

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.457 of 2019

Arising Out of PS. Case No.-228 Year-2016 Thana- SHAHPUR PATORI District- Samastipur

Shiv Shankar Singh, Son of Late Ram Chandra Singh, Resident of Village-
Rasalpur, P.S.- Patory (Mohanpur O.P.), District- Samastipur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Santosh Kumar, Advocate
For the State	:	Ms. Shashi Bala Verma, Addl.PP
For the Informant	:	Mr. Pankaj Kumar Das, Advocate Mr. Pankaj Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 19-11-2024

Heard learned counsel for the appellant, learned counsel
for the informant as also learned Additional Public Prosecutor for
the State.

2. The appeal has been preferred for setting aside the
judgment of conviction dated 11.03.2019 (hereinafter referred to
as the ‘impugned judgment’) and the order of sentence dated
15.03.2019 (hereinafter referred to as the ‘impugned order’)
passed by learned 1st Additional Sessions Judge, Samastipur
(hereinafter referred to as the ‘learned trial court’) in Sessions Trial
No. 693 of 2016 arising out of Patory P.S. Case No. 228 of 2016.

3. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 302 of the Indian Penal Code (in short 'IPC') and by the impugned order, the appellant has been ordered to undergo imprisonment for life with a fine of Rs.25,000/- under Section 302 IPC and in default of payment of fine, he has to further undergo simple imprisonment for four months.

Prosecution Case

4. The prosecution story is based on the *fardbeyan* of Madneshwar Prasad Singh (PW-4) recorded by SI Jageshwar Rai, S.H.O. Mohanpur on 09.06.2016 at 12:45 hours in Village-Rasalppur. In his *fardbeyan*, he has stated that on 08.06.2016 at 04:00 PM, Shiv Shankar Singh (this appellant) was plucking mangoes from mango tree to which the informant forbade but Shiv Shankar Singh started abusing him. On 09.06.2016 at 10:00 AM, a panchayati was held West to the house of Mukhiya Ajay Kumar Singh on sahan land near a Neem Tree. For the Panchayat, Mukhiya Ajay Kumar Singh, Sarpanch Ganesh Singh, Up-Mukhiya Brajesh Kumar Singh, Yashwant Kumar Singh, Raj Kishore Singh, Baidyanath Singh and other villagers assembled there. In the meantime, from East (1) Shiv Shankar Singh, (2) Raghuvansh Singh, (3) Ashok Kumar Singh, (4) Ramnaresh Singh,

(5) Madan Singh and (6) Kalyani Devi also came for the panchayati and as soon as they came, Shiv Shankar Singh started abusing the informant and Ramnaresh Singh instigated to assault and caught Bipin Kumar Singh (deceased). Thereafter, Shiv Shankar Singh (this appellant) inflicted multiple knife blows on the chest and abdomen of Bipin Kumar (deceased) causing serious injury to him and he fell on the ground. When the informant tried to save his son he was also given knife blow on his chest resulting in injury to him. The son of the informant died on the spot and other accused persons also assaulted with lathi and rod. After the occurrence, the villagers took them to Primary Health Centre, Manhar where the doctor had declared the son of the informant dead and the informant was given treatment. The informant alleged that all the accused persons under conspiracy with each other assaulted his son with knife with an intention to kill him.

5. On the basis of this *fardbeyan*, Patory (Mohanpur O.P.) P.S. Case No. 228 of 2016 dated 09.06.2016 was registered under Sections 120(B), 307, 302, 504/34 IPC against (1) Shiv Shankar Singh (2) Kalyani Devi (3) Raghuwansh Singh (4) Ashok Kumar Singh, (5) Ramnaresh Singh and (6) Madan Singh. After investigation, Police submitted chargesheet bearing No. 304 of 2016 dated 09.09.2016 under Sections 302, 307, 324, 120(B)/34

IPC against (1) Shiv Shankar Singh (2) Ashok Kumar Singh and (3) Raghuwansh Singh keeping investigation pending against (1) Kalyani Devi, (2) Ramnaresh Singh and (3) Madan Singh. On the basis of this chargesheet, the learned Chief Judicial Magistrate took cognizance of the offences *vide* order dated 23.11.2016 and committed the records to the court of sessions. After receiving the records, Sessions Case No. 693 of 2016 was registered. Charges were read over and explained to the appellants in Hindi to which they denied and claimed to be tried. On 27.02.2017, charges were framed under Sections 302/34 and 120B/34 IPC against three chargesheet accused and against Shiv Shankar Singh, charge under Section 307 IPC was also framed.

6. In course of trial, the prosecution examined as many as ten witnesses and exhibited several documents to prove the prosecution case. The defence has also examined witnesses and produced several documents. The names of the prosecution witnesses as well as defence witnesses and the exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Yashwant Singh
PW-2	Ganesh Pd. Singh
PW-3	Brajesh Kumar Singh
PW-4	Madaneshwar Pd. Singh
PW-5	Dr. Dharmendra Kr. Choudhary

PW-6	Dr. Umashankar Sinha
PW-7	Dr. Ram Pravesh Mandal
PW-8	Ajay Kumar Singh
PW-9	Jageshwar Rai
PW-10	Vaidyanath Singh @ Vaije Singh

List of Exhibits on behalf of Prosecution

Ext- 1 to 1/4	Signature of witness no. 1 and other four witnesses on <i>fardbeyan</i>
Ext-2	Signature of P.W. 2 on Carbon copy of Panchnama
Ext-2/1 & 2/2	Signature of the witnesses on seizure list
Ext- 3	F.S.L. Report
Ext- 4	Injury report of Madaneshwar Singh in written & signed by the P.W. 5
Ext- 5	P.M. report written & signed by the witness no. 6
Ext- 5/1	Signature on P.M. report of an observer
Ext- 6	Carbon copy of inquest report
Ext- 7 & Ext-8	Signature of the witness no. 8 in two seizure list
Ext- 9	Fardbeyan is written & signed by the witness Jageshwar Rai
Ext- 10 to 10/2	Seizure list of 3 sheets in written & signed by the witness Jageshwar Rai
Ext- 11	C.C. of Patori (Mohanpur) P.S. 241/16 Report

List of Defence Witnesses

DW-1	Nawal Kishore Singh
DW-2	Vinod Kr. Singh

Findings of the Learned Trial Court

7. Upon analysing the evidences on the record, the learned trial court found that all the prosecution witnesses including the informant Madaneshawar Singh have deposed in one voice and they have proved the date and time of the occurrence as

also the place of occurrence at the *darwaja* of Ajay Kumar Singh where panchayat was going on. They have deposed on the manner of occurrence that Shiv Shankar Singh (this appellant) killed Bipin Kumar Singh by knife in the said Panchayati. Learned trial court held that there is no contradiction in the evidences of the prosecution witnesses on these points. Learned trial court found that PW-6 Dr. Uma Shankar Singh who had proved the postmortem report of the deceased had found that the deceased died due to injuries caused by sharp and pointed weapon.

8. Learned trial court has found that the I.O. (PW-9) has deposed in his examination-in-chief that the place of occurrence is near the neem tree which is situated near the house of Mukhiya Ajay Kumar Singh. Learned trial court has observed that there is no such evidence which has come to doubt the place of occurrence. Accordingly, learned trial court convicted the appellant under Section 302 IPC.

Submissions on behalf of the Appellant

9. Mr. Ramakant Sharma, learned Senior counsel assisted by Mr. Santosh Kumar, learned counsel for the appellant has assailed the impugned judgment on various grounds.

10. Learned Senior counsel submits that the trial court has disbelieved the major part of the prosecution evidence.

Altogether, three accused persons were facing trial in this case, including this appellant. The learned trial court having analysed the prosecution evidence held that the charge under Section 307 IPC as against this appellant could not be proved by the prosecution beyond all reasonable doubts, therefore, he has been acquitted of the charge under Section 307 IPC. The learned trial court also acquitted the appellant of the charge under Section 120B IPC. The other two accused, namely, Ashok Singh and Raghuvansh Singh, who were facing charges under Sections 302/34 and 120B IPC have been acquitted for the reason that the prosecution had failed to prove the guilt of the two accused beyond all reasonable doubts.

