

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.231 of 2003

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

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Bimal Singh, son of Madho Singh, resident of village Sarsi, P.S. Paliganj, District Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rajani Kant Singh, Advocate

For the Respondent/s : Mr. Bipin Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 13-03-2018

Sole appellant stands convicted under Section 304A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year vide judgment and order dated 4.4.2003 passed by Sri Bishwadeo Narain Singh, the then District and Sessions Judge, FTC III, Patna in Sessions Trial Case No.250 of 1994.

2. Prosecution case as appears from the statement of Chaukidar Kameshwar Yadav of village Mahavalipur, P.S. Paliganj, in short, is that on 29.10.1992 when he returned to his house from duty he learnt that a boy, who was riding on a bicycle, was dashed by a jeep, as a result of which he died at the spot and on such information he rushed to the place of occurrence and found a boy lying dead on the northern side of the road and his head was broken and his bicycle was also lying on the northern side of the road in damaged condition.



He also found a jeep bearing registration No. BPZ 6456 lying on the northern side of the road, owner of which is Malik Singh of village Masaurha and about the boy he came to know that he is son of Krishneshwar Sharma of village Chauri and the name of the boy was Amrit Kumar alias Bablu and from the direction of the bicycle it transpired to him that the boy was going from the west to east and the jeep was coming from east to west and dashed the bicycle on account of wrong side taken by the driver of jeep while he was driving the jeep in rash and negligent manner.

3. On the basis of said fardbeyan, Paliganj P.S. Case No. 161 of 1992 was registered and after investigation police submitted charge sheet against the appellant under Section 302 IPC and cognizance of the offence has been taken and case was committed to the court of sessions, which ultimately traveled to the file of the learned trial judge for trial and disposal.

4. The appellants stands charged under Section 302 IPC for committing murder of the victim boy intentionally on 29.10.1992 near the village Mahabalipur.

5. Prosecution in order to establish its case has examined altogether nine witnesses, they are PW 1 Krishneshwar Sharma, who is father of the victim boy, PW 2 Alok Kumar, who is an eye-witness to the occurrence, PW 3 Kameshwar Yadav, who is village Chaukidar



and informant of this case, PW 4 Bachchu Narain Singh, PW 5 Rameshwar Singh, who is a formal witness and has proved the formal FIR (Ext.3), PW 6 Kamlesh Kumar, who is another formal witness and in whose presence the inquest report was prepared and he has been declared hostile, PW 7 Ram Iqbal Paswan, who has been declared hostile as he has stated that he does not know about the occurrence, PW 8 Ajay Kumar, who is a formal witness and has proved carbon copy of inquest report prepared in his presence as Ext.4 and PW 9 Akhlesh Prasad, who is a formal witness and has simply proved post mortem report, M.V.I. report and case diary pages 1 to 34 as Exts. 5, 6 & 7 respectively.

6. Considering the above, PWs 1 to 4 are the witnesses on the fact and neither I.O. nor the Doctor has been examined in this case. So far PW 3 is concerned, he has given a complete goby to the prosecution story and has been declared hostile by the prosecution as he has stated that he came to know the occurrence when he reached at the place of occurrence. P.W.2 claims himself to be eye-witness to the occurrence and he has stated that on 19.10.1992 at about 4 P.M. while he was gardening his field in Naubigha Khandha, suddenly he noticed a boy meeting with an accident by a jeep coming from opposite side while the victim was going on the road by bicycle from west to east and the boy after being hit by the jeep fell down on the northern side



of the road and the jeep driver drove back the jeep and again hit the boy by the vehicle and thereafter the driver of the vehicle brought out a rod and assaulted the victim boy on his head. It appears that on his evidence charge has been framed under Section 302 IPC. PWs 1 to 4 are father and relatives of the boy but the learned trial court has himself rightly found them not eye-witnesses to the occurrence. Learned trial court considering the evidence available on record does not found the case under Section 302 IPC rather he has convicted the appellant under Section 304A IPC and sentenced him as stated above.

