

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.209 of 2016**

Arising Out of PS. Case No.-38 Year-1989 Thana- NAYAGAON District- Begusarai

Radhe Singh, son of Late Sukhdeo Singh alias Munni Singh, resident of
Village and P.O. Safapur, P.S. Nayagaon, District- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate.
Ms. Vaishnavi Singh, Advocate.
For the Respondent/s : Mr. Abhimanyu Sharma, APP.

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 09-01-2024

1. We have heard Mr. Ajay Kumar Thakur, the learned Advocate for the sole appellant and Mr. Abhimanyu Sharma, learned APP for the State.

2. The appellant has been convicted under Section 302 of the Indian Penal Code, *vide* judgment



dated 17.02.2016 passed by the learned Sessions Judge, Begusarai in Sessions Trial No. 339 of 1993 (Computer Reg. No. 5733 of 2013) arising out of Nayagaon P.S. Case No. 38 of 1989. By order dated 22.02.2016, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs.5,000/- and in default of payment of fine, to further suffer S.I. for three months.

3. The appellant and his late brother were made accused in Nayagaon P.S. Case No. 38 of 1989, which initially was instituted for offences under Sections 341, 324, 307, 504/34 of the IPC, but later Section 302 of the IPC was added. Only the appellant was put on trial, as his brother, a co-accused, had died by the time the trial had commenced.

4. The occurrence is 35 years old. On 07.09.1989, one Saryug Singh (since dead) lodged the fardbeyan that his Nephew/Sanjeet Kumar (P.W. 4) had fought with the nephews of the appellant/Radhe



Singh while playing and the nephews of Radhe Singh had complained to him. Radhe Singh and his brother (since dead) came to the house of Saryug Singh and started assaulting Sanjeet Kumar (P.W. 4). In the meantime, the father of Sanjeet Kumar viz. Subansh Singh (deceased) came from field and accosted the appellant and his brother for assaulting a child and interfering in a dispute between children. The appellant and his brother are then said to have left in a huff. They came back after an hour and while the brother of the appellant held the deceased by his waist, the appellant attacked him by a fly-axe. The deceased, while trying to avert the attack, got injured in his arm. Shortly thereafter, he died. As such, the FIR referred above was registered for investigation.

5. As noted above, the maker of the FIR died and, therefore, the *fardbeyan* had to be proved by a formal witnesses viz. Umakant Mishra and Ram Chandra Prasad, P.Ws. 6 and 7 respectively.



6. The post-mortem report is not on record for the reason of it being lost during the long period that the case remained pending. However, the Doctor who had conducted the post-mortem on 08.09.1989 has been examined as P.W. 8.

7. A bare perusal of the deposition of P.W. 8, referred to above, would indicate that he had opened a dressed wound in the upper arm of the deceased. All the blood vessels were found to be completely cut-off. The muscles were also cut-off at a particular level. However, there was no fracture of any bone. The death was opined to have been caused because of haemorrhage and shock, as a result of the injuries suffered by the deceased. The injury was again opined to have been caused by a sharp-cutting weapon. The time elapsed since death was fixed at 24 hours.

8. From the perusal of the post-mortem report, one thing is certain that the deceased would



not have died of fat-embolism as the bone had not been fractured. Therefore, there is a possibility of the deceased dying because of neurogenic shock as a result of bleeding, because the blood vessels and muscles had been sheared through. That the deceased was subjected to medical aid would appear from the findings of the doctor *viz.* that the wound was found to be dressed. However, there is no evidence of the deceased having put to any medical aid and he is said to have died before such medical aid could have been given to him.

9. In this context, we have examined the deposition of Yogeshwar Singh, Ram Kumar Singh and Mahendra Singh P.Ws. 1, 2 and 3 who are the own brother, a cousin and an agnate of the deceased and the informant respectively.

10. From their deposition again, it would become very clear that they have a common house. But then, a different establishment, away from the



house has also been spoken of by all the afore-noted witnesses. At home, there is a common courtyard. The occurrence is said to have taken place in the out-house and not in the main dwelling house of the informant or the deceased.

11. A closer look at the deposition of P.W. 1 would indicate that he was the first person to arrive when the deceased was being assaulted. However, the manner of narration leaves an impression that he had only seen the deceased when he had fallen down on the ground injured.

12. This appears to be a more plausible interpretation for the reason that none of the witnesses have talked about any attempt at nabbing the appellant or his brother. The appellant and his late brother are residents of the same village, whose children had fought amongst themselves.

13. Surprisingly, Ram Kumar Singh (P.W. 2), a cousin of the deceased claims to have reached



the place of occurrence as the first person and only thereafter P.Ws. 1 and 3 had arrived. This narration, therefore, leaves one with a doubt whether anyone of the three persons had seen the actual part of the assault.

14. That the deceased died of the injury on his upper arm is for certain and such fact stands proved by the deposition of the Doctor, notwithstanding, the post-mortem report not having been brought on record because of the same having been lost.

15. But the issue which is to be examined therefore, is whether the appellant had attacked the deceased with the intention of killing him or with the intention of causing such bodily injury, which in ordinary course of nature would have caused his death or with the knowledge that such attack would cause such an injury as would become fatal for the deceased.

16. What was the circumstance under



which this brawl took place?

17. According to the *fardbeyan* and the deposition of the witnesses, Sanjeet Kumar (P.W. 4), who is the son of the deceased had picked up a fight with the nephews of the appellant. The nephews of the appellant had complained about Sanjeet Kumar. The appellant and his brother jumped in the fray and after reaching the house of the deceased, caught afore-noted Sanjeet Kumar and assaulted him. This was objected to by his father, who had arrived at the house in the nick of the time. Nothing happened then. It was only after an hour that the appellant along with his brother came and attacked the deceased.

18. The story has been repeated here only for the purposes of testing the correctness of the version, especially with respect to the intention harboured by the appellant of killing the deceased for such a minor dispute, as also for testing the presence of Sanjeet Kumar and Rajeev Kumar (P.W. 5) at the



P.O.

19. Sanjeet Kumar, perhaps, had come to the out-house from the play field. He was assaulted by the appellant at 3 O'clock in the out-house. There is nothing on record to indicate that he had stayed back in the out-house till the time the appellant and his brother came back to assault his father who had intervened.

20. In normal expectation, a child who was the cause of trouble would get back to his home after the dispute was over. There is no reference of the presence of Sanjeet or his brother Rajeev Kumar (P.W. 5) in the *farbdeyan* or in the deposition of the witnesses viz. P.Ws. 1 to 3.

21. Thus, it is also doubtful that Sanjeet Kumar and Rajeev Kumar, P.Ws. 4 and 5 had really seen the assault taking place.

22. After having said this, we have taken into account that the deceased died because of the



injuries on his upper limb.

23. Whether the attack was aimed at killing the deceased? That the bone had not been fractured or cut is one of the factors to be taken into account before concluding about the intention of the appellant. The injury had been caused because of the deceased having made an attempt to thwart the attack.

24. If this were true, then perhaps the deceased would have suffered injuries on his palms also. That the injuries were not medically tended to, would appear very clearly from the deposition of P.Ws. 1 to 3. The deceased while he was still struggling for his life was lifted bodily by four persons and brought to his home. The local police had come in the neighbouring village for investigation of a different case. The injured/deceased is said to have been taken to Matihani Hospital on the police jeep.

25. If this were so, then the deceased



would have received first aid or a proper treatment at the hospital. However, the witnesses have confirmed that the deceased could not possibly be taken to the hospital as he died mid-way.

26. Where from, then, there was a bandage on the wound which was spotted by the Doctor conducting the post-mortem.

27. Obviously, therefore, some spaces have been left in the narration by the witnesses.

28. Did the deceased die of excessive bleeding, resulting in neurogenic shock and death?

29. The non-examination of the I.O. leaves us in complete lurch.

30. It would thus only be safer for us to conclude that the deceased was attacked by the appellant but he can only be attributed with the knowledge that such attack was cause an injury which could be fatal.

31. If the deceased were to be killed by



the appellant, there was no intervening circumstance. If the prosecution story is to be believed, the deceased was put in an arm-lock with the help of the brother of the appellant, thus immobilizing him. There was no second attack. This only signifies that the intention was not to kill but the attack was only a reaction to the deceased stopping the appellant and his brother from assaulting Sanjeet Kumar, who had fought with the nephews of the appellant.

32. This cannot be the reason for harbouring an intention to kill somebody.

33. We do appreciate that the intentions cannot be plumbed and can only be derived from the surrounding circumstances. The surrounding circumstances viz. there being nothing to stop the appellant from giving another blow; no bone having been fractured; no attempt having been made by anybody to nab the appellant and the death possibly on account of the deceased not put to medical aid in



time, are confirmatory of the fact that the intention was not to kill.

34. The appellant appears to have been enraged by the fact that Sanjeet Kumar was not allowed to be beaten up by him, even though he (Sanjeet) had assaulted his nephews.

35. This was not a reason strong enough for anybody to kill anyone.

36. We, however, do not classify it as an action in a flash of temper, for the reason that the appellant is said to have come back to the house of the deceased again after an hour. There was sufficient time for him to have cooled down; but attributing him with the intention of causing the death appears to be a bit far-fetched.

37. For the afore-noted reasons, we do not agree with the opinion of the Trial Court that the appellant had intended to kill the deceased.

38. We, therefore, deem it appropriate to



convert the conviction of the appellant to one under Section 304-II of the IPC from Section 302 of the IPC.

39. While saying so, we have also taken note of the fact that the occurrence took place about 35 years ago.

40. We find that the appellant has remained in jail for about eight years by now. We convert the sentence accordingly, to one which the appellant has already undergone in jail by now. The amount of fine saddled upon the appellant is not being interfered with.

41. This, in our estimation, would serve the ends of justice.

42. Since the appellant is in jail, he is directed to be released forthwith from jail, if not required or detained in any other case.

43. The appeal is partially allowed.

44. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail



forthwith for compliance and record.

45. The records of this case be returned to the Trial Court forthwith.

46. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

manoj/krishna-

AFR/NAFR	NAFR
CAV DATE	NA
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