

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1711 of 2017**

Arising Out of PS. Case No.-69 Year-2014 Thana- RUNISAIDPUR District- Sitamarhi

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Md. Foolsharif @ Md. Phul Sharif, Son of Yunush Miyan, Resident of Village- Kharka, P.S.- Runnisaid Pur, District- Sitamadhhi.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Pushpanjali Sharma (*Amicus Curiae*)

For the Respondent/s : Ms. Anita Kumari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT**

Date : 09-10-2023

1. Heard the parties.

2. The instant appeal has been filed by the appellant against the judgment of conviction dated 17.05.2017 and order of sentence dated 24.05.2017 passed in Sessions Trial No. 577 of 2014/16, arising out of Runnisaidpur P.S. Case No. 69 of 2014, in which the appellant was charged for the offences under Sections 302, 341, 323/34, 326 and 504 of the Indian Penal Code (hereinafter referred to as 'IPC') and the trial Court convicted him for the offences punishable under Sections 304 part II, 341 and 323 read with Section 34 of IPC and held the appellant guilty of culpable homicide not amounting to murder



and accordingly, sentenced him to undergo rigorous imprisonment for 7 years with a fine of Rs. 50,000/- for the offence under Section 304 part II of the IPC and in default of payment of fine, to further undergo additional simple imprisonment for 3 months. The Trial Court further sentenced the appellant to undergo rigorous imprisonment for one year for the offence punishable under Section 323 of IPC and to undergo simple imprisonment for 1 month under Section 341 of IPC and all the sentences of imprisonment were directed to run concurrently by the trial Court.

3. The substance of the prosecution's case is as under:

As per allegation, on 26 February, 2014 at 06:00 PM, the informant's nephew, namely, Bhikhari Sah was standing at a Cycle shop of one, namely, Krishna Mohan Sah, in the meantime the appellant came there from his house and started abusing him, thereafter, the informant's nephew protested then the appellant started assaulting him by means of *lathi* and then co-accused persons, Fakira Miyan, Fuddi Miyan and Md. Yunish Mian also arrived there and assaulted the informant's nephew and when the informant and his brother, namely, Ramjinish Sah reached at the place of occurrence, the appellant



brought a sword from his house and inflicted a sword blow at the leg of informant's brother as he could not return back while the informant managed to protect himself by returning back on seeing the appellant with a sword in his hand and thereafter, informant's villagers gathered there and then the accused persons including the appellant fled away. After that informant and his villagers rushed the informant's brother to Primary Health Centre, Runnisaidpur where the doctor declared him dead.

4. With the above allegations, the informant recorded his fardbeyan Exhibit-3 at Runnisaidpur police station, on that basis the formal FIR bearing Runnisaidpur P.S. Case No. 69 of 2014 was registered under Sections 302, 326, 323, 341 and 504/34 of the IPC which set the criminal law in motion.

5. After the completion of investigation, the police submitted charge-sheet against the appellant under Sections 341, 323, 326, 302, 504/34 of IPC and the investigation was kept pending against the other co-accused persons. The appellant stood charged for the offences as mentioned above.

6. During trial, the prosecution examined altogether 15 witnesses and produced the following documents



and got them marked as Exhibits which are as under:

- Ext. 1- Post Mortem Report;
- Ext. 2- The injury Report of Bhikhari Sah;
- Ext. 2/1- The injury report of Krishna Mohan Sah;
- Ext. 3- Fardbeyan;
- Ext. 3/1- The endorsement on fardbeyan.
- Ext. 4- Formal F.I.,R;
- Ext. 5- Carbon Copy of Inquest Report;
- Ext. 6- Signature of S.I. Jitendra Kumar on requisition for injury report of Krishna Mohan Sah;
- Ext. 6/1- Signature of S.I. Uma Kant Singh on requisition for injury report of Bhikhari Sah;
- Ext. 7- C.C. of final form of Runnisaidpur P.S. Case No. 279 of 2014;
- Ext. 8- C.C. of formal F.I.R. of Runnisaidpur P.S. Case No. 70 of 2014;
- Ext. 9- C.C. of Charge Sheet of Runnisaidpur P.S. Case No. 70 of 2014; and
- Ext. 10- C.C. of Charge framed in Runnisaidpur P.S. Case No. 70 of 2014 (S.Tr. No. 535 of 2014).

7. After the completion of prosecution's evidence, the statement of the accused/appellant was recorded



under Section 313 of Cr.P.C., in which the main circumstances appearing against him from the prosecution's evidences were denied by him and he mainly took the defence that Ram Jinish Sah, Bhikhari Sah, Krishna Mohan Sah and Ram Phool Sah, who were members of the prosecution party, attacked at his house and misbehaved with his mother and when resistance was made by him then the said persons set his house on fire and thereafter fled away.

