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Court : Patna

Decided On : Feb-11-2014

Judge : Akhilesh Chandra

Appeal No. : Criminal Appeal (SJ) No. 336 of 2002

Appellant : Bimal Singh @ Bimal Kumar Singh and Others

Respondent : State of Bihar

Judgement :

Oral Judgment:

The three appellants have preferred this Appeal against their conviction for the offence under Section 304/34 of the Indian Penal Code and sentence to undergo rigorous imprisonment for five years and pay a fine of Rs.2,000/- each and out of the amount so realized Rs.5,000/- shall go to the informant i.e. son of the deceased in failure to pay the fine further to undergo rigorous imprisonment for six months as awarded on 5th June 2002 by the 1st Additional Sessions Judge, Fast Track Court, Begusarai in Sessions Trial No.7 of 88/65 of 2001 arising out of Cheria Bariyarpur P.S. Case No. 5(2)/77.

2. The prosecution case in short as reveals from Ext.1 based on the statement of informant, PW-10 recorded at the Police Station on 12th February 1977 at 06:30 hours by Sub-Inspector Ramdin Singh (not examined) in presence of Sitaram Sah and Mukhtar Ahmad (both not examined) is that in the morning hours father of the

informant had gone to meet natural call while returning found PW2, chased and assaulted by the appellants and on his intervention PW2 succeeded in escaping but father of the informant came in the clutches of the miscreants who assaulted, pulled him down on the earth and, thereafter, pressed his tisticle resulting into instant death.

3. The case was instituted under Section 302/34 of the Indian Penal Code but ultimately chargesheet was submitted under Section 304/34 of the Indian Penal Code, accordingly, trial commenced for same offence.

4. In order to substantiate the charge, the prosecution has produced the following three documentary evidence, which is as under:-

œExt. 1- Writing and signature of S.I. Ramdin Singh on Formal FIR.

Ext.2 “ Signature of Pramod Kumar Singh on Fardbeyan.

Ext.3 “ Post-mortem report?

In this case altogether 10 witnesses have been examined, out of whom PW-1, Ramashraya Singh, PW-3, Sri Narayan Singh and PW-5 Chunu Deo Mahton since said nothing about the Patna High Court CR. APP (SJ) No.336 of 2002 dt.11-02-2014 prosecution case declared hostile and PW-7, Akal Mahton was tendered for cross-examination whereas PW-8, Devendra Jha is a formal witness proved Ext.1.

5. Out of remaining, PW-2, Jai Prakash Singh is the person who was allegedly chased and assaulted by the appellants has come to state the prosecution version and in cross-examination also has said about intervention of the deceased resulting into his rescue but the deceased was assaulted by the appellants ultimately died. PW-4, Ramsharan Choudhary one of the person arriving on alarm at the place of occurrence has narrated the prosecution version and assault by the appellants to the deceased almost similar is the position of PW-6, Kedar Singh.

6. PW-9 Ramadhar Singh @ Ram Udgar Singh one of the son of the deceased stated prosecution version that on alarm raised he arrived at the place of occurrence subsequent to other witness and stated about assault of his father by

the appellants. PW-10, Pramod Singh has also said almost same thing.

7. Defense has not produced any witness in cross-examination who simply produced Ext. A, certified copy of the deposition of one Madhsudan Singh but it appears of no relevance.

8. While assailing findings of the learned Court below, it is contended by learned counsel for the appellants that in spite of some variation in the statement of the witnesses towards which their attentions were drawn I.O. has been withheld for no reasons. Similarly, Ext. 3, post-mortem report of the deceased has been taken into evidence only on the ground that the doctor is dead and it is written in ordinary course of business but in absence of any competent person Ext.3 is of no value it was incumbent upon the prosecution to cross-examine any doctor either worked with the person who prepared Ext.2 or at least competent to explain the circumstances behind death of the deceased but for no reasons nothing of the kind could be done.

9. Learned Additional Public Prosecutor in spite of his best efforts could not explain and justify conviction of the appellants for offence under Section 304. But, at the same time, it is contended that all the witnesses examined rather consistent about assault of the deceased by the appellants and deceased had no time left for being examined and treated by the doctor rather as stated he died at the spot.

10. Having regard to the facts and circumstances, conviction of the appellants for the offence under Section 304/34 of the Indian Penal Code and is not sustainable but deserves conversion into Section 323 of the Indian Penal Code and since as pre and post conviction stage they have suffered substantial detention apart from suffering mental agony for about 37 years their sentence is also reduced as undergone.

11. With the above modification in the conviction and sentence of the appellants, as awarded by the trial Court the Appeