

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.177 of 1995

Sessions trial no. 855/1992 arising Out of Danapur PS.Case No. 147/1991
District- PATNA

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Abbas Quarashi son of Late Kalut Quarashi resident of Mohalla Chik Toli Bibiganj
PS. Danapur District Patna

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Ms.Shaheen Begum, Amicus curie

For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 06-01-2018

1. No one appears on behalf of the appellant on repeated call. Learned Addl. Public Prosecutor Sri Dilip Kumar Sinha is present.

2. Ms. Shaheen Begum is appointed as amicus curiae so that she could place the case of appellant and give assistance to this court.

3. We heard Ms. Shaheen Begum appearing as amicus curiae and Sri Dilip Kumar Sinha for the State and perused the record.

4. This criminal appeal has been preferred against



the judgment of conviction dated 25.5.1995 and sentence order dated 27.5.1995 passed by the Addl. Sessions Judge VII, Patna in Sessions trial no. 855/1992 by which and whereunder he convicted the sole appellant under section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.

5. PW 4, Md. Saukat gave his fardbeyan to PW 5, Bishwanath Rai, the then ASI of Danapur police station on 2.4.1991 at 6.45 a.m. to this effect that on the same day at about 6 a.m. deceased Md. Rashid Quareshi was at his meat shop. Shop of the deceased was situated near bank colony and adjacent to meat shop of the deceased Rashid Quareshi, meat shop of appellant was also situated. He, further, stated that appellant wanted to slaughter the goat near the shop of the deceased but the deceased raised objection upon which a quarrel took place between them and in that course, appellant gave dagger blow causing injury on the chest of the deceased Md. Rashid Quareshi who fell down on the ground whereas the sole appellant managed to flee away from there. While Md. Rashid Quareshi was being taken to Kurzi hospital, he succumbed to his injury near Gandhi Murti.



6. On the basis of the aforesaid fardbeyan of PW4, Danapur P.S. case no. 147/1991 for the offence under section 302 of the Indian Penal Code was registered on 2.4.1991 and on the same day, formal FIR was prepared against the sole appellant. PW5 took charge of investigation and after completion of investigation, he submitted charge sheet against the appellant. The cognizance of the offence was taken in usual course and the case was committed to the court of sessions. The sole appellant was put on trial and accordingly, he was charged for the offence punishable under section 302 of the Indian Penal Code. Charge was read over and explained to him to which he pleaded not guilty and claimed to be tried.

7. In course of trial, prosecution examined, altogether, six witnesses and also produced documentary evidences as well as some material evidence. The statement of the accused was recorded under section 313 of the Code of Criminal Procedure in which he denied the prosecution story and claimed his false implication. The accused also examined one witness. Learned court below, having heard the parties and having analyzed the evidences available on record,



convicted and sentenced the appellant passing the impugned judgment in the manner as stated above.

8. Ms Shaheen Begum appearing as amicus curiae assailed the impugned judgment of conviction and sentence order arguing that except family members and relative of the deceased, no independent witness has come forward to support the prosecution case and moreover, there are several contradictions in the statements of prosecution witnesses which make the prosecution case doubtful. She, further, submitted that prosecution failed to prove the place of occurrence and so far as seized weapon is concerned, the same was not sent for chemical examination and, therefore, prosecution could not succeed to prove this fact that seized weapon had been used in committing the alleged crime. She pointed out that appellant was in jail custody since 03.04.1991 and remained in jail custody till 07.11.2000. She, further, submitted that even if the prosecution evidence adduced in this case assumed to be true, then also, deceased sustained only one injury and that injury was caused to the deceased in a quarrel which erupted on petty dispute and, therefore, at best, appellant could have been convicted under



section 304 part I of the IPC.

9. Learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentenced order arguing that eye-witnesses have clearly supported the prosecution case and moreover, I.O has proved the place of the occurrence. He, further, submitted that the doctor, who conducted the post mortem examination on the dead body of the deceased, was not available in course of trial and that was the reason PW 6, who was posted as Deputy Superintendent, in the Subdivisional hospital, Danapur at the relevant time, proved the post mortem report of the deceased as exhibit 5 and, therefore, it is well proved case in which prosecution succeeded to prove that appellant had committed murder of the deceased.

10. Having heard the contentions of both parties, we went through the record along with lower court record. From perusal of the record, we find that PW 1, Md. Halim Quareshi and PW 2, Md. Shahid Quareshi have been declared hostile and they have stated nothing in support of the prosecution case.