8. I have heard Ms. Pushpanjali Sharma, learned *amicus curiae*, and Ms. Anita Kumari Singh, learned APP appearing for the State and also perused the impugned judgment and the evidences available on the case record of court below. In the present matter, as per allegation the appellant firstly, assaulted the informant's nephew and thereafter, brought a sword from his house and then assaulted the informant's brother by the said means and in that occurrence the other co-accused persons Fakira Miyan, Fuddi Miyan and Md. Ynus Mian also joined the appellant but the main allegation of inflicting sword blow is against the appellant as per the prosecution's story appearing from the FIR.

9. In respect of the prosecution's allegation the most important prosecution witnesses are the informant and his



nephew Bhikhari Sah, who were examined as PW-1 and PW-9 respectively. PW- 1 deposed in his examination-in-chief that on 26.02.2014 at about 6 PM he was standing near a cycle shop of one namely, Krishna Mohan Sah then the appellant came there and started abusing him which was objected by him, thereafter the appellant started assaulting him by means of *lathi* and then his brothers Fakira @ Akhtar, Unnis Mian and Shariff Hussain also arrived there and they started scuffling with him and when his uncle Ram Jinish Sah tried to save him then the appellant brought a sword from his house and inflicted a sword blow at the left leg of his uncle, after the incident his uncle was rushed to Runnisaidpur hospital where the Doctor declared him dead. PW.9 who is the informant of the present matter, deposed almost the similar evidence in his examination-in-chief and both the said witnesses were cross examined at length by the defence but they remained firm to their stand and except minor contradiction regarding the presence of other co-accused persons with the appellant, nothing came out against the prosecution's allegation from their cross examination.

10. So far as the evidence of other prosecution witnesses, other than the Doctor concerned who conducted the postmortem examination over the body of the deceased is



concerned, their evidence is also supportive to the prosecution's allegation.

11. In this matter, the important evidence is deceased's postmortem report which was marked as Exhibit-1. As per the medical expert's opinion given in the postmortem report of the deceased regarding the external injury of the deceased, a sharp cut injury at the below left knee in the size of 6" x 3" x bone deep was found on the body of the deceased and the deceased's knee was found almost being amputated and attached to the body with ligaments and the Doctor concerned proved in the postmortem report and deposed that the cause of death of the deceased was due to hemorrhage and shock leading to C.R. failure as a result of the injury mentioned in the postmortem report which was caused by sharp cutting weapon. In the light of this evidence, the sharp cut injury which was found on the left knee of the deceased was the main cause of the death of the deceased as per medical expert's opinion and the said injury was specifically attributed against the appellant and he allegedly caused the said injury by using a sharp-edged weapon, namely sword. As such, the medical evidence appearing from the postmortem report of the deceased also goes in favour of the prosecution's allegation.



12. The specific defence taken by the appellant in his statement recorded under Section 313 of Cr.P.C. does not get support from the evidence of prosecution witnesses and the same does not appear to be reliable and PW- 10 proved the postmortem report of the deceased. Though, the appellant produced and examined two defence witnesses in support of his defence as to the prosecution party having set appellant's house on fire, but the defence witnesses did not depose the fact that on the alleged date of occurrence, the said incident of appellant's house setting on fire by the prosecution party took place. Accordingly, I find no force in the said defence of the appellant.

13. Though, in the present matter two important prosecution witnesses PW 2 and PW 3 were declared hostile but the informant (PW-9) and his nephew's evidence (PW-1) discussed above and the evidence of PW- 6 is completely in support of the prosecution's allegation and PW 6 claimed himself to be an eye witness of the alleged occurrence and he deposed that at the time of commission of the alleged occurrence, he was also present at the place of occurrence and he saw that the appellant, firstly, abused the informant's nephew and thereafter, brought a sword from his house and then assaulted the informant's brother by the said means. Similar



evidence was given by PW 7 who is also stated to be an eye witness of alleged occurrence.

14. In view of the above discussed facts, coming out from the prosecution evidences, I am of the considered view that the prosecution succeeded to prove the allegations against the appellant that firstly, the appellant abused the informant 's nephew (PW-1) and thereafter assaulted him and informant's brother and in that course, the appellant used a sword in assaulting the informant's brother, which resulted in a sharp cut injury to his left knee which caused his death.

15. As according to prosecution's story, the alleged occurrence was not pre-planned and the same took place in the spur of moment and there was no allegation that the appellant inflicted sword blow repeatedly on the victim, so, the conviction of the appellant for the offence punishable under Section 304 part II of I.P.C. appears to be proper and legal and I find no reason to interfere in the judgment of conviction and sentence awarded to the appellant by the convicting trial court.

16. The appellant has been languishing in jail since 18.07.2014, as such, he has completed the entire sentence of rigorous imprisonment of seven years. I find no merit in the instant appeal and also no reason to interfere in the judgment



impugned, hence, the instant appeal stands dismissed.

17. Ms. Pushpanjali Sharma, learned *Amicus Curiae* shall be entitled to remuneration as per notification dated 18.05.2017 issued by the State Government to be paid by the Patna High Court Legal Services Committee for assisting this court as *Amicus Curiae*.

18. Let the L.C.R. be sent back to the trial court forthwith.

(Shailendra Singh, J)

shweta/rajiv

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