11. Learned Senior counsel has taken this Court through the deposition of the prosecution witnesses. It is his submission that even with regard to the place of occurrence, the prosecution witnesses have not maintained consistency. The submission is that the learned trial court could not appreciate the evidences available on the record on this point and has rejected the contention of the defence with regard to the place of occurrence.

12. Learned Senior counsel for the appellant has given much emphasis on the fact that in this case, a counter case was also lodged by this appellant and the FIR of the counter case being

Patori P.S. Case No.241 of 2016 dated 16.12.2016 has been brought on record and marked Exhibit '11'. Referring to the FIR of Patori P.S. Case No.241 of 2016, which is on the basis of *fardbeyan* of this appellant recorded by ASI Md. Shoaib at the O.P. PMCH, Patna on 09.06.2016 at 21:30 hours, learned Senior counsel submits that this appellant has given the description of the real occurrence which took place with him on 09.06.2016 at 10:20 AM. According to his *fardbeyan*, the four named accused persons including the informant and deceased of this case had caught hold of him and injured him seriously by causing assault with *lathi-danda* and knife. In his *fardbeyan*, this appellant has stated that his four teeth were broken and the deceased of this case had assaulted him by a knife causing grievous injury on his left hand. It is submitted that though the police had submitted a final form saying that the case lodged by this appellant was not found true and police had also submitted the final form under Section 182/211 IPC with a proposal to prosecute the appellant but the learned Chief Judicial Magistrate, Samastipur differed with the police report and vide order dated 24.04.2018 took cognizance of the offences under Section 341, 323, 324, 326, 379 and 504/34 IPC. Referring to the order of the learned Chief Judicial Magistrate, Samastipur (Exhibit 'A') learned Senior counsel for the appellant submits that the FIR

lodged by this appellant and order taking cognizance passed by learned Chief Judicial Magistrate in the case of this appellant are the two documentary evidences which would show that in the occurrence which took place the appellant was assaulted by the informant side and in fact in exercise of his right to private defence, the appellant seems to have caused the assault upon the deceased. It is his submission that even though this plea of right to private defence has not been specifically taken by the defence in course of trial, this Court being an Appellate Court can look into this defence and consider the same while re-appreciating the entire evidences on the record.

13. Learned Senior counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court in the case of *Dharam and others Vs. State of Haryana*, reported in *AIR 2007 Supreme Court 397*. Attention of this Court has been drawn towards paragraph '12' of the said judgment to submit that the burden of establishing the plea of self-defence is on the accused but it is not as onerous as the one that lies on the prosecution. It is his submission that in this case once the defence has proved the FIR of Patori P.S. Case No.241 of 2016 and the order taking cognizance passed by the learned Chief Judicial Magistrate, the

plea of self-defence has been duly established by the accused-appellant.

14. Learned Senior counsel for the appellant has further relied upon a judgment of the Hon'ble Supreme Court in the case of *Kasam Abdullah Hafiz etc. Vs. State of Maharashtra* reported in *AIR 1998 Supreme Court 1451* to submit that in the circumstances of the present case, looking into the kind of blood relationship between the parties and the cause of dispute being a land dispute between the co-sharers as also the nature of injuries sustained by the deceased, it may be held that there was no intention on the part of the appellant to kill the deceased and at best in this case, the appellant may be convicted under Section 304 Part II IPC. This is, however, by way of an alternative submission on behalf of the appellant. It is his submission that the appellant has already remained in incarceration for about eight and half years.

Submissions on behalf of the Respondent

15. On the other hand, Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State as well as Mr. Pankaj Kumar Das, learned counsel for the informant have contested the submissions of learned Senior counsel for the appellant. In opposition, it is submitted that in the present case, the prosecution

has examined as many as ten witnesses. Out of these ten witnesses, at least six witnesses are independent witnesses, they were members of the *panchayat* present at the place of occurrence and had seen the occurrence with their naked eyes. According to them, the defence has failed to impeach the credibility of these independent witnesses in course of their cross-examination.

