

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.414 of 1993

Against the judgment of conviction dated 14.09.1993 and order of sentence dated 16.09.1993 passed in Sessions Trial No.197 of 1990 by the Additional Sessions Judge-II, Patna.

1. Gopal Sharma, son of Rajendra Sharma
2. Om Prakash Sharma @ Nunu, son of late Surajdeo Singh
Both residents of village Moriawan, Police Station Bikram, District-Patna.
... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Anukriti Jaipuriyar, *Amicus curiae*
For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-05-2018

Appellants Gopal Sharma and Omprakash Sharma @ Nunu have filed this appeal under Section 374(2) of the Code of Criminal Procedure challenging their conviction vide judgment dated 14th September, 1993 passed by the Additional Sessions Judge-II, Patna in Sessions Trial No.197 of 1990 for offences under Section 307/34 of the Indian Penal Code and sentencing them to undergo three years R.I. Along with the present appellants, two more co-accused persons Rajendra Sharma and Bishundeo Sharma were also prosecuted and convicted for various offences under Sections 302/302/34 of the Indian Penal Code and both of them were convicted to undergo life imprisonment, R.I. for five



years and three years respectively and in their cases challenging conviction they had also filed Criminal Appeal No.430 of 1993 (DB) and Criminal Appeal No.504 of 1993 (DB) respectively. However, today, by separate orders passed, both these appeals filed by Rajendra Sharma and Bishundeo Sharma being Criminal Appeal No.430 of 1993 (DB) and 504 of 1993 (DB) have been disposed of on account of the fact they have died during the pendency of the appeals. Now, with regard to the incident in question, this appeal is only to be decided with respect to the present appellants Gopal Sharma and Omprakash Sharma @ Nunu.

It is the case of the prosecution that on 6th of July, 1989 at about 6.30 P.M., co-accused since dead, Rajendra Sharma and Bishundeo Sharma, came to the land of Kameshwar Pd. Sharma (P.W.4) which had been ploughed in the morning and after coming there, both the co-accused started uprooted grasses in the field which was kept on the ridges by collecting them from the field. When Kameshwar Pd. Sharma (P.W.4), Ram Kishore Sharma, Ranjay Kumar (P.W.1) and Bahadur Singh started resisting, it is said that the accused persons Rajendra Sharma and Bishundeo Sharma went to their house and soon after came with arms in their hands. Following these two accused persons, the present appellants



Omprakash Sharma and Gopal Sharma also came to the spot. It is said that thereafter certain confrontation and arguments took place and Bishundeo Sharma opened fire with his gun causing gun shot injury on the left ear of Janga Singh. He fell down on the ground and when Ram Kishore Sharma and Ranjay Sharma wanted to move towards their houses to fetch their family members, it is said that co-accused Rajendra Sharma opened fire with his rifle causing injury on the hand of Ranjay and when Ram Kishore Sharma wanted to prevent any other mishap, Rajendra Sharma is said to have shot fire on his head and he dropped in the lane adjacent thereto.

As far as the present appellants Gopal Sharma and Omprakash Sharma are concerned it is said that when the incident was happening they pelted brick bats on the person of the deceased. It is alleged that in the incident because of the gun shot injury caused Ram Kishore Sharma died and the prosecution was on account of the same. That apart Janga Singh and Ranjay Sharma sustained gun shot injuries. As far as the gun shot injuries caused on the deceased Ram Kishore Sharma and injured Janga Singh and Ranjay Sharma are concerned they have been caused by co-accused Rajendra Sharma and Bishundeo Sharma who have since dead. The only allegation against the present appellants is



causing injury on Ram Kishore Sharma by use of stones and brick-bats. From the statement of P.W.5 Dr. M. Q. Ahamad, who conducted postmortem examination of Ram Kishore Sharma, we find that the deceased Ram Kishore Sharma sustained six injuries which are as under:-

(i) Lacerated wound 1x 1 1/2" x scalp cavity deep over the right temporal area behind the right ear having inverted margin and blackening over the area. It was the wound of entry.

(ii) Lacerated wound 3" x 2 1/2" x Scalp cavity deep over the left temporal region behind the left ear. The margin was averted that was the wound of exit, a probe was passed through and through from injury no.1 to injury no.2.

(iii) One lacerated wound 1" x 1 1/2" x scalp deep over the left side of forehead. Margin was inverted with blackening. This was the wound of entry.

(iv) Lacerated wound 1" x 1" x Scalp cavity deep just above injury no.2. The margin was averted. A probe also passed through and through from injury no.3 to injury no.4.

(v) Lacerated wound 2" x 1" x 1/2" over the left wrist-joint

(vi) Bruises over the both shoulder joint having 3" x 2".



As far as injury nos.(i), (ii), ((iii) and (iv) are concerned, they are fatal and have been caused by use of the fire arms. The injuries which may attribute to the present appellants are injury nos. (v) and (vi) which are simple in nature. That apart, informant P.W.4 Kameshwar Prasad Sharma does not say anything with regard to these injuries being caused on the person of Ram Kishore Sharma by the present appellants. On the contrary, the injuries caused upon Janga Singh and Ranjay Sharma who have been examined by P.W.7 S. K. Choudhary are wounds and injury caused by use of fire arms. Accordingly, it is a case where, apart from the fact that there is no evidence to show that there is use of brick-bats by the present appellants, the only injuries even if it is assumed are injury nos.(v) and (vi) caused by the appellants. It is only a simple injury caused on the non-vital part of the body and therefore their conviction for the same under Section 307 of the Indian Penal Code is not sustainable. That apart, as far as the conviction under Section 34 of the Indian Penal Code is concerned, we find that no ingredients necessary for constituting an offence under Section 34 of the Indian Penal Code are found.

Accordingly, we allow the appeal being Cr. Appeal No.414 of 1993 (DB) filed by the appellants Gopal Sharma and Omprakash Sharma @ Nunu, set aside their conviction and acquit



them from the charges levelled against them. They are on bail.
They are discharged from the liability of their bail bonds.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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