11. PW3, Md. Firoz and PW4, Md. Saukat, who



happens to be informant of the present case, claimed themselves to be eye-witnesses of the alleged occurrence. PW 5 is I.O. of this case whereas PW 6 is a doctor who has proved post mortem report of the deceased.

12. PW 6 stated in his deposition that on 2.4.1991 Dr. Kasim Ahmed was posted as Medical officer, Subdivisional hospital, Danapur where he was posted as Deputy Superintendent in that hospital. He, further, stated that Dr. Md. Kasim Ahmed had gone abroad for higher education. This witness proved writing and signature of Dr. Md. Kasim Ahmed on post mortem. Accordingly, he proved post mortem as exhibit 5. From perusal of exhibit 5, we find that the deceased sustained one incised wound below left side of the chest $\frac{1}{2}$ " x 1" x chest deep. The aforesaid exhibit goes to show that only one incised wound was found on the person of the deceased.

13. PW 3 is younger brother of the deceased. He stated that on the alleged date of the occurrence, he was at his shop and his elder brother deceased Rashid Quaresi was also present there, appellant wanted to slaughter a goat in front of shop of the deceased which was objected by the deceased



upon which hot exchange of words took place between them and in that course, appellant gave **chura** blow to the deceased who was subsequently taken to hospital but while he was on way, he succumbed to his injury. This witness has been cross-examined by defence at length but it would appear from the cross-examination, the defence could not succeed to elicit any material from this witness in support of the defence.

14. PW 4 is brother-in-law of the deceased and being informant claimed to have seen the occurrence. He also repeated almost similar statement which has been made by PW3 and stated that hot exchange of words took place between the deceased and the appellant and in that course, appellant gave chura blow causing injury on the chest of the deceased. This witness stated that after death of the deceased while he was going to the police station, police party reached at his shop and thereafter, he gave his statement before the police. This witness, too, was cross-examined by the defence but nothing could be elicited from the statement of this witness to show false implication of the appellant.

15. PW 5 is the Investigating officer of this case. This witness stated that on the alleged date of occurrence at



about 6.30 a.m. he got telephonic information that a mob had assembled at B.S. College, Danapur and having entered Sanha no.41 dated 2.4.1991 at 6.45 a.m. in respect of above information, he reached at the place of the occurrence where he recorded fardbeyan of PW4. This witness proved fardbeyan of PW4 as exhibit 1. He also prepared inquest report of the deceased and sent dead body for postmortem examination. He inspected the place of the occurrence and in course of that he recovered bloodstained dagger and prepared seizure list which has been marked as exhibit 3. He also identified dagger which had been recovered by him and proved the said dagger as material exhibit 1A. He also proved photostat copy of inquest report which was marked "X" for identification. However, after completion of investigation, he submitted charge sheet. This witness was cross-examined and he admitted that he had not sent seized dagger to Forensic Science Laboratory for examination of the aforesaid dagger. He stated that he arrested the accused on 2.4.1991 from his house.

16. Defence examined one witness to prove this fact that seized dagger can not be used for cutting goats.



17. It would appear from perusal of the aforesaid evidences that PWs 3 and 4 have categorically stated that it was the appellant who gave single blow to the deceased. Admittedly, appellant did not repeat the blow. It is also an admitted position that hot exchange of words had taken place between the appellant and the deceased and in that course, appellant gave dagger blow to the deceased. Therefore, it is obvious from the aforesaid facts that the appellant had no intention to commit murder of the deceased and the alleged occurrence took place due to sudden provocation and, therefore, we are of the view that no case under section 302 of the Indian Penal Code is made out and, at best, the appellant could have been convicted under section 304 part I of the Indian Penal Code. Accordingly, conviction of the appellant is modified under section 304 part I of the Indian Penal Code. Appellant was remanded in this case on 03.04.1991 and remained in jail custody till 07.11.2000 and, therefore, the aforesaid fact goes to show that he had already remained in jail custody for more than nine years and, therefore, we are of the view that he has sufficiently been punished.



18. On the basis of the aforesaid discussions, conviction of the appellant is converted into under section 304 Part I of the Indian Penal Code and accordingly, sentence order of the appellant is modified to this extent that he is sentenced to the period already undergone by him during pendency of trial and appeal.

19. In the aforesaid manner, this criminal appeal stands disposed of.

20. Let first and last page of the copy of this judgment be handed over to Ms Shaheen Begum for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.1.2018
Transmission Date	NA