16. It is submitted that in this case, Jaswant Singh (PW-1), Ganesh Prasad Singh (PW-2) and Brajesh Kumar Singh (PW-3) were present in the *panchayat*. PW-2 happened to be the *Sarpanch*. All three witnesses have supported the prosecution case as regards the genesis of occurrence, the place of occurrence, the date and time of occurrence and manner of occurrence. PW-1 has stated that on 08.06.2016, in the evening this appellant was plucking mangoes from the tree of Madneshwar Singh (the informant). On this issue, there was a *panchayati* on the next day in the morning. He has stated that in his presence Shiv Shankar Singh (the appellant) had given dagger blow to the deceased Bipin Singh. This appellant had given 5-6 blows of dagger in the chest and abdomen of Bipin Singh. In presence of PW-1, *fardbeyan* of Madneshwar Singh was recorded, on which this witness has put his signature as a witness. He has identified the signature of Ganesh Prasad Singh, Brajesh

Kumar Singh and Ajay Kumar Singh also which have been marked Exhibit '1' to '1/4' respectively.

17. Learned counsel submits that in similar manner, PW-2 and PW-3 have also supported the prosecution case. Referring to the pattern of cross-examination of the prosecution witnesses, learned Additional Public Prosecutor as well as learned counsel for the informant would submit that the defence never put up a case of self-defence and it would be evident from the pattern of the cross-examination of the prosecution witnesses that they were not even suggested that the appellant was being assaulted by the prosecution side at a different place of occurrence and in course of said assault, the appellant had caused assault upon Bipin Singh.

18. Learned counsel(s) would submit that no doubt a plea of self-defence is not required to be established to the hilt and the defence may discharge the onus by showing preponderance of probabilities in favour of that plea but such probabilities in favour of that plea are to be shown on the basis of the materials on the record. Attention of this Court has been once again drawn to paragraph '12' of the judgment in case of **Dharam and Ors.** (*supra*) wherein this proposition has been discussed by the Hon'ble Supreme Court.

19. It is submitted that in this case the informant has been examined as PW-4. He happened to be an injured witness, however, the learned trial court has given the benefit of doubt to the accused while appreciating the evidences with regard to the charge under Section 307 IPC. The submission is that the learned trial court has found out the chaffs from the grain and has believed that part of the evidence of PW-4 in which he has supported the prosecution case as regards the assault made upon his deceased son by this appellant. PW-4 was cross-examined by the defence. His attention was simply drawn towards the FIR lodged by this appellant giving rise to Patori P.S. Case No. 241 of 2016. He was suggested that the appellant was treated in PMCH but PW-4 denied to be aware of the fact that the appellant was treated in PMCH. In paragraph '25' of his deposition, PW-4 was suggested that no such occurrence as reported by him had taken place and only because of the enmity he had falsely implicated Shiv Shankar Singh and his *sasural* people. Learned counsel submits that from the pattern of cross-examination of PW-4 it would appear that the defence has simply referred the FIR of Patori P.S. Case No. 241 of 2016 but did not muster enough courage to develop its case of self-defence.

20. Learned counsel(s) have further pointed out that the Doctor (PW-6) had proved the postmortem report of the deceased. He had found multiple injuries on the body and postmortem report, which has been marked Exhibit '5', would show that repeated dagger blows were given by the appellant on the vital part of the body of the deceased. The Doctor had found punctured wound over the left side of heart and several other incised wounds were found on various parts of the body. Learned counsel submits that the *Mukhiya* who has been examined as PW-8 and the I.O. (PW-9) have also supported the prosecution case.

21. Learned counsel lastly submits that the defence examined two witnesses on its behalf. The defence witnesses are not eyewitnesses to the occurrence and even through these defence witnesses, the defence has not taken plea of self defence.

Consideration

22. We have heard learned Senior counsel for the appellant, learned counsel for the informant and learned Additional Public Prosecutor for the State as also perused the trial court records.

