan were standing nearby and went to pacify both Indradeo Paswan and Gore Lal Paswan and in the meantime Balram Paswan came there armed with Gupti and assaulted him with the Gupti in his stomach, as a result of which he fell down and become unconscious and was brought to doctor at Jamui sub-division hospital and was referred to PMCH and was thereafter taken to PMCH on 10.10.1989 and during treatment he died at 5.00 PM. Police came there and recorded his statement. His fardbeyan was recorded at Rajendra Surgical Block, Emergency Ward, Patna on 11.10.1989 at 7.30 AM. He has further stated that at place of occurrence Indradeo Paswan caught hold his uncle Mauzi Paswan and thereafter Balram Paswan inflicted Gupti blow in his stomach. On 09.10.1989 at about 11.45 AM Mauzi Paswan was brought to Jamui sub-division hospital and the doctor examined him and two incised wound in his stomach, one penetrating wound of 1" x ½" x abdominal cavity deep on



upper part of abdomen and another incised and penetrating wound 3" x 1/3" abdomen cavity deep on the right side of the back were found. Both the injuries were grievous and were caused by sharp pointed weapon. Injury report has been marked as Ext. 4 and postmortem report has been marked as Ext. 6.

7. After hearing the parties and considering the evidence on record, although PW-1, PW-2, PW-3 and PW-4 have been declared hostile but PW-5 who is the informant and is an eye witness of the occurrence as given complete description about the place of occurrence, time of occurrence and manner of occurrence and he has been cross examined by the defence at length but he has stood the test of cross examination and there is nothing in his deposition to disbelieve him. Although the investigating Officer and the doctor who conducted the postmortem and treated the deceased were not examined by the prosecution which is a serious lacuna in the prosecution case and the postmortem report, case diary and injury report has been proved by an Advocate clerk and not by the author of case diary, injury report, postmortem report as such contents of those documents could not be proved before the Trial Court. It is the quality of evidence that matters and not the quantity of evidence. In present case the evidence of PW-5 who is the



informant in this case is sufficient to be believed and requires no further corroboration, as such the finding of the trial court holding appellants as guilty needs no interference. However, there is nothing on record to suggest that the assault made by appellant Balram Paswan with help of Indradeo Paswan was premediated or planned and it was a result of sudden anger and loss of self control who was in state of intoxication, as such their conviction under Section 302 and 302/34 is altered to 304 part I of IPC and their sentence of rigorous imprisonment for life is modified to the period already undergone. Since both the appellants are on bail, they are discharged from the liability of their bail bond.

8. The Criminal Appeal is partly allowed.

**(Dr. Ravi Ranjan, J)**

**( S. Kumar, J)**

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