

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.722 of 2018

Arising Out of PS. Case No.-227 Year-2015 Thana- DUMRA District- Sitamarhi

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Jitendra Singh S/o Sri Gauri Shankar Singh, R/o village- Muradpur Purbari
Tola, P.S.- Dumar, District- Sitamarhi.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant	:	Mr. Radhe Shyam Sharma, Advocate Ms. Smiti Bharti, Advocate
For the Respondent	:	Mr. Abhimanyu Sharma, APP
For the Informant	:	Mr. Santosh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA)

Date : 28 -11-2024

We have heard Mr. Radhe Shyam Sharma,

the learned counsel for the appellant, Mr. Abhimanyu

Sharma, the learned Additional Public Prosecutor for the

State and Mr. Santosh Kumar, the learned counsel for the

informant.

2. The appellant has been convicted for the

offence under Section 302 of the Indian Penal Code (for

brevity, “IPC”) *vide* judgment of conviction dated

16.05.2018 and order of sentence dated 22.05.2018,



passed by the learned Fast Track Court-II, Sitamarhi, in connection with Sessions Trial No. 40 of 2016 + 382 of 2016, arising out of Dumra Police Station Case No. 227 of 2015. By order dated 22.05.2018, the appellant has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 25,000/- (rupees twenty-five thousand only) each payable to the widow of the deceased and in default of payment of fine, each convict shall further undergo simple imprisonment for six months each for the offence punishable under Section 302 of the IPC.

3. The written report was lodged by one Punita Devi (PW-4), who is the wife of the deceased (Dharmendra Singh) and which was recorded by Sub-Inspector Chhotan Kumar, SHO, Dumra, Police Station on 11.09.2015 at about 15:10 hrs. at the house of one Gauri Shankar Singh in presence of her brother namely, Uma Shankar Singh. She has alleged that her marriage was solemnized with one Dharmendra Singh in the year 1988, who is the brother of the appellant and son of the



co-accused Gauri Shankar Singh. Five *bighas* of land stood in the name of her father-in-law. After her marriage, her father-in-law and her brother-in-law had been quarreling with her husband over allocation of family property. After intervention by the panchayat, the land was partitioned in three equal shares and her husband got one-third of the total share. Thereafter, she started residing with her husband after construction of house on the share of her husband. It is further alleged that father-in-law and brother-in-law of the informant started selling their shares of the land and they sold almost entire land that came in their share. The father-in-law of the informant also sold three *katthas* of land from the share of informant's husband to his brother Jagdish Singh, due to which whenever the husband of the informant questioned regarding selling of his land without taking his consent, then informant's father-in-law and brother-in-law resorted to abuse and assault. It is further alleged that on the date of occurrence, the informant's husband



went at the house of his brother for demanding money regarding land which was sold by the father-in-law of the informant and in course of demanding money, some quarrel took place between both the sides and Gauri Shankar Singh, Jitendra Singh, Shobha Devi, Ram Jyoti Devi and Jagdish Singh together committed murder of the informant's husband by assaulting him with *lathi*, *danda*, *bhala* and *khanti*. When the informant received the information regarding murder of her husband, she rushed at the place of occurrence, where she saw the dead body of her husband lying in an injured condition. The co-accused persons after committing murder fled away from the said house after setting it on fire.

4. Based upon the afore-noted written report, a case *vide* Dumra Police Station case no. 227 of 2015 dated 11.09.2015 was registered for investigation against the appellant under Sections 302 and 34 of the IPC. The police after investigation submitted chargesheet on 10.12.2015 against the appellant under Sections 302



and 34 of the IPC keeping investigation pending for the rest three co-accused persons. On the basis of case diary and chargesheet, the cognizance of the offence was taken under Sections 302 and 34 of the IPC by the learned Additional Chief Judicial Magistrate, Sitamarhi and after compliance of the provisions of the Sections 208 and 209 of the Code of Criminal Procedure (for brevity, "Cr.P.C."), the case was committed to the Court of Sessions. The learned trial Court after having examined seven witnesses on behalf of the prosecution convicted and sentenced the appellant as aforesaid.

5. We have examined the evidence of the prosecution witnesses. It transpires that PW-1 (Shiv Shankar Singh), PW-2 (Uma Shankar Singh) and PW-3 (Rama Shankar Singh), who are brothers of the informant, claim that they are eyewitnesses of the alleged occurrence and they have stated that all the co-accused persons including the appellant were armed with lathi, danda, spades, khanti, rod and knives and they assaulted



the deceased (Dharmendra Singh) on account of which the deceased died on spot.

6. They are close relatives of the informant. Such evidence *prima facie* do not explain their (PW-1, PW-2 and PW-3) presence in the village where matrimonial house of their sister is located. These three brothers have, in unison, deposed about the murder and assault on Dharmendra Singh. Unfortunately, it is seen that due process of providing contradiction from the former statement of these three witnesses was not followed during the course of their cross-examination by the defence counsel. But, seizure list shows that these witnesses are witness to seizure effected by the prosecution.

7. Chhotan Kumar (PW-5) is the investigating officer in the present case. He had recorded the statement of informant. He has also investigated the case and during investigation he has recorded the statements of the witnesses and on the basis of investigation he has



filed chargesheet against the appellant.

8. Dr. Sakil Anjum (PW-6), the doctor had conducted the *post-mortem* examination.

9. Ramanuj Yadav (PW-7) is the Assistant Sub-Inspector of the Dumra Police Station. He produced the weapon used in the crime as well as the blood-stained clothes.

10. From the bare perusal of the depositions of the PW-1 (Shiv Shankar Singh), PW-2 (Uma Shankar Singh) and PW-3 (Rama Shankar Singh) it would appear that though they have claimed to be the eyewitnesses of the alleged occurrence, but the informant had not stated anywhere in the FIR that her brothers had seen the occurrence. From her statement, the presence of PW-2 (Uma Shankar Singh) and PW-3 (Rama Shankar Singh) at the place of occurrence is not reflected.

11. That apart, we have also examined the deposition of the doctor (PW-6) and the investigating officer (PW-5) and it appears that due to land dispute, the



occurrence has taken place. The informant has also stated in her deposition as well as in the FIR that due to land dispute, the occurrence had taken place between the deceased and the appellant.

12. Be that as it may, even if prosecution witnesses are believed, it is apparent that the alleged incident occurred on the spur of the moment. There was no prior concert. No prior intention to kill the deceased can be inferred.

13. We are, thus, of the view that the case fits into Part-II of Section 304 of the IPC, 1860.

14. We, therefore, partly allow the appeal by altering the conviction against the appellant to be one under Part-II of Section 304 of the IPC and modify the sentence to the period of custody already undergone by the appellant.

15. The appeal is partly allowed.

16. Since the appellant is on bail, he is discharged from the liabilities of his bail bonds.



17. The records of this case shall also be transmitted to the concerned Trial Court forthwith.

18. The interlocutory application/s, if any, also stand disposed off accordingly.

(Rajesh Kumar Verma, J)

(Ashutosh Kumar, J)

Shahnawaz/-

AFR/NAFR	NAFR
CAV DATE	12.11.2024
Uploading Date	28.11.2024
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