23. The whole prosecution case is based on the *fardbeyan* of Madneswar Prasad Singh who has deposed as Prosecution Witness No. 4 (PW-4). His *fardbeyan* was recorded by

S.I. Jageshwar Rai, Station House Officer of Mohanpur (O.P.) Police Station on 09.06.2016 at 12:45 hours in village Rasalpur. S.I. Jageshwar Rai has been examined as PW-9. It further transpires that Ganesh Prasad Singh (PW-2), Brajesh Kumar Singh (PW-3) and Ajay Kumar Singh (PW-8) have signed as witnesses on the *fardbeyan* of the informant (PW-4). In his *fardbeyan*, PW-4 has given the genesis of the occurrence. According to him, on 08.06.2016 this appellant was plucking mangoes from the mango tree to which the informant forbade but the appellant started abusing. On 09.06.2016, at 10:00 AM, a *Panchayati* was held at a place fully described by the informant in his *fardbeyan*. The place is west to the house of Mukhiya Ajay Kumar Singh on the sahan land near a neem tree. For the *panchayat*, Mukhiya Ajay Kumar Singh, Sarpanch Ganesh Singh, Upmukhiya Brajesh Kumar Singh and witnesses such as Yashwant Kumar Singh (PW-1) and Baidynath Singh @ Vaije Singh had assembled. Other villagers had also come there. The appellant along with Raghuvansh Singh, Ashok Kumar Singh, Ram Naresh Singh, Madan Singh and Kalyani Devi came to the *panchayat* and as soon as they came, Shiv Shankar Singh (the appellant) started abusing the informant. Ram Naresh Singh instigated him to assault and caught hold of Bipin Kumar Singh (deceased). Thereafter, this appellant inflicted

multiple knife blows on the chest and abdomen of Bipin Kumar Singh, causing serious injuries to him. He died on the spot.

24. The *fardbeyan* of the informant has been duly approved as Exhibit '9' in course of trial.

25. This Court finds on perusal of the evidences of PW-1, PW-2 and PW-3 that they have fully supported the prosecution case as regards the genesis of occurrence, place of occurrence, date and time of occurrence and the manner of occurrence. They are witnesses to the occurrence which took place on 09.06.2016 at 10:00 AM near the neem tree where they had assembled for holding the *panchayat*. PW-1 is uncle in relation of the deceased, therefore, his presence at the place where *panchayat* was to be held seems natural. He was cross-examined by the defence and was suggested that he was deposing as a witness in this case only because he is related to the informant. The defence never suggested him that in the alleged occurrence which took place on 09.06.2016 at 10:00 AM, the appellant had exercised his right to private defence. Similarly, PW-2 Ganesh Prasad Singh and PW-3 have also supported the prosecution case. They are the respectable members of the society and the defence has completely failed to impeach their credibility.

26. Madneshwar Prasad Singh (PW-4) is the father of the deceased. He is also the informant of the case. In his examination-in-chief, he has stood by his *fardbeyan* and has stated that in the *panchayat* Ram Naresh Singh and Shiv Shankar Singh started abusing him and his son to which his son protested. He has stated that Ram Naresh Singh had caught hold of his son from behind and on his instigation to kill his son, this appellant who had concealed a dagger took out the same and repeatedly penetrated the same onto the chest and abdomen of his son, whereafter his son fell down on the earth. He has stated that he had brought his son to Mahnar Health Centre where his son was declared dead. The informant was cross-examined at length. In his cross-examination, he was never suggested that the appellant was being assaulted by the prosecution side and in exercise of his right to private defence, he had assaulted the deceased. The informant claimed his unawareness about the lodging of Patori P.S. Case No. 241 of 2016 by the appellant with regard to the occurrence on the said day. He was also not aware that the appellant was treated in PMCH. This Court finds that in this case police had upon investigation of the counter case found that the same was false and had submitted a final form with a recommendation to launch a prosecution against the informant of the said case under Section

182/211 of the IPC. In course of trial, the defence could not produce any document showing admission of the appellant in PMCH. No paper showing his treatment in PMCH has been brought on record, therefore, the defence has miserably failed to make out a case of exercise of right of private defence by the appellant.

