

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.79 of 1995

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

1. Nathuni Prasad , son of Chandradeo Prasad
2. Chandradeo Prasad, son of Gathaul Mahto
3. Kabutri Devi wife of Tribeni Mahto
- All are resident of Village Mathauli Khas, P.S. Uchaka Gaum, Distt. Gopalganj
.... Appellant/s
Versus
State of Bihar Respondent/s

Appearance :

For the Appellant/s : Mr. Mohit Srivastava (A.C.)
For the Respondent/s : Mr. Shivesh Ch. Mishra, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)
Date: 03-05-2018

This criminal appeal has been preferred against the judgment of convection and sentence order dated 06.05.1995 passed by the learned Sessions Judge, Gopalganj in S. T. No. 82 of 1992 by which and whereunder all the three appellants were convicted for the offence punishable under Section 302 read with Section 34 of the IPC and were sentenced to undergo rigorous imprisonment for life and furthermore, the appellant no. 1 was, separately, convicted for the offence punishable under Section 324 IPC and similarly, appellants no. 2 and 3 were convicted for the offence punishable under Section 323 IPC but no separate sentence was awarded to them for the aforesaid offences.

2. On 08.05.1991 at about 4 a.m. deceased Gobardhan



Prasad gave his fardbeyan in injured condition at Sadar Hospital, Gopalganj to P.W.-6 Paras Nath Singh, the then S.I., Gopalganj Police Station to this effect that in pervious evening at about 6.30 p.m. while he was sitting in his house, appellants came there and started abusing him. The reason for the aforesaid act of the appellants was that in the morning of the same day, a childish quarrel had taken place between the children of their family. The deceased Gobardhan Prasad further stated that he forbade them to do so, but the appellant nos. 2 and 3 caught him and appellant no. 1 gave dagger blow which caused injury on his *Panjara* and *Pakhura* (shoulder) and having sustained aforesaid injuries he fell down there and raised alarm which attracted Sudarshan Prasad and Motilal as well as others. The appellants after seeing the aforesaid persons, fled away from there. The deceased Gobardhar Prasad claimed that there was land dispute between him and the appellants. On the basis of fardbeyan of deceased Gobardhan Prasad, Gopalganj P.S. Case No. 57 of 1991 was registered for the offences punishable under Sections 324, 307, 342 and 504 of the I.P.C. and on the same day formal F.I.R. for the aforesaid offence was registered against the appellants. However, the informant-deceased Gobardhan Prasad died during the course of his treatment and accordingly, Section 302 of the IPC was added on 16.05.1991.

3. P.W.-6 took charge of investigation and after completion of investigation, he submitted charge-sheet against the



appellants. The cognizance of the offence was taken and case was committed to the court of sessions in usual way. The appellants stood charged for the offences punishable under Sections 302/34 and 307 of the IPC. In course of trial, prosecution examined, altogether, seven witnesses and got exhibited the inquest report, post-mortem report etc.

4. The statements of appellants were recorded under Section 313 of the Cr.P.C., in which they denied the prosecution story and appellant no. 2, specifically, stated that there was quarrel between the children and he went to pacify the quarrel but the wife of deceased came there with dagger and deceased tried to snatch the dagger from her but he, unfortunately, got injury from the aforesaid dagger.

No evidence was adduced by the appellants in support of their defence but from perusal of trends of cross examination of prosecution witnesses as well as statements recorded under Section 313 of the Cr.P.C., it appears that the defence of the appellants was that the deceased sustained injury, accidentally.

6. Learned trial court after scrutinizing the materials and evidences available on record, convicted and sentenced the appellants in the manner as stated above.

7. Learned amicus curiae Sri. Mohit Srivastava, appearing for the appellants, challenged the impugned judgment of conviction and sentence order arguing that the prosecution witnesses have made contradictory statements because P.W.-2 claimed that the



occurrence had taken place at the door of the deceased whereas, P.W.-3 claimed that the occurrence had taken place inside the house. He further submitted that the deceased, nowhere, stated about the injury sustained by P.W.-3 but P.W.-3 claimed that she also sustained injury. He further submitted that moreover, P.W.-4, who happens to be independent person, claims that the appellant no. 1 gave dagger blow to the deceased on account of sudden provocation though the appellant no. 1 in his statement recorded under Section 313 Cr.P.C. specifically stated that it was P.W.-3 who brought the dagger at the time of occurrence and deceased was trying to snatch the dagger from the hands of P.W.-3 but unfortunately in that course, deceased got injury and therefore, the above stated statement of appellant no. 1 creates doubt about the genuineness of the prosecution story.

8. On the other hand, learned Additional Public prosecutor supported the impugned judgment of conviction and sentence order arguing that P.W.-2, P.W.-3 and P.W.-4 are eye witnesses and they have specifically stated that the appellant no. 1 gave dagger blow to the deceased and moreover, the fardbeyan of the deceased became his dying declaration and, therefore, in the aforesaid circumstances, there is no scope to this Court to interfere into impugned judgment of conviction and sentence order.

9. Having heard the contentions of both the parties we went through the materials available on record. We find that P.W.-1



claimed that having heard noise, he went to the place of occurrence, where he saw that the deceased was lying in injured condition and the deceased disclosed that the appellant no. 1 had given dagger blow to him. P.W.-1 has, nowhere, stated that the deceased also disclosed the name and the role of appellants no. 2 and 3 in the alleged occurrence.

10. P.W. 2 is mother of deceased. This witness has stated that on the alleged date of occurrence, the appellants went at the door of deceased and started abusing because in the morning of the same day a quarrel had taken place between the family of deceased as well as the appellants. She further stated that when deceased forbade them, the appellants no. 2 and 3 caught hold the deceased and appellant no. 1 gave dagger blow to him, causing injury on his hand, head and abdomen. The post-mortem report of the deceased shows that no injury was found on the hand of the deceased. Moreover, further this witness has stated that when P.W.-3 went to save her husband, the appellant no. 1 gave dagger blow, causing injury on her back. Furthermore, she stated that appellants no. 2 and 3 also assaulted her with bricks. However, the deceased Gobardhan Prasad had, nowhere, stated in his fardbeyan that his wife (P.W.-3) had also sustained injury in the aforesaid occurrence. No doubt, P.W.-7, who had examined P.W.-3, had found three injuries on the person of P.W.-3 but out of aforesaid three injuries, two injuries were sharp cut injuries whereas, one injury was abrasion in front of chest and,



therefore, the statement of P.W.-4 regarding assault by the appellants no. 2 and 3 to P.W.-3 by means of bricks appears to be doubtful.

11. P.W. 3 Sarda Devi is wife of the deceased. This witness has supported the prosecution case and stated that appellant no. 2 and 3 caught hold the deceased whereas, appellant no. 1 gave dagger blow causing injury on abdomen and back of the deceased. She also claimed that appellant no. 1 gave *Chhura* blow to her when she went to rescue her husband. She further stated that appellant no. 2 and 3 assaulted her by means of bricks causing injury on her chest. However, it is not specific who had caused abrasion injury on the chest of P.W.-3. This witness stated that in the morning of the alleged occurrence, son of appellant no. 3 had assaulted her son upon which she made inquiry from the appellant no. 3, but she started abusing her and appellants entered into her house and started assaulting. She further stated that the appellants abused her as well as her family members for about one hour.

12. P.W.-4 Sudarshan Prasad stated a different story. This witness has stated that a quarrel was going on between family members of the appellants as well as the prosecution party and in that course, deceased started pressing the neck of appellant no. 3 and seeing this the appellant no. 1 became furious and gave dagger blow to the deceased. This witness stated that appellant no. 2 and 3 had not assaulted either to deceased or to P.W.3.



13. P.W.-5 had conducted post-mortem examination on the dead body of deceased and found two stitched surgical wound on the abdomen of the deceased, therefore, it is obvious that deceased had sustained two sharp cut injuries on his abdomen.

14. After perusing and scrutinizing the entire evidence available on record, it is obvious that it was the appellant no. 1, who gave dagger blow which caused injury to the deceased on his vital part of the body and the aforesaid injury became fatal for the deceased, but it has also come in evidence that the aforesaid blow was given by the appellant no. 1 in sudden provocation because the deceased was pressing the neck of appellant no. 3 and seeing this, the appellant no. 1 became furious and gave dagger blow to the deceased due to above stated sudden provocation and, therefore, we are of the view that the appellant no. 1 had no intention to commit the murder of deceased rather, he only wanted to save the appellant no. 3. However, at best, it can be said that the appellant no. 1 had knowledge that his blow might cause death of deceased and, therefore, in our view, the appellant no. 1 ought to have been convicted under Section 304 Part II of the Indian Penal Code instead of Section 302/34 of the IPC.

15. So far as remaining appellants are concerned, there participation in the alleged crime appears to be doubtful in view of the contradictory statements of the prosecution witnesses and, therefore, in our view, the appellants no. 2 and 3 are entitled to get benefit of



doubt.

16. The appellant no. 1 has been convicted under Section 324 of the IPC for causing injury to P.W.-3 and it is obvious from the evidence available on the record that the appellant no. 1 had caused sharp cut injury to P.W.-3 though the aforesaid injuries were found simple in nature and, as such in our view, the learned trial court rightly convicted the appellant no. 1 for the offence punishable under Section 324 of the IPC, but so far as appellants no. 2 and 3 are concerned, the trial court ought to have given them benefit of doubt instead of convicting them for the offence punishable under Section 323 of the IPC.

17. On the basis of aforesaid discussions, the impugned judgment of conviction and sentence order in respect of appellant no. 2 and 3 are hereby set aside and both the aforesaid appellants no.2 and 3 are acquitted of the charges framed against them. Both the above stated appellants are on bail. They are discharged from the liabilities of their bail bonds.

18. So far as appellant no. 1 is concerned, his conviction is converted into Section 304(II) of the IPC in place of 302/34 of the IPC and accordingly, the impugned judgment of conviction is modified to the above stated extent and the appellant no. 1 is convicted under Section 304(II) of the IPC. Admittedly, the appellant no. 1 remained in jail custody for more than two years seven months



and the alleged occurrence took place on account of sudden provocation. Furthermore, it is admitted position that both parties are close agnates and therefore, in our view, the ends of justice will meet, if the appellant no. 1 is sentenced to the period already undergone. Accordingly, his order of sentence is modified to the above stated extent.

19. In the result, this criminal appeal is allowed in respect of appellant no. 2 and 3 and the same stands dismissed in respect of appellant no. 1 with modification in the impugned judgment of conviction and sentence order to the extent as indicated above. Accordingly, the appellant no. 1 stands discharged from the liability of his bail bonds.

20. Let a copy of the first and last page of this judgment be handed over to learned Amicus Curiae for needful.

(Hemant Kumar Srivastava, J)

sushma/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	NAFR
CAV DATE	-NA-
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