

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.208 of 1993

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Tribhuan Ram, son of late Rajgrihi Ram, resident of village – Amnour Bazar,
P. S. - Amnour, District – Saran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mr. Pramod Kumar, Advocate
For the Respondent : Mr. Shivesh Ch. Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 30-07-2019

Heard learned counsel for the appellant as well as
learned Additional Public prosecutor for the State.

2. The sole appellant has been convicted for the offences punishable under Sections 302/34 and 323 of the Indian Penal Code and, accordingly, has been sentenced to undergo life imprisonment for the offence punishable under Section 302/34 of the Indian Penal Code and to undergo six months rigorous imprisonment for the offence punishable under Section 323 of the Indian Penal Code by IVth Additional Sessions Judge, Saran at Chapra vide impugned judgment of conviction, dated 12.04.1993, and sentence order, dated 15.04.1993, passed in Sessions Trial No.



41 of 1992. However, both the sentences were ordered to run concurrently.

3. Briefly stated prosecution case is that PW-3, Deo Muni Devi, gave her fardbeyan to PW-4, the then A.S.I. of Amnaur Police Station, on 07.07.1991 at about 10 p.m. near her house to this effect that on the same day, at about 7 p.m., while she was sitting in her courtyard, her child came there weeping. She tried to console the child and in the meantime, her husband (deceased) came there from market and gave one slap to his child. She, further, claimed that in the meantime, her father-in-law, Jag Rosan Ram, and her brother-in-law, Tribhuwan Ram (appellant), came running in the courtyard and having caught the hair of her husband, threw him on the ground and started assaulting him with fists, slaps and legs. She tried to save her husband but she was also assaulted by them with fists and slaps. She, further, claimed that having heard the noise, Sukhal Ram (not examined), Satyen Ram (not examined) and Lal Mohan Ram (not examined) and others came there and they also tried to pacify the matter but Jag Rosan Ram as well as Tribhuwan Ram were not agreed to cool down the matter and both told to kill her husband. She, further, stated that her husband tried to come out of the house along with the witnesses but in the meantime, appellant Tribhuvan Ram brought a dagger from his house and handed over to Jag Rosan Ram, who



pierced the dagger into the chest of her husband. She, further, claimed that having sustained injury, her husband fell down on the ground and died then and there. After the occurrence, both the aforesaid persons fled away from there along with the aforesaid dagger. She, further, claimed that her father-in-law, Jag Rosan Ram and her brother-in-law, Tribhuwan Ram were separated from her husband since long and there was enmity between them and, that was the reason, they killed her husband.

4. On the basis of aforesaid fardbeyan of PW-3, Deo Muni Devi, Amnaur P. S. Case No. 87 of 1991, for the offence punishable under Section 302/34 of the Indian Penal Code, was registered and on the same day, formal F.I.R. was drawn up.

5. PW-4 took charge of investigation and in course of investigation, he recorded the statements of witnesses, inspected the place of occurrence but before completion of investigation, he handed over the charge of investigation to PW-5, who after completion of the formalities, submitted charge-sheet against the appellant as well as one co-accused Jag Rosan Ram.

6. Cognizance of the offence was taken and the case was committed to the court of sessions in usual way. The appellant along with co-accused Jag Rosan Ram stood charged for the offences punishable under Sections 302/34 and 323 of the Indian Penal Code, to which they denied and claimed to be tried.



7. In course of trial, prosecution examined, altogether, eight prosecution witnesses and also got exhibited inquest report, postmortem report etc., as documentary evidence. The statements of the appellant as well as co-accused Jag Rosan Ram were recorded under Section 313 of the Cr. P. C., in which they reiterated their innocence. No evidence was adduced by the appellant as well as co-accused Jag Rosan Ram in support of their defence but from perusal of statements recorded under Section 313 of the Cr. P. C as well as cross-examination of the prosecution witnesses, it appears that the defence of the appellant as well as co-accused Jag Rosan Ram was totally denial of the prosecution story. Learned trial court after evaluating the prosecution evidence convicted the appellant as well as co-accused Jag Rosan Ram having relied upon the testimonies of PW-3, Deo Muni Devi, and PW-7 (doctor).

8. Learned counsel appearing for the appellant challenged the impugned judgment of conviction and sentence order arguing that the learned trial court failed to appreciate the prosecution evidence in right perspective. He submitted that except PW-3, the wife of deceased, the informant of the present case, not a single prosecution witness supported the prosecution story. He, further, submitted that according to the prosecution case itself, the alleged occurrence took place in the courtyard of PW-3



but the dead body of deceased was found on the road and not a single drop of blood was found in courtyard of PW-3.