27. Dr. Dharmendra Kumar Choudhary (PW-5) who was posted at Mahnar Primary Health Centre on 09.06.2016 had examined the informant and had found the following injuries:-

- “(i) Stitched lacerated or perforating wound at (Lt) lower chest size – 1/2” x 1/4”
- (2) Blood clots on both lower chest
- (3) pain in (Lt) thumb”

28. The injury report of the informant has been marked Exhibit ‘4’.

29. Dr. Uma Shankar Sinha (PW-6), who was posted as Medical Officer at Sadar Hospital, Samastipur on 09.06.2016 had conducted postmortem on the dead body of Bipin Singh aged 40 years, who is the deceased in this case. In his deposition, he has proved the postmortem report, which has been marked Exhibit ‘5’. The antemortem injuries, external findings and internal examination of the dead body revealed the following injuries:-

“Antemortem injuries
External finding

Teeth bite over the left forearm round in one inch circumference abrasion and bruise present around the teeth bite, transverse incised penetrating wound 1/2"x1/4" just lateral to the left nipple. Incised wound 1/2"x1/6"x muscle deep on the left side of the upper hypochondrium. 1"x1/4" incised wound transverse 10" below left axilla. 1/2"x 1/4" x muscle deep left side of lower abdomen. 1/2" x 1/6" incised wound 3" above umbilicus left side abdomen incised wound over the left cheek 1/2" x1/8" x muscle deep. 1/2"x1/8" x muscle deep incised wound right side of upper chest lower part. Lacerated wound over right toe 1/2" x 1/8" x muscle deep. Lacerated wound over left toe 1"x 1/2"x muscle deep.

Internal examination

Punctured wound over the left side of heart 1/2" x cavity deep. Chest cavity full of blood. All viscera pale.

Time elapsed since death – within twenty four hours.

In our opinion the cause of death is hemorrhage and shock caused by above mentioned injuries produced by sharp and pointed weapon.

2. This P.M. report is in my pen and signature I, identify at mark it as Ext-5.

3. Dr. Ram Pravesh Mandal has also put his signature on the P.M. Report".

30. It would appear from findings of PW-6 that the deceased had suffered multiple injuries over his body and the doctor had opined that the cause of death is hemorrhage and shock

caused by the above-mentioned injuries produced by sharp and pointed weapon.

31. Dr. Ram Pravesh Mandal (PW-7) is the another doctor who had been made observer at the time of postmortem of the dead body. He also signed the postmortem report. PW-7 has proved his signature on the postmortem report which has been marked as Exhibit '5/1'.

32. Ajay Kumar Singh (PW-8) is the *Mukhiya* of the *panchayat* and an independent witness of this case. He has fully proved the prosecution case. In his examination-in-chief, he has stated that Shiv Shankar Singh started shouting immediately after reaching there, he was pacified, but he assaulted Bipin Singh by a dagger. PW-8 has been cross-examined at length. During his cross-examination also, the defence never suggested that the appellant was being assaulted by the deceased and in exercise of his right to private defence, he had assaulted the deceased.

33. Jageshwar Rai (PW-9) is a retired Police Sub-Inspector who was posted at Mohanpur O.P. on 09.06.2016. He had received the information regarding the occurrence at 10:20 AM which he had recorded in the Station Diary *vide* Sanha No. 13 and had proceeded to the place of occurrence. He had recorded the *fardbeyan* of Madneshwar Singh (PW-4) and put his signature on

the *fardbeyan*. He has proved the *fardbeyan* which has been marked Exhibit '9'. He has also proved the forwarding application of the *fardbeyan*. PW-9 had conducted the investigation of the case. He had also prepared the inquest report (Exhibit '6'). PW-9 has stated that he had seized blood soaked soil, mobile and motorcycle from the place of occurrence and had prepared the seizure list. He has proved the seizure list as Exhibit '10', '10/1' and '10/2' respectively. PW-9 had given the description of the place of occurrence and has proved the same which is in consonance with the place of occurrence as disclosed by the informant and other prosecution witnesses. The I.O. was not cross-examined on the point that there was any assault by the deceased upon the appellant. In fact it was not the case of the defence either at the stage of investigation or in course of trial.

