

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1051 of 2018

Arising Out of PS. Case No.-115 Year-1998 Thana- EKMA District- Saran

=====

Dinesh Singh S/o late Ramdhayan Singh, R/o Vill.- Ganjper, P.S.- Ekma,
District- Saran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 956 of 2018

Arising Out of PS. Case No.-115 Year-1998 Thana- EKMA District- Saran

=====

Rabindra Singh S/o late Madhaw Singh Resident of Village - Ganjpar, P.S. -
Ekma, District - Saran at Chapra.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 968 of 2018

Arising Out of PS. Case No.-115 Year-1998 Thana- EKMA District- Saran

=====

YUGUL THAKUR @ KASHI NATH THAKUR Son of Late Graj Narayan
Thakur, Resident of Village- Madansath, P.S.- Daudpur, District- Saran at
Chapra.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 990 of 2018



Arising Out of PS. Case No.-115 Year-1998 Thana- EKMA District- Saran

Sunil Singh S/o Shabhapati Singh, resident of Village- Ganjpar, P.S. Ekma District- Saran at Chapra.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Surendra Kumar Singh, Sr. Adv
Mr. Nawal Kishore Singh, Adv
Mr. Praveen Prakash, Adv
Mr. Raghav Prasad, Adv
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 956 of 2018)

For the Appellant/s : Mr. Surendra Kumar Singh, Sr. Adv
Mr. Nawal Kishore Singh, Adv
Mr. Praveen Prakash, Adv
Mr. Raghav Prasad, Adv
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 968 of 2018)

FFor the Appellant/s : Mr. Surendra Kumar Singh, Sr. Adv
Mr. Nawal Kishore Singh, Adv
Mr. Praveen Prakash, Adv
Mr. Raghav Prasad, Adv
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 990 of 2018)

For the Appellant/s : Mr. Surendra Kumar Singh, Sr. Adv
Mr. Nawal Kishore Singh, Adv
Mr. Praveen Prakash, Adv
Mr. Raghav Prasad, Adv
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH



and
**HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**
ORAL JUDGMENT
**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 18-09-2023

The appellants have preferred these appeals under Section 374(2) of the Code of Criminal Procedure assailing the judgment of conviction dated 21.06.2018 and an order of sentence dated 26.06.2018 passed by the Fast Track Court-I, Saran at Chapra in S.Tr. No. 160 of 2000 arising out of Ekma P.S. Case No. 115 of 1998, whereby and whereunder, the appellants have been convicted and sentenced as under:-

**Dinesh Singh, appellant in Criminal Appeal (DB) No. 1051 of
2018**

Penal Provision	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
Section 302/34 of the IPC	Imprisonment for life	Rs. 10,000/-	-----

**Rabindra Singh, appellant in Criminal Appeal (DB) No. 956 of
2018**

Penal Provision	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
Section	Imprisonment for	Rs. 10,000/-	-----



302/34 of the IPC	life		
-------------------	------	--	--

Yugul Thakur appellant in Criminal Appeal (DB) No. 968 of 2018

Penal Provision	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
Section 302/34 of the IPC	Imprisonment for life	Rs. 10,000/-	-----

Sunil Singh, appellant in Criminal Appeal (DB) No. 990 of 2018

Penal Provision	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 302/34 of the IPC	Imprisonment for life	Rs. 10,000/-	-----

2. The informant-Devendra Singh (PW-2) is the *cousin* of the deceased Dharmendra Singh. From what has been alleged in the FIR, it can be inferred that the deceased and the appellant Dinesh Singh were closely associated with each other so much so that they would humorously exchange abuses. The *fardbeyan* of the informant (Exhibit-1) recorded by the Officer-in-charge



of Ekma police station is the basis for registration of FIR, according to which the deceased and the informant were on their way back home at about 9:30 pm after having visited a fair at Ekma Bazar and in the midway they stopped at the betel shop of the appellant Dinesh Singh. It transpires from the FIR that the informant and the deceased were waiting for the appellant Dinesh Singh to prepare *paan* and give it to them; in the meanwhile, the deceased and the appellant Dinesh Singh engaged themselves in exchange for abuses, mocking each other. Their exchanges at some point in time turned into an altercation and became ugly. In the meanwhile, the other co-convicts namely, Rabindra Singh [appellant in Criminal Appeal (DB) No. 956 of 2018], Yugul Thakur [appellant in Criminal Appeal (DB) No. 968 of 2018] and Sunil Singh [appellant in Criminal Appeal (DB) No. 990 of 2018] came and they also started abusing the deceased. The appellants namely, Rabindra Singh, Yugul Thakur and Sunil Singh caught hold of the deceased, and in the meanwhile appellant Dinesh Singh pulled a knife from his betel shop and gave one knife blow to the chest of the deceased. The informant thereafter attempted to take the deceased to a hospital, where he died. Out of fear, the informant did not inform any Doctor in the hospital and informed the



villagers later at about 2:30 a.m. about the occurrence. Subsequently, the villagers assembled and the matter was reported to the police, whereafter the *fardbeyan* of the informant was recorded giving rise to Ekma P.S. Case No. 115 of 2018.

3. Upon completion of investigation chargesheet was submitted against all these appellants for the offence punishable under section 302 read with section 34 of the Indian Penal Code. The case was committed to the Court of Sessions and charges were framed against them for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The appellants denied the charges and claimed to be tried. Accordingly, they were put on trial.

4. In order to establish the charge against these appellants, the prosecution examined six witnesses including the Doctor who had conducted the postmortem report (PW-6). A nephew of the deceased Krishna Pratap Singh (PW-5) who did not support the prosecution's case, came to be declared hostile at the instance of the prosecution. A co-villager of the deceased Ram Kishun Singh (PW-4) also did not support the prosecution's case and accordingly, he also came to be declared hostile at the instance of the prosecution. The two other witnesses namely Satya Prakash Koiery (PW-1) and Ramudar



Singh (PW-3), co-villagers are hearsay witnesses. Thus, the informant (PW-2) is only the eye witness of the case as is evident from the FIR and deposition of the prosecution's witnesses. Apart, from the oral evidence, the prosecution brought on record the following documentary evidence:-

- (i) Signature of the informant on the *fardbeyan* (Exhibit-1).
- (ii) Signature of PW-3 on the inquest report (Exhibit-2)
- (iii) Postmortem report is marked as (Exhibit-3).

5. The appellants were questioned under Section 313 of the CrPC so as to give them an opportunity to explain the incriminating circumstances emerging against them based on the evidence of the prosecution's witnesses. They answered in negative. One defence witness, Kamlesh Kumar Singh, was examined as DW-1 to support appellant Rabindra Singh's alibi plea.

6. The investigating officer was not examined at the trial. The trial Court, after having appreciated the evidence adduced at the trial has reached a conclusion by the impugned judgment dated 21.06.2018 that the prosecution has been able to prove the charge of commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code against all the persons put on trial.

7. Mr. Surendra Kumar Singh, learned senior counsel



appearing on behalf of the appellants assailing the impugned judgment of conviction against appellant Dinesh Singh of Criminal Appeal (DB) No. 1051 of 2018, has submitted that it is manifest from the depositions at the trial that PW-2 is the only eye witness to the act of the appellant Dinesh Singh. If the deposition of PW-2 is taken to be correct at its face value, the act by the appellant was committed without any premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without taking undue advantage. For the said reason, appellant Dinesh Singh's act can be said to be falling, at the maximum, under explanation 4 of Section 300 of the Indian Penal Code. He, accordingly, contends that the act of the appellant Dinesh Singh would fall under Part II of Section 304 of the Indian Penal Code. As regards, other appellants namely Rabindra Singh, Yugul Thakur and Sunil Singh, he has submitted that the prosecution, based on evidence of PW-2 has miserably failed to establish beyond all reasonable doubts that these appellants had caught hold of the deceased so as to facilitate the appellant Dinesh Singh cause fatal injury with a knife. He has submitted that it would be apparent from the narration in the *fardbeyan* itself that a trivial matter snowballed into a serious occurrence, in the heat of that moment. He submits that the intervention of



the appellants Rabindra Singh, Yugul Thakur and Sunil Singh for the purpose of pacifying a sudden fight between the deceased and the main assailant Dinesh Singh by catching hold of the deceased cannot be ruled out and appears to be of the greater possibility. Learned Senior counsel has placed reliance on the Supreme Court's decision in **Veeran and Ors Vs. State of Madhya Pradesh (AIR 2011 SC 1655)** and **Jugut Ram Vs. State of Chhatisgarh (AIR 2020 SC 4395)** to bolster his contention that the case falls under Part II of Section 304 of the Indian Penal Code, based on the depositions of the witnesses at the trial and it is not a case of murder punishable under Section-302 of the Indian Penal Code.

8. Learned Additional Public Prosecutor representing the State of Bihar while defending the findings recorded by the trial Court has argued that though the prosecution's case in the present trial is based on the evidence of solitary eye witness i.e. PW-2, he appears to be a truthful witness who has given correct description of the background in which the occurrence had taken place without any exaggeration. The deposition of PW-2 stands corroborated by the medical evidence. In such circumstances, the finding of conviction does not suffer from any legal infirmity and does not require any interference. He has



further argued that the act of the appellant Dinesh Singh proved at the trial to the effect that he had given a knife blow right in the chest of the deceased demonstrating that the said blow was made with a clear intention to kill the victim knowing it fully well that injury so caused to the deceased would lead to his death. He has argued that the case does not fall within Part II of Section 304 of the IPC. As regards three other appellants Rabindra Singh, Yugul Thakur and Sunil Singh, he has submitted that it has been deposed at the trial by oral evidence of PW-2 that they had caught hold of the deceased whereafter the appellant Dinesh Singh had given a knife blow resulting into the death of the deceased. He has, accordingly, submitted that in such circumstances, their conviction for the offence punishable under section 302 of the Indian Penal Code read with Section 34 thereof cannot be said to be suffering from any legal infirmity requiring this Court's interference.

9. We have perused the impugned judgment and order of the trial court as well as the trial court's records and we have given our thoughtful consideration to the rival submissions advanced on behalf of the parties as noted above.

10. On a careful reading of the *fardbeyan* of the informant, which is the foremost version of the occurrence



disclosed by the informant, the sole eye witness, it is easy to infer that the deceased and the appellants were on very good terms with each other and were exchanging pleasantries just before the occurrence had taken place. When and how those pleasantries turned into a hot exchange of words/altercation, is not clearly mentioned in the *fardbeyan*, which must have been the turning point leading to the occurrence of the deceased having been assaulted by the appellant Dinesh Singh. It is pertinent to mention that the informant himself in his *fardbeyan* disclosed that the exchange of pleasantries between the deceased and the main assailant had taken a serious turn. It can easily be inferred from the said disclosure that none of the appellants had any intention or premeditation to do any act directed towards the killing of the deceased. The things apparently happened at the spur of the moment.

11. As regards the appellants Rabindra Singh, Yugul Thakur and Sunil Singh, it is said that they had caught hold of the deceased. There is evidence that some altercation had taken place. Learned senior counsel appearing on behalf of the appellants appears to be correct in his submission that the chance of these appellants namely, Rabindra Singh, Yugul Thakur and Sunil Singh of having reached the place of



occurrence to pacify sudden controversy that had arisen between the deceased Dharmendra Singh and the main assailant cannot be ruled out. There is no *iota* of evidence on record that the appellants, Rabindra Singh, Yugul Thakur and Sunil Singh had any animosity with the deceased or any close association with the appellant Dinesh Singh. There is no evidence that they had reached the place of occurrence to assist the main assailant in the killing of the deceased. In our opinion, the conviction of the appellants namely, Rabindra Singh, Yugul Thakur and Sunil Singh cannot be sustained, as in our opinion the prosecution could not prove beyond all reasonable doubts that they, by catching hold of the deceased, intended to assist or facilitate the main assailant, Dinesh Singh to cause the death of the victim.

12. Accordingly, the appellants namely, Rabindra Singh, Yugul Thakur and Sunil Singh stand acquitted of the charge of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code by giving them the benefit of doubt.

13. Now coming to the case of the appellant Dinesh Singh, it has already been noticed hereinabove that there are six witnesses out of whom two have been declared hostile. Witness Satya Prakash Koiery (PW-1) and Ramudar Singh (PW-3) are hearsay witnesses. Section 300 of the IPC defines “murder” as a



culpable homicide if the act by which death is caused is done with the intention of causing death. There are three other circumstances where culpable homicide can be termed as “murder” within the meaning of Section 300 of the Indian Penal Code. Section 300 of the Indian Penal Code, however, opens with the following words “**except in the cases hereinafter excepted**”. There are altogether 5 exceptions carved out under Section 300 of the Indian Penal Code. The first and the fourth exceptions are relevant to the present matter and are being reproduced hereinbelow:-

*“... **Exception 1.-** When culpable homicide is not murder. – Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

The above exception is subject to the following provisos:-

***First.-** That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*

***Secondly.-** That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*

***Thirdly.-** That the provocation is not given by anything done in the lawful exercise of the right of private defence.*



Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner...”