9. He, next, submitted that according to the prosecution case, it was co-accused Jag Rosan Ram, who gave dagger blow to the deceased and no overt-act has been attributed against the appellant. He submitted that so far as the claim of PW-3 that the appellant brought dagger from his house and gave it to co-accused Jag Rosan Ram is concerned, the said claim appears to be doubtful because it is an admitted case of the prosecution that the appellant and co-accused Jag Rosan Ram were annoyed with the deceased as the deceased had given one slap to his child and, therefore, the aforesaid circumstance indicates that neither Jag Rosan Ram nor the appellant had intention to commit murder of the deceased and therefore, even if, it assumed that Jag Rosan Ram had given dagger blow to deceased, then also, the appellant had no intention to commit murder of the deceased.

10. On the other hand, learned Additional Public Prosecutor for the State supported the impugned judgment arguing that PW-3 has, specifically, stated that the appellant brought dagger from his house and handed over to co-accused Jag Rosan Ram, who subsequently pierced the dagger into the chest of the deceased and, therefore, the aforesaid circumstance clearly goes to



show that there was common intention of the appellant as well co-accused to commit the murder of the deceased.

11. Having heard the rival contentions of both the parties, we went through the record.

12. As we have already stated that to prove the charges framed against the appellant and co-accused, prosecution examined, altogether, eight prosecution witnesses. Out of the aforesaid eight prosecution witnesses, only PW-3, the informant of the present case, supported the prosecution case and so far as the remaining prosecution witnesses are concerned, PW-1 is a witness of inquest report whereas PW-2 and PW-6 have been declared hostile and PW-4 and PW-5 are police officials and PW-7 is doctor and similarly, PW-8 is a formal witness.

13. The entire case of the prosecution is based upon the testimony of PW-3, who has supported her fardbeyan, saying that when her husband slapped his child, appellant and co-accused Jag Rosan Ram came there and started assaulting her husband with fists, slaps and legs and, subsequently, appellant brought a dagger from his house and handed over to co-accused Jag Rosan Ram who pierced the dagger into the chest of the deceased. It is obvious from perusal of statement of PW-3 as well as her fardbeyan that the scuffle between deceased and the appellant as well as co-accused Jag Rosan Ram started when deceased gave a slap to his



child. It is an admitted position that the appellant is cousin brother of deceased and similarly, co-accused Jag Rosan Ram is cousin father-in-law of the deceased. The statement of PW-3 goes to show that the appellant as well as co-accused Jag Rosan Ram wanted to punish the deceased as he had slapped his child. Therefore, it is obvious from the aforesaid fact that the appellant as well as co-accused Jag Rosan Ram had not shared their intention to commit the murder of deceased while they were assaulting the deceased by fists and slaps. It is true that PW-3 claimed that the appellant brought a dagger from his house and handed over to co-accused Jag Rosan Ram and, thereafter, Jag Rosan Ram gave dagger blow to deceased but except the PW-3, none has stated the above stated fact and there is no corroboration of the statement of PW-3. Although, it is true that if the testimony of a witness inspires confidence to the court, the corroboration of the testimony of the said witness is not required but in the present case, PW-3 tried to suppress the factum of enmity in course of trial and the aforesaid conduct of PW-3 creates doubt in the mind of the court. PW-3 has claimed in her fardbeyan that there was previous enmity between her husband and appellant as well as co-accused Jag Rosan Ram. Although, PW-3 has not stated the fact of enmity in her deposition before the court but the aforesaid fact has been mentioned in fardbeyan of PW-3. It is an admitted position that except PW-3, none has claimed to have seen the appellant while handing over



dagger to co-accused Jag Rosan Ram. Therefore, in our view, only on the statement of PW-3, it would not be safer to convict the appellant for the offence punishable under Section 302/34 of the Indian Penal Code and furthermore, we are of the view that the appellant is entitled to get benefit of doubt.

14. On the basis of aforesaid discussions, this criminal appeal is allowed and the impugned judgment of conviction and sentence order, so far as it relates to the appellant, is, hereby, set aside. The appellant is acquitted of the charge giving benefit of doubt to him. The appellant is on bail and, accordingly, he is discharged from the liability of his bail bonds.

15. In the aforesaid manner, this criminal appeal stands disposed of.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Rajeev Kumar/-

AFR/NAFR	A.F.R
CAV DATE	NA
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