

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.203 of 1994

(Against the judgment of conviction, dated and order of sentence, dated 24.3.1994 passed by Shri Tarkeshwar Prasad Singh, 3rd Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 544 of 1992)

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Anil Singh, son of Gajadhar Singh, resident of village-Baluamarar, P.S.-Parsa, District-Chapra (Saran).

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 249 of 1994

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

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Kameshwar Rai, son of Sri Singasan Rai, resident of village-Baharmarar, P.S.-Parsa, District-Saran

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.203 of 1994)

For the Appellant/s : Mr. Krishana Prasad Singh, Sr. Advocate
Mrs. Meera Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

(In CR. APP (DB) No.249 of 1994)

For the Appellant/s : Mr. Mr. Krishana Prasad Singh, Sr. Advocate
Mrs. Meera Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

Date: 25-01-2018

Both the appeals arises out of the judgment of conviction passed by third Additional Sessions Judge, Saran at Chapa



in Sessions Trial No. 544 of 1992 dated 28.3.1994 whereby the appellants have been convicted and sentenced to undergo R.I. for life.

2. The prosecution case in brief is that the informant's son Lal Bahadur Manjhi was working as Khalasi on a Maxi Taxi. It is alleged that about three months back the accused Kameshwar Rai who was working as driver of the same Taxi had been removed by the owner of the Taxi. The appellant Kameshwar Rai has suspected that on the complaint of deceased Lal Bahadur Manjhi he had been dismissed. Three days ago prior to the occurrence, accused Kameshwar Rai had gone to the house of the informant and threatened his son by saying that his days are now over. It is further alleged that on the day of occurrence, the accused Kameshwar Rai was working as a driver in another Maxi Taxi. On 9.6.1992 the son of the informant and accused Kameshwar Rai both came with their vehicles to Bahara Manar Bazar. At about 8 P.M. the appellant's son accused Kameshwar Rai and the appellant took tea in the shop of Vishwanath Sah. After taking tea they went towards the Middle School, where the appellant caught hold Lal Bahadur Manjhi and accused Kameshwar Rai gave knife blow in his chest, as a result he fell down and died there.

3. The police after investigation submitted charge-sheet against the appellants under section 302/34 of the Indian Penal Code.



4. After taking cognizance the case was committed to the court of sessions. On framing of charges under section 302/34 of the Indian Penal Code, the appellants pleaded not guilty and false implication on account of previous enmity in connection with the dispute of raising wall. They pleaded that the deceased was killed at the tea shop of Vishwanath Sah by someone else and informant has implicated the appellants on account of previous enmity since no one has seen the actual occurrence.

5. On behalf of the prosecution six witnesses were examined. P.W.1 is Binod Manjhi, P.W.2 Anand Prakash Gupta is the I.O. of the case, P.W.3 is Dasrath Ram, P.W.4 is Janj Bahadur Manjhi, P.W.5 is Dr. Rajbali Singh and P.W.6 Ramprit Manjhi is the informant of the case.

6. The trial court on scrutiny of the evidence convicted the appellants for the offence under section 302/34 of the Indian Penal Code and sentenced them to undergo R.I. for life.

7. Mr. Krishana Prasad Singh, learned senior counsel appearing on behalf of the appellants has submitted that in the present case all witnesses are highly interested witnesses and prosecution has made a pick and choose in the examination of the witnesses. The natural witnesses available at the place of occurrence were not examined and highly interested witnesses have been examined in this



case.

8. Mr. Singh submitted that the place of occurrence is tea stall of Vishwanath Sah. There are several shop keepers who were in their shops at the time of occurrence in the market but they were not examined.

9. Mr. Singh submitted that in the instant case Chouwkidar who was sent to police for information of the occurrence was not examined. He submitted that in the present case there are four witnesses who claimed to be the eye-witnesses including the informant but on closure scrutiny of their depositions, it would be apparent that informant was only a hearsay. He has not disclosed in the Fard-beyan that he was present at the place of occurrence when the occurrence took place.

10. Mr. Singh referred to the deposition of the P.W.1 Binod Manjhi submitted that this witness has mentioned that at the place where the occurrence took place 3-4 shops are permanent. The occurrence took place in front of the tea stall of Vishwanath Sah and there was shop of Prahalad Sah and Nagendra Sah but they were not examined.

11. Referring to paragraph 4 of his deposition of P.W.1 Mr. Singh submitted that this witness was highly interested witnesses as he was Pattidar of the deceased. Referring to the deposition of



P.W.2 Mr. Singh submitted that the I.O. has done perfunctory investigation in the present case. He had not collected the blood stained clothes of the deceased. His deposition before the court does not support the prosecution case.

