

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.195 of 1995

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Jagarnath Pandit @ Nankhi Pandit, son of Hirdaya Pandit, resident of Village Bhadada, P.S. Karza, District Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vindyakeshri Kumar, Sr. Advocate. Mr. Satyendra Singh, Advocate. Ms. Ranjana Sinha, Advocate.
For the State	:	Mr. Dilip Kumar Sinha, APP

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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 : 01-08-2018

1. This appeal has been preferred against the judgment of conviction and sentence order dated 19.06.1995 and 20.06.1995, respectively, passed by 1st Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 283 of 1992, by which and whereunder, he convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. The learned trial court by the same impugned Judgment, acquitted co-accused, Gadavati



Devi @ Pramila Devi and Samundari Devi, of the charged framed against them.

2. Karja P.S. Case No. 20 of 1992 for the offence punishable under Sections 447, 324 and 307 of the Indian Penal Code was registered against the appellant and two other accused on the basis of Fardbeyan of P.W.6, namely, Harihar Pandit, who got recorded his Fradbeyan, on 18.04.1992, at about 11P.M., at his door to this effect that on the same day, at about 5.30P.M., he along with his brothers Sukhdeo Pandit, Nandlal Mahto, Laxman Pandit, Ram Ayodhya Pandit and Harendra Sahani were keeping *Chappar* on his cattle house. In the meantime, appellant along with two FIR named accused came there and made protest and appellant took out a dagger from his pocket and gave dagger blow on the abdomen of Sukhdeo Pandit and fled away from there. P.W.6 and others brought injured, Sukhdeo Pandit, to Muzaffarpur for his treatment. P.W.6 further stated that the land, on which the *Chappar* was being put, was being claimed by the appellant as his own land.

The formal FIR was drawn up and P.W.9 took charge of investigation. He recorded the statement of witnesses, inspected the place of occurrence and submitted charge sheet against the appellant and others for the offences punishable under Section 302



and other minor Sections of the Indian Penal Code, as the injured, Sukhdeo Pandit, died in course of treatment.

It is pertinent to note here that, on 21.04.1992, P.W.8, Ahamad Hussain Khan, recorded the statement of injured, Sukhdeo Pandit, while he was admitted in private clinic of Dr. R.N.Thakur.

After cognizance and commitment, the appellant and two others were put on trial and, accordingly, they stood charged for the offences punishable under Sections 302 and 120B of the Indian Penal Code, the appellant and others denied the charges.

3. In course of trial, prosecution examined, altogether, 11 witnesses and also gave exhibited certain documents. The statement of appellant and others were recorded under Section 313 of the Criminal Procedure Code, in which, they again denied prosecution story. No evidence was adduced by the appellant as well as other accused in support of their defence.

The learned trial court having perused the materials available on the record convicted and sentenced the appellant whereas acquitted the remaining accused persons in the manner, as we have already stated.

4. Learned counsel appearing for the appellant submits that the learned trial court has not appreciated the evidences in its



right perspective, as a result whereof, the learned trial court came to wrong conclusion. Learned counsel, further, submitted that the prosecution failed to prove the manner of occurrence and moreover, even if, the evidence adduced by the prosecution assumed to be true, then also, the appellant could have only been convicted for the offences punishable under Section 304(1) of the Indian Penal Code, because according to the prosecution case itself, the alleged occurrence took place due to sudden fight and in the aforesaid sudden fight, the appellant gave single dagger blow to the deceased.

5. On the other hand, learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentence order, arguing that the eye witnesses of the alleged occurrence have supported the prosecution story and apart from this, the statement of deceased was recorded by the Police before his death and the aforesaid statement of deceased is amount to his dying declaration. He further submitted that the deceased very clearly stated in his statement that the appellant gave thrice dagger blow to him and, therefore, the aforesaid circumstance goes to show that the appellant gave thrice dagger blow to deceased with an intention to commit his murder and, therefore, the case of the



appellant does not come under the purview of Section 304(1) of the Indian Penal Code.

6. Having heard the rival contentions of both the parties, we went through the record. P.W.1 Nand Lal Mahto, P.W.2 Harinder Sahni, P.W.3 Ram Ayodhya Pandit, P.W.4 Kirtan Pandit and P.W.6 Harihar Pandit claimed themselves to be the eye witnesses of the alleged occurrence.

P.W.1, Nand Lal Mahto, says that the appellant took out the dagger and gave one dagger blow on the abdomen of the deceased, Sukhdeo Pandit and again the appellant made attempt to give dagger blow to deceased, Sukhdeo Mahto, but the aforesaid blow hit on the elbow of the deceased, Sukhdeo Mahto. P.W.2, Harinder Sahni, simply stated that the appellant gave dagger blow to deceased, Sukhdeo Pandit. P.W.3, Ram Ayodhya Pandit, says that appellant gave twice dagger below on the abdomen of the deceased, Sukhdeo Pandit. Similarly, P.W.4, Kirtan Pandit, says that the appellant gave dagger blow to deceased. P.W.6, Harihar Pandit, the informant of the present case, says that appellant gave dagger blow twice on the abdomen of the deceased and again he gave dagger blow causing injury on the elbow of the deceased and, therefore, according to P.W.6, appellant gave thrice dagger blow to the deceased.



The statement of deceased, Sukhdeo Pandit, has been brought in evidence as Ext.3. The deceased, Sukhdeo Pandit, stated before the police that appellant gave dagger blow twice on his abdomen and again gave one dagger blow on his left hand.

7. P.W.7, Dr. Bartendu Kumar, says that on 18.04.1992, he was working in his private clinic, namely, R.N. Thakur Memorial Clinic at Brahmpura and on the aforesaid date, he had examined the deceased, Sukhdeo Pandit. According to this witness, he found (1) penetrating injury on the left side of abdomen size 4" x 1" x 1.5" lateral to the midline and 6" above mid inguinal point with portion of small gut and transverse colon coming out through the wound and perforation in the small gut and colon also with bleeding from the wound. (2) Incised wound 1/2" x 1/4" x 1/4" lateral border of left forearm, 2" below elbow with bleeding from the wound. This witness opined that both the aforesaid injuries were caused by sharp cut instrument.

8. P.W.9, Dr. Manoranjan Kumar Shrivastava, says that on 22.09.1992, he did postmortem examination on the dead body of deceased, Sukhdeo Pandit. This witness states that he found following antimortem injuries: "Bandage over the abdomen, which was removed. Incised and punctured wound 3" x 1/2" x abdominal cavity deep found on the left flank of abdomen and on dissection,



look of intestine was found stitched at four places. This witness also found stitched wound 12" long on the middle of abdomen and opined that the said wound was surgical wound. He also found incised wound 2" x 1/2" bone deep on the left forearm just 2" below left elbow joint".

This witness states that the above stated injury nos. 1 and 3 were caused by sharp pointed weapon and so far as injury no. 2 is concerned, the same was due to surgical interference by the surgeon.

9. On conjoint perusal of evidence of P.W. 7 and P.W.9, we find that only two injuries caused by sharp cutting weapon were found on the person of the deceased and, out of aforesaid two injuries, one injury was found on the abdomen of the deceased whereas another injury was found on the forearm of the deceased and, therefore, in view of the aforesaid depositions of P.W.7 and P.W.9, Ext.3, the statement of deceased, appears to be doubtful. It is apparent from the above stated evidences that the deceased sustained two injuries. Out of them, he only one injury on his abdomen.

10. It is admitted case of the prosecution that the deceased along with informant and others were putting *Chapper* on a land, which was being claimed by the appellant and,



therefore, the aforesaid admission of the prosecution case goes to show that there was land dispute and the appellant was claiming his right in respect of the land, over which, *Chapper* was being put by the deceased and others. Furthermore, as we have already stated that the deceased sustained single blow of dagger on his abdomen and another dagger blow was on his elbow, which was found simple in nature. It is obvious from the aforesaid evidence that the appellant gave dagger blow to deceased due to sudden fight and provocation, as the appellant under bonafide believe was claiming his right over the land on which the *Chapper* was being put by deceased and others. Therefore, in our view, the learned counsel for the appellant rightly submitted that the case of the appellant comes under the mischief of Section 304(1) of the Indian Penal Code. Accordingly, the conviction of the appellant is converted under Section 304(1) of the Indian Penal Code. It is admitted position that the appellant remained in jail custody for more than five years and, therefore, in our view the ends of Justice would meet, if the appellant is sentenced to the period already undergone. Accordingly, he is sentenced to period already undergone in course of trial as well as during pendency of this appeal.



11. On the basis of aforesaid discussions, this appeal stands dismissed with above stated modification in the impugned Judgment of conviction and sentence order.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-Rahul/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	7-8-2018
Transmission Date	7-8-2018

