

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.540 of 2013

Arising Out of PS. Case No.-20 Year-2009 Thana- SANOKHAR District- Bhagalpur

Md. Nazir @ Muoga S/O Late Md. Salamat Resident Of Village- Bari Naki,
P.S- Sanokhar, District- Bhagalpur.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Indeshwari Prasad Mandal, Advocate
For the Respondent : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH

SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 15-12-2022

This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure putting to challenge the judgment of conviction dated 19.03.2013 and the order of sentence dated 21.03.2013, passed in Sessions Case No. 906 of 2009/Sessions Trial Case No. 280 of 2009, by the trial court, whereby the sole appellant has been convicted and sentenced as under: -

Convicted under Sections	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
302 of the Indian Penal Code	R.I. for life	2,000/-	One year simple imprisonment



2. Heard Mr. Indeshwari Prasad Mandal, learned counsel appearing on behalf of the appellant and Ms. Shashi Bala Verma, learned Additional Public Prosecutor representing the State.

3. A *fardbeyan* of the widow of the deceased, Sairun Nisha (PW 9) is the basis for registration of the FIR, giving rise to Sanokhar P.S. Case No. 20 of 2009. According to the FIR, on 27.02.2009, the victim had gone out for casting bricks. While he was returning to his home, the appellant stabbed him in his abdomen. The deceased, thereafter, rushed from the place of occurrence towards his village, screaming in pain and fell down in the midway, in front of the house of one Jahangir (PW 3). The deceased was brought to his house first and was thereafter taken towards a hospital. On his way to the hospital, the deceased is said to have died.

4. Upon registration of the FIR, inquest report was prepared and the dead body of the deceased was subjected to postmortem examination. The postmortem report, which is exhibit-2, found following antemortem injuries: -

“One punctured (stab) wound 2 ½” x ¾” x abdominal cavity deep was found on the left part of abdomen 4” away from midline, 6 ½” below the left nipple at the level of umbilicus. The coils of intestine were found protruding outside the wound. The spleen, mesentery, right lobe of liver



were found lacerated. The whole abdominal cavity was full of blood and blood clots.”

5. From the inquest report, which is exhibit-5, it appears that the omentum of the deceased was found protruding from his stomach. The police, upon completion of investigation, submitted its charge-sheet on 11.06.2009, whereupon cognizance was taken by learned Chief Judicial Magistrate, Bhagalpur, on 15.06.2009 and the case was committed to the Court of Sessions. Subsequently, on 08.09.2009, a charge for commission of offence punishable under Section 302 of the IPC was framed against the appellant. At the trial, altogether 11 witnesses came to be examined for the prosecution. After closure of the evidence of the prosecution's witnesses, complying with the requirement of Section 313 of the Cr.P.C., the trial court asked the appellant to explain the circumstances emerging against him based on the evidence. He, however, denied all the circumstances. The prosecution adduced documentary evidence also including the FIR (exhibit-4), postmortem report (exhibit-2) and the inquest report (exhibit-5).

6. Apparently, based on the evidence of the prosecution's witnesses to the effect that the deceased had disclosed this appellant's name in injured condition to PW 3, Jahangir, that the



appellant had stabbed him, the trial court has recorded conviction taking into account the corroboration in the form of medical evidence.

7. Learned counsel appearing on behalf of the appellant has contended that the trial court has committed gross error by basing its finding of conviction on the testimony of the witnesses to the effect that the deceased had disclosed the name of this appellant after he (the deceased) had sustained injuries. He has, firstly, contended that considering the nature of injury, which the deceased was found to have sustained, it was impossible for him to speak, much less taking the name of the person, who had stabbed him. He has, secondly, submitted that in the facts and circumstances of the present case, considering the nature of injury, the deceased had sustained, there ought to have some proof to corroborate the said dying declaration in the background of the fact that in no circumstance, with the kind of injuries, which the deceased had sustained, he could have spoken even a single word.

8. Ms. Shashi Bala Verma, learned Additional Public Prosecutor representing the State has submitted, on the other hand, that a dying declaration, if appears to be truthful does not require any corroboration. She has submitted that it was the specific case of the prosecution that after having sustained the injuries, the



deceased had fallen down near the house of PW 3, Jahangir. PW 3 had enquired from him as to how he had sustained the said injuries, in response to which the deceased disclosed the appellant's name who had stabbed him. She contends that there does not appear to be any reason why the evidence of PW 3 could have been discarded by the trial court. She has submitted that the trial court has rightly taken into account the evidence of Jahangir (PW 3) and other prosecution's witnesses to hold the appellant guilty of the offence punishable under Section 302 of the IPC.

9. We have perused the impugned judgment and order of the trial court as well as the lower court records, which have been received. We have given our thoughtful consideration to the rival submissions made on behalf of the parties. It is easily culled out from the evidence of the prosecution's witnesses that PW 3, Jahangir, is said to have heard from the deceased that he was stabbed by this appellant in his stomach. Jahangir (PW 3) thereafter disclosed this fact to the informant (PW 9). PWs 2 and 4 also learnt the aforesaid disclosure made by the deceased to PW 3, from PW 3. It is apparent, thus, that PWs 2, 4 and 9 are hearsay witnesses.

10. The limited question, which the Court is required to consider in the present appeal is, as to whether on the sole



evidence of PW 3, to whom the deceased is said to have disclosed that he was stabbed by the appellant, conviction recorded by the trial court of the appellant can be sustained or by not or whether a case is made out for giving the appellant benefit of doubt.

11. We have reproduced the result of the postmortem report, from which it is evident that one punctured (stab) wound 2 ½” x ¾” x abdominal cavity deep was found on the left part of abdomen 4” away from midline, 6 ½” below the left nipple at the level of umbilicus. The coils of intestine were found protruding outside the wound. The spleen, mesentery, right lobe of liver were found lacerated. The whole abdominal cavity was full of blood and blood clots. With the nature injuries, which the deceased had sustained, it might not have been possible, in our opinion, to understand and respond to the queries made by PW 3. In the Court’s opinion, it is difficult to hold, based on sole testimony of PW 3, that the deceased was in such mental state, after having received the nature of injuries, as noted above, that he could have understood the question said to have been put by PW 3 and answered the same, disclosing the name of an assailant.

12. Further, from the evidence of the Investigating Officer, it appears that from the place of occurrence, a pair of slippers was recovered, but no further investigation was done in



respect of those slippers. No mark of blood was found at either of the places, where the deceased was stabbed or where he had fallen down, in front of the house of PW 3 after sustaining injuries.

13. Taking into account, the cumulative effect of the prosecution's evidence, as noted above, in our view, the conviction recorded by the trial court is unsustainable, which is solely based on the evidence of PW 3 without any corroboration. This is particularly in the background of the fact considering the antemortem injuries as mentioned in postmortem, it would have been nearly impossible for a person to speak.

14. In the facts and circumstances of the case, the appellant deserves to be given benefit of doubt. In our opinion, it is unsafe for this Court to uphold the impugned judgment of conviction and accordingly the order of sentence.

15. Situated thus, the impugned judgment of conviction dated 19.03.2013 and the order of sentence dated 21.03.2013, passed in Sessions Case No. 906 of 2009/Sessions Trial Case No. 280 of 2009 passed by Ad-hoc Additional District and Sessions Judge-3, Bhagalpur, is hereby set aside. The appellant stands acquitted of the charge for the offence punishable under Section 302 of the IPC, giving him benefit of doubt.

16. This appeal is accordingly allowed.



17. The appellant is in custody. Let him be released forthwith, if no required in any other matter.

(Chakradhari Sharan Singh, J)

(Chandra Prakash Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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