34. Baidyanath Singh @ Vaije Singh (PW-10) is the brother-in-law of the informant who is a hearsay witness.

35. So far as the defence witness are concerned, the defence has produced two witnesses. Nawal Kishore Singh (PW-1) is a neighbour of Ram Naresh Singh. Ram Naresh Singh is the father-in-law of this appellant. DW-1 got information with regard to the occurrence when he was sitting with Ram Naresh Singh and Ram Naresh Singh received a telephonic call from his daughter

Kalyani Devi. On such information, Ram Naresh Singh had sent his younger brother Ashok Singh and neighbour Raghuvansh Singh to village Rasalpur. In his cross-examination, this witness has stated that he had made statement before Police but he does not remember as to after how many days he had made statement before Police. In paragraph '14' of his deposition, he has clearly stated that he is not an eye-witness to the occurrence. He has denied the suggestion in paragraph '15' that he was deposing in this case falsely being co-villager of Ashok and Raghuvansh.

36. Binod Kumar Singh (DW-2) is also a co-villager of Ram Naresh Singh and has deposed on similar line with that of DW-1. He has also stated that he had not seen the occurrence. The prosecution cross-examined them and suggested that he was deposing falsely being co-villager of Ashok Singh and Raghuvansh Singh. It is evident from the deposition of the defence witnesses that they do not belong to village Rasalpur and had no occasion to be present on the date and time of occurrence in village Rasalpur. The defence has not led any evidence to even *prima-facie* suggest that the prosecution side was assaulting the deceased and only in exercise of his right to private defence, he had inflicted dagger blow upon the deceased.

37. At this stage, this Court would briefly deal with the two judgments on which learned Senior counsel for the appellant has placed reliance. In the case of **Dharam and others** (*supra*), learned Senior counsel has relied upon paragraph '12' of the judgment. This Court would reproduce paragraph '12' of the judgment as under:-

“**12.** It is trite that the burden of establishing the plea of self defence is on the accused but it is not as onerous as the one that lies on the prosecution. While the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea of self defence to the hilt and may discharge the onus by showing preponderance of probabilities in favour of that plea on the basis of the material on record (See: *Munshi Ram and others vs. Delhi Administration*³; *The State of Gujarat vs. Bai Fatima and another*⁴ and *Salim Zia vs. State of Uttar Pradesh*⁵).

38. Again learned Senior counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Kasam Abdullah Hafiz etc.** (*supra*) to submit that the parties being related by blood and the cause of dispute being a land dispute between the co-sharers, it may be held that there was no intention on the part of the appellant to kill the deceased and at best this is a case in which appellant may be convicted under Section 304 Part II IPC.

3. AIR 1968 SC 702

4. AIR 1975 SC 1478

5. AIR 1979 SC 391

39. We find from the judgment in case of **Dharam and others** (*supra*) that in the said case, the Hon'ble Supreme Court has categorically held that the burden of establishing the plea of self-defence is on the accused though it is not as onerous as the one that lies on the prosecution. This proposition led down by the Hon'ble Supreme Court, if applied in the facts of the present case which are emerging from the evidences on the record, we find that the accused had never taken the plea of self-defence either in course of investigation of the case or in course of trial. The pattern of cross-examination of the prosecution witnesses clearly demonstrates that at no point of time any of the prosecution witnesses were suggested that the prosecution side was assaulting the appellant or that in course of exercise of his right to private defence, the appellant had assaulted the deceased.

40. We find from the materials on the record that in this case not only the informant who is father of the deceased has supported the prosecution case, when independent witnesses who are Mukhiya, Sarpanch and Upmukhiya of the panchayat with whom the appellant had no enmity at all have fully supported the prosecution case. Doctor (PW-8) has also found punctured wound over the left side of heart and several other incised wounds on various parts of the body of the deceased and has clearly opined

that the injuries were caused by sharp cutting and pointed weapon, the defence could not create any doubt over the prosecution story and the credibility of the prosecution case.

41. In the light of the discussions hereinabove, we find no merit in this appeal. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Rishi/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.12.2024
Transmission Date	20.12.2024