

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.291 of 1995

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Guddu Singh, son of Shri Rajendra Singh, resident of Village Habibnagar, P.S.
Husainganj, District- Siwan.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Kanhaiya Prasad Singh, Sr. Advocate. Mr. Raghav Prasad, Advocate.
For the Informant	:	Mr. Udit Narayan Singh, Advocate.
For the State	:	Mr. S.C. Mishra, 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 : 20-07-2018

1. This Criminal Appeal has been preferred by the appellant against the Judgment of conviction and sentence order dated 03.08.1995 and 05.08.1995, respectively, passed by the learned Additional Sessions Judge-I, Siwan, in Sessions Trial No. 54 of 1994, by which and whereunder, he convicted the appellant for the offence punishable under Sections 302 and 324 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code and also to undergo rigorous imprisonment for two years for the offence punishable under Section 324 of the Indian Penal Code. The learned trial court directed to run both the sentences concurrently.



2. P.W.9, Upendra Kumar Singh, gave his Fradbeyan on 30.07.1993, at about 9.30 P.M., at Sadar Hospital, Siwan, to A.S.I., S. Prasad Yadav, of Siwan Town Police Station to this effect that on the same day, at about 6.45 P.M., hot exchange of words took place between him and appellant for irrigating the land through a canal and the appellant being furious due to the aforesaid hot exchange of words started quarreling with the informant. However, the appellant went to his home and after that his grandmother came at the house of informant to make complain and, at about 7.30 P.M, appellant too, came to the door of the informant and took out the Dagger and gave one Dagger blow to him, as a result whereof, he sustained injury at his stomach. The informant called his brother, Sunil, who came there running and tried to catch the appellant, but appellant pierced the Dagger into the left side of chest of the deceased, Sunil. The deceased having sustained aforesaid injury fell down there and became unconscious. In the meantime, Radheshyam Singh (P.W.6), Ram Kuer (P.W.3), Ram Bilas Kuer (not examined), Santosh Singh (not examined), Daroga Singh (not examined) and several other persons came there and witnessed the occurrence. The appellant having seen the aforesaid persons took to his heels. The informant and his brother were taken to Sadar Hospital, Siwan, where informant's brother, Sunil Kumar Singh, died.

On the basis of aforesaid Fradbeyan, Hussainganj P.S. Case No. 129 of 1993 for the offence punishable under Sections 302, 447, 324 and 307 was registered and, accordingly, the formal F.I.R. was



drawn up against the appellant for the above stated offences. P.W.10, Nawal Kishre, took the charge of investigation and after completion of investigation, he submitted charge sheet for the above stated offences against the appellant. The cognizance was taken and after commitment the appellant was put on trial. The appellant stood charged for the offences punishable under Sections 302, 307 and 447 of the Indian Penal Code, to which, he denied the charges and claimed to be tried.

3. The prosecution in course of trial examined, altogether, eleven witness and also got exhibited some documents. The defence also examined one defence witness. The statement of appellant was recorded under Section 313 Cr.P.C., in which, he again denied the prosecution story.

The learned trial court after dealing with the prosecution evidence convicted and sentenced the appellant in the manner, as we have already stated.

4. Leander counsel for the appellant challenged the impugned Judgment of conviction and sentence order arguing that prosecution failed to prove the manner of occurrence as well as place of occurrence, as the prosecution witnesses have made contradictory statements, but even then the learned trial court convicted and sentenced the appellant. He further submitted that the learned trial court has not appreciated the evinces in its right perspective, as a result whereof, the learned trial court came to wrong conclusion. Learned counsel, further, submitted that even if prosecution story assumed to be true, then also,



the alleged occurrence appears to have taken due to sudden provocation and single blow of dagger is said to have given to deceased by the appellant and, therefore, at best the case under Section 304(2) of the Indian Penal Code is made out against the appellant and the appellant has already remained in jail custody for near about five years.

5. On the other hand, the learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentence order arguing that the eye witnesses have supported the prosecution case and the injury found on the person of the deceased also corroborates the statement of prosecution witnesses. He further submits that the Investigating Officer has proved the place of occurrence and, therefore, the aforesaid facts go to show that prosecution has come with well proved case and, therefore, the learned trial court rightly convicted and sentenced the appellant.

