

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.667 of 2012

Arising Out of PS. Case No.-183 Year-1993 Thana- RAMNAGAR District- West Champaran

Anil Choudhary, Ram Swarup Choudhary, R/O,Vill.-Chandiasathan,P.S.-
Gobinganj,Dist.-East Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Suraj Narain Pd. Sinha, Sr. Advocate Mr. Jitendra Narain Sinha, Advocate Ms. Rashmi Bharti, Advocate
For the Respondent/s	:	Mr. A.K. Sinha (APP)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 09-01-2018

We have heard parties and perused the records of this case.

The appellant has filed this appeal assailing the judgment of conviction dated 16.04.2012 and order of sentence dated 20.04.2012 passed by the Additional Sessions Judge-II, Bagaha, West Champaran in Sessions Trial Nos. 433 of 1994/433 of 2009 arising out of Ram Nagar P.S. Case No.183 of 1993 by which he has been convicted for the offence punishable under Section 307 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life and



also to pay a fine of Rs.10,000/- and in default to pay fine, he has to undergo further rigorous imprisonment for one year.

The prosecution case is based on the written complain dated 31.07.1993 of one Paras Nath Choubey, Jamadar, Harinagar Sugar Mill Limited, Harinagar to the effect that at about 7.15 A.M. when Kundan Singh Mokha, Engineering Consultant and Adviser of the Mill reached near Lathe Machine inside the Mill, one of the labour, namely, Anil Choudhary (appellant) inflicted knife blows in the chest of Kundan Singh Mokha who fell down on the ground. The occurrence was witnessed by Manan Singh (P.W.2), Sitaram Yadav (P.W.4), Lalan Prasad (P.W.5) and the informant himself. It is further alleged that when Dr. B.C. Kar was called to attend the injured, the appellant, Dinanath Pandey, Tarique Khan, Pradeep Pandey, Mahibulla, Mrityunjay Kumar Deuby and Haridwar Sharma were instigating the Mill labourers to stop the doctors from attending the injured Kundan Singh Mokha. It is also alleged that on their incitement, labourers assaulted the staff of Bettiah Hospital and damaged several vehicles standing inside the campus of the Mill and also damaged glass panels and other articles of Kundan Singh's quarter.



On the basis of aforesaid written complaint, the police registered a case under Sections 147/323/307/427/337/109/353 of the Indian Penal Code vide Ramnagar P.S. Case No. 183/1993. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the accused including the appellant. Thereafter, cognizance has been taken. The case has been committed to the court of sessions, where charges were framed, to which, the appellant pleaded not guilty. Thereafter, trial started.

During trial, the prosecution has examined altogether twelve witnesses in support of its case. P.W.1 is Dr. Srikant Upadhaya, P.W. 2 is Manan Singh, P.W. 3 is Sridhari Koeri, P.W. 4 is Sitaram Yadav, P.W. 5 is Lalan Prasad, P.W. 6 is Dr. Ramchandra Mall, P.W. 7 is Noor Mohammad, P.W. 8 is Dr. B.C. Bar, P.W. 9 is Parasnath Choubey, P.W. 10 is Dr. Sanjay Kumar Jha, P.W. 11 is Madhusudan Prasad Srivastava and P.W. 12 is Mohammad Ali.

The defence has not examined any witness on its behalf.

The trial court after hearing learned counsel for the parties and considering the materials available on record came to the conclusion that the prosecution has been able to prove the



charges against the appellant and, accordingly, the aforesaid judgment of conviction and order of sentence was passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

Mr. Suraj Narain Prasad Sinha, learned Senior counsel appearing on behalf of the appellant submits that it is evident from the injury report as well as the deposition of the doctor, who has medically examined the injured and has been examined as P.W. 1 that the doctor had not given the nature of injury at that point of time. As per injury report, there is one sharp cutting injury on the right hypochondrium size 1" x 1/2" x cavity deep, caused by sharp pointed substance, may be dagger. However, he has also stated in his cross-examination that he has not written penetrating injury in the report and it may also be caused due to fall of sharp cutting weapon from certain height. This witness has been declared hostile by the prosecution.

It is next submitted that the victim died after three years of the occurrence and, thus, he has not been examined as a witness during the trial. Not only that, his statement was recorded by the police under Section 161 Cr. P.C. but that was also not brought



on record by exhibiting it as it would have been of some value as per the provision contained in Section 33 of the Evidence Act.

It is urged that since the nature of injury has not been given, it cannot be a case under Section 307 IPC rather it may be a case in which conviction can be under Section 324 IPC only.

Per contra, Mr. Ashwini Kumar Sinha, learned A.P.P. appearing for the State has submitted that it is not of importance what was the nature of injury, what would be relevant would be attempt made by the accused. It is contended that attempt was made and injury was caused on the ribs which is cavity deep and that apart there are several eye witnesses, who had seen the appellant stabbing the victim.

Having regard to the aforementioned facts and circumstances of the case and the depositions of the eye witnesses, i.e., P.Ws. 2, 3, 4, 5 and 9, we have no difficulty in holding that this case does not warrant interference so far as the conviction of the appellant is concerned.

However, taking into account of the injury which has been inflicted and the fact that the doctor has stated it to be a sharp cutting weapon and not a penetrating wound and also no repeated blows were there and further that the doctor himself has been declared hostile and the further fact that the office has



reported that the appellant has already completed custody period of about 6 years, 2 months and 21 days, in our view, it is a fit case in which sentence should be modified to the period already undergone by the appellant in custody.

Ordered accordingly.

In the result, this appeal is dismissed with the aforesaid modification in the sentence.

The appellant, who is admitted in jail custody, would be required to be released forthwith, if not wanted in any other case.

(Dr. Ravi Ranjan, J)

(Anjana Mishra, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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