14. Mr. Singh, learned senior counsel appearing on behalf of the appellants has heavily relied on Exception-4 as noted above to contend the present case as against the appellant Dinesh Singh can be said to be a case of culpable homicide not amounting to murder punishable under Part II of Section 304 of the IPC. The language of the 4th exception to Section 300 of the Indian Penal Code is clear and unambiguous. So as to bring a case within Exception-4, it has to be seen as to whether the homicide was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. However, in case an offender is found to have taken undue advantage or acted in a cruel or unusual manner, Exception-4 under section 300 of the Indian Penal Code shall not apply. We find that it is the prosecution's case itself that the act of appellant Dinesh Singh was without premeditation. The occurrence happened in a sudden fight. The quarrel between the deceased and the appellant Dinesh Singh was sudden. The occurrence had taken place in a heat of passion. In our view, thus the conditions



precedent for invoking 4th Exception to Section 300 of the Indian Penal Code are present in this case so far as it relates to the appellant Dinesh Singh. The next question is as to whether the appellant can be denied the benefit of the 4th Exception applying the exclusion part under said Exception *i.e.* “without the offender having taken undue advantage or acted in a cruel or unusual manner”.

15. In the present case, there is evidence against the appellant that he gave one knife blow to the chest of the deceased. It is not the prosecution's case that he repeated the blow. He had the opportunity of repeating the blow as according to the prosecution, the deceased was already overpowered by the other appellants namely, Rabindra Singh, Yugul Thakur and Sunil Singh. He, thus, opted not to give another blow. Situated thus, it can be safely said that he did not take any undue advantage. It can also not be said that he acted in a cruel or unusual manner in the facts and circumstances of the case noted above.

16. In our view, the learned senior counsel appearing on behalf of the appellant has rightly submitted that so far as appellant Dinesh Singh is concerned his case falls under Exception-4 to Section-300 of the Indian Penal Code. It can



safely be concluded thus that the act of the appellant Dinesh Singh cannot be said to be culpable homicide amounting to murder rather it is a culpable homicide not amounting to murder punishable under Section 304 of the Indian Penal Code.

17. The next question which would arise for the present is as to whether his act will fall under the first part or the second part of Section 304 of the Indian Penal Code. It would be useful to reproduce Section 304 of the Indian Penal Code which reads as under:-

“304. Punishment for culpable homicide not amounting to murder.-- Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

18. The distinction between Part-I and Part-II of Section 304 of the Indian Penal Code can be easily discerned on close reading of the aforesaid provision. For constitution of an offence



punishable under Part-I of Section 304 of the Indian Penal Code, the prosecution is required to prove that the act by which the death was caused was with the intention of causing death or of causing such bodily injury as is likely to cause death. “Intention” of causing death or “of causing such bodily injury as is likely to cause death” is to be essentially proved by the prosecution to bring a case under Part-I of Section 304 of the Indian Penal Code. Part II excludes the element “intention” to cause death or to cause bodily injury as is likely to cause death. We, in the facts and circumstances of the case emerging from the evidence of the witnesses are of the considered view that it cannot be said that the prosecution could establish beyond all reasonable doubts that the appellant Dinesh Singh had any intention to cause death.

19. In such view of the matter, in our considered opinion the conviction of appellant Dinesh Singh deserves to be modified to an offence punishable under Section 304 Part II of the Indian Penal Code instead of Section 302 thereof. Mr. Singh, learned senior counsel for the appellant has rightly placed reliance on the Supreme Court’s decision in the case of **Veeran & Ors (supra) and Jugut Ram (supra)** shall apply in the present set of facts.



20. Accordingly, the impugned judgment of conviction dated 21.06.2018 and an order of sentence dated 26.06.2018 passed by the Fast Track Court-I, Saran at Chapra in S.Tr. No. 160 of 2000 arising out of Ekma P.S. Case No. 115 of 1998, so far as the same relate to the appellants Rabindra Singh, Yugul Thakur and Sunil Singh are hereby set aside. They stand acquitted of the charge. Criminal Appeal (DB) No. 956 of 2018, Criminal Appeal (DB) No. 968 of 2018 and Criminal Appeal (DB) No. 990 of 2018 are allowed.

21. Since, appellant Rabindra Singh of Criminal Appeal (DB) No. 956 of 2018, appellant Yugul Thakur of Criminal Appeal (DB) No. 968 of 2018 and appellant Sunil Singh of Criminal Appeal (DB) No. 990 of 2018 are on bail, they are discharged from the liability of their bail bonds and sureties, if any.

22. The conviction of Dinesh Singh as recorded by the trial court is modified and altered to conviction under Section 304 Part-II thereof. The order of sentence passed by the trial court is also modified to the period of imprisonment already undergone by this appellant. Criminal Appeal (DB) No. 1051 of 2018 is partly allowed. We are not inclined to interfere with the sentence of fine imposed by the trial court, in his case.



23. Since the appellant Dinesh Singh is in custody, let him be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.10.2023
Transmission Date	04.10.2023