7. Submission of learned counsel for the appellant is that in this case no charge has been framed under Section 304A IPC and Section 304A IPC is not a minor offence of Section 302 IPC, rather a distinct offence of Section 302 IPC and in such a situation in absence of charge under Section 304A IPC, conviction of appellant under Section 304A IPC is perverse and bad in law. Further submission of learned counsel is that learned trial court has not found PWs 1 to 4 as eye-witnesses to the occurrence and he has also not believed the evidence of PW 2 so far his allegation that after meeting with an accident the jeep driver again drove back the jeep and again hit the boy by the vehicle and he assaulted the boy by rod. Apart from that PW 3 is the informant of this case and in his fardbeyan nothing has been mentioned about the identity of the appellant or regarding



disclosure if made by PW 2 before him. However, this witness has been declared hostile by the prosecution. The earlier prosecution version does not show that apart from that no question about death of the deceased caused due to rash and negligent driving by the appellant has been put to this witness under Section 313 of Criminal Procedure Code and hence the conviction of appellant on that ground also is not maintainable as has been held by various judgments of Hon'ble Supreme Court. However, learned trial court has not considered the above infirmities and inconsistencies and convicted the appellant under Section 304A IPC which does not inspire confidence and appears to be perverse.

8. On the other hand, learned counsel for the State has defended the judgment and submitted that evidence of PW 2 shows that soon after the occurrence he has named the appellant being driver of the jeep and PW 2 has not been cross examined and even no suggestion has been given that the appellant was not driving the vehicle. Hence, the conviction appears to be sustainable in the eye of law.

9. In the background of rival submission, on perusal of the evidence it appears that except evidence of PW 2 there is no legal evidence available on record as PW 3 has been declared hostile and PWs 1 and 4 have not been found to be eye-witnesses to the



occurrence and so far evidence of PW 2 is concerned, learned trial court has partly disbelieved his evidence. However, on the same evidence he has convicted the appellant under Section 304A IPC. Learned trial court has failed to consider that no charge has been framed against the appellant under Section 304A IPC and Section 304A IPC is a distinct offence under Section 302 IPC and it is not a minor Section of Section 302 IPC, as such, the conviction under Section 304A IPC does not appear to be sustainable as conviction without any charge appears to be perverse and bad in law as purpose of framing charge is to show the accused regarding allegation against him, in order to prepare himself to defend that allegation. There is no allegation that due to rash and negligent driving appellant has caused death of the boy has been made against him in the charge. Secondly in this case while learned trial court has convicted the appellant under Section 304A IPC without complying the provision of Section 313 Cr.P.C. as no question was asked to the appellant that due to rash and negligent driving he has caused the death of the deceased, rather a general question has been put to him that he has caused murder of the deceased.

10. Hon'ble Supreme Court in the case of Sukhjit Singh v. State of Punjab : (2014) 10 SCC 270 after relying upon earlier judgments of the Hon'ble Supreme Court, including Ajay Singh vs.



State of Maharashtra : (2007) 12 SCC 341 has laid down the principle that the requirement of Section 313 of the Code of Criminal Procedure is to draw the attention of the accused to the specific points, materials and evidences available against him, put to these to him and seek explanation for the same. In case of Ajay Singh (supra), the Hon'ble Apex Court in paragraph-14 of the judgment has laid down the principle that has to be followed for complying with the provision of Section 313 Cr.P.C., which is as follows :

“14. The word “generally” in Sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

After considering the aforesaid, in the case of Sukhjit Singh



(supra), the Hon’ble Supreme Court says that in case, the requisites questions are not put to the accused and if there is non compliance of the statutory requirement of Section 313 Cr.P.C., prejudice is deemed to have been caused to the accused and this vitiates the entire trial and a conviction based on such a vitiated trial is unsustainable.

11. In the present case, the circumstance on which the learned trial court has relied upon has not been put to the appellant and, as such, the conviction of the appellant does not appear to be sustainable as learned trial court has not considered the aforesaid infirmities in the prosecution case and convicted the appellant under Section 304A IPC.

12. In view of the entire discussions made above, this appeal is allowed. The impugned judgment and order are set aside. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bond.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.3.2018
Transmission Date	16.3.2018