6. Having heard the rival contention of both the parties, we went through the record alongwith the Lower Court Records.

P.W. 3 Ram Kuer, P.W. 4 Sheo Banshi Kuer, P.W.6 Radheshyam Singh, P.W.8 Lalati Devi and P.W. 9 Upendra Kumar Singh claimed themselves to be eye witnesses of the alleged occurrence and they supported the prosecution case in one voice and all the above stated witnesses stated that the alleged occurrence took place in front of house of the deceased and the appellant gave Dagger blow to P.W.9 as well as deceased, Sunil Kumar Singh.



7. P.W.5, Lal Bahadur Choudhary, claims that on 30.07.1993, he was posted at Sadar Hospital, Siwan and on that very day, at about 8.40 P.M., he examined P.W.9 and found one incised wound $1\frac{1}{4}$ " x $\frac{1}{2}$ " x muscle deep on left side of abdomen. This witness further claims that the injury found on the person of P.W.9 was simple in nature and caused by sharp cutting weapon, such as Dagger. The evidence of P.W.5 establishes this fact that on 30.07.1993, P.W.9 sustained simple injury on his stomach said to be caused by the sharp cutting weapon.

8. P.W.7, Dr. Jai Narayan Prasad, claims that on 31.07.1993, he did Postmortem Examination on the corpse of deceased, Sunil Kumar Singh. This witness further claims that he found one sharp cutting wound of $1\frac{1}{2}$ " x $\frac{1}{2}$ " deep to thoracic cavity on left part of chest in front. He also found one abrasion 5" x $\frac{1}{8}$ " curve on the medial side of above wound. The Doctor opined that the above stated injury was caused by sharp cutting instrument such as Dagger. This witness further claims that injury no. 1 was sufficient to cause death in ordinary course of nature. The evidence of P.W.7 goes to show that injury no. 1 of the deceased had caused his death.

9. P.W.10, Nawal Kishore, is the Investigating Officer of the case. This witness claims that the place of occurrence of this case is *Sahan* of deceased, Sunil Kumar Singh. This witness seized the blood stained earth from the place of occurrence and also described the topography of place of occurrence. This witness also claims that he



received postmortem report as well as injury report of P.W.9. The evidence of this witness goes to show that this witness has proved the place of occurrence.

10. As we have already stated that defence also got examined one defence witness, who claimed that a free fight took place between deceased and P.W.9 and in the aforesaid free fight P.W.9 as well as deceased got injured, but subsequently, after the death of the deceased, the informant lodged this case implicating the appellant on account of previous enmity. The evidence of D.W.1 goes to show that, at least, injury on P.W.9 is admitted by the defence and, therefore, the presence of P.W.9 over the place of occurrence cannot be denied. P.W.9, specifically, stated that it was appellant, who gave Dagger blow to him as well as deceased, as a result whereof, deceased died later on in hospital. Further, it is pertinent to note here that all the eye witnesses stated that single blow was given by the appellant and the alleged occurrence took place on account of sudden provocation due to dispute of irrigation of the field. It is obvious from the evidences available on the record that the appellant gave Dagger blow to the deceased and P.W.9 when his grandmother went to make complaint to the deceased as well as P.W.9 and, therefore, the aforesaid circumstance goes to show that the alleged occurrence took place due to sudden fight and, therefore, in our view, the learned court below committed error in convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and the learned court below ought to have



convicted the appellant for the offence punishable under Section 304(1) of the Indian Penal Code.

11. It is evident from perusal of the impugned Judgment that the appellant was aged about in between 17 to 18 years at the time of alleged occurrence and, therefore, it goes to show that he was a boy of tender age at the time of alleged occurrence. Furthermore, we find that appellant has already remained in jail custody for near about five years and, therefore, in the aforesaid circumstance, we are of the opinion that the end of Justice would meet, if the appellant is sentenced to period already undergone.

12. On the basis of the aforesaid discussions, this appeal stands dismissed with the above stated modification in the impugned Judgment of conviction and sentence order and, accordingly, the appellant is convicted for the offence punishable under Section 304(1) as well as Section 324 of the Indian Penal Code and, accordingly, he is sentenced to period already undergone.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	06.08.2018
Transmission Date	06.08.2018