12. Mr. Singh with reference to deposition of P.W.3 submitted that this witness in paragraph 6 has stated that he was taking tea at the tea stall of Vishwanath Sah and family members of the deceased including the informant reached the place of occurrence after hearing rumour and as such Mr. Singh submitted that informant is not the eye-witness and his version cannot be relied upon as he is a hearsay and reached the place of occurrence only after commission of crime. Referring to his deposition, Mr. Singh submitted that the prosecution has not been able to explain the reason for non-examination of the Chouwkidar Mishri Manjhi who alleged to have been asked to inform the police about the occurrence. Highlighting the infirmity of the deposition of the witnesses, Mr. Singh submitted that prosecution witnesses are at variance and their statement runs contrary to each other.

13. Referring to the deposition of the witnesses he submitted that on closure scrutiny of the deposition of the witnesses, the place of occurrence is under serious doubt.

14. Mr. Singh next submitted that the conviction of the



appellants in the present case suffers from manifold infirmities; firstly, the place of occurrence stands not conclusively proved, secondly, from the deposition of the witnesses, it appears that version of one witness runs contrary to other witnesses. Thirdly, the witnesses in their deposition have rendered the prosecution case under serious doubt. He submitted that the counter version as to the commission of crime on account of dispute between the father of the appellant Anil Singh and the family of the deceased was not considered by the trial court.

15. Mr. Abhimanyu Sharma, learned A.P.P. appearing on behalf of the State on the other hand submitted that in the present case three eye-witnesses have supported the case of the prosecution which stands corroborated by the medical evidence. The witnesses on behalf of the prosecution are consistent on the point that the deceased was given 'Chhura' blow on the chest which caused death of the deceased. He submitted that in the present case, the eye-witnesses to the occurrence have deposed and their deposition is consistent on the point of place of occurrence, manner of occurrence i.e. injuries through Chhura blow at chest of the deceased caused death of the deceased and under the aforesaid circumstances when there is specific direct evidence of commission of crime, the conviction of the appellants is well founded.



16. We have gone through the materials available on record, the deposition of the witnesses, we find that certain abrasion in the deposition of the witnesses. From closure scrutiny of the deposition of the prosecution witnesses, it appears that certain persons who would have seen the occurrence were not examined in the present case.

17. In the present scenario many natural witnesses avoid giving evidence in court and in most of the cases only family members and interested witnesses only support the prosecution case and as such prosecution case cannot be discarded only on the ground that interested witnesses or family witnesses were only examined in the case.

18. In the present case the witnesses are consistent on the point of giving Chhura blow by the appellant Kameshwar Rai. The witnesses are also consistent on the point that the occurrence took place at the tea shop of Vishwanath Sah. The inquest report is on the line of the prosecution that the deceased sustained Chhura blow on the chest as per prosecution case, therefore, we do not find any infirmity in the consideration of the trial court about the commission of crime but in the totality of the facts situation when we scrutinize incident, we find that the deceased as well as the appellants took tea at the tea stall and there was nothing strange to indicate that there was



any intention to kill the deceased and from the discussion of the trial court in para-11 it is manifest that there was sudden provocation and altercation in which the appellant Anil Singh caught hold the deceased and appellant Kameshwar Rai gave Chhura blow and on sustaining the aforesaid injury the deceased fell down and died. There is no repeat of blow as evident from the prosecution case as well as from the deposition of the prosecution witnesses as well as post-mortem report.

19. Thus, in the totality of attending facts and circumstances of this case, we are of the view that the case at hand does not fall in the category of culpable homicide amounting to murder rather it falls in the category of culpable homicide not amounting to murder. The sudden altercation and out of that altercation giving one Chhura blow and no repeat indicates that appellants have committed crime but not murder rather the offence of the appellants falls under section 304-II of the Indian Penal Code.

20. From the record, it appears that the appellants have remained in jail for nearly six years. The occurrence is of 1982. The appeal remained pending for nearly 23 years and considering the totality of the facts situation, we are of the view that the appellants have already served imprisonment of six years in the present case and accordingly, we are of the view that the sentence in the present case is



required to be modified as period undergone.

21. Accordingly, the appeal is partly allowed.

22. The judgment of conviction is converted from Section 302/34 to 304-II of the I.P.C. The sentence is reduced to period already undergone.

23. Since the appellants are on bail, they are discharged from the liability of the bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.02.2018
Transmission Date	17.02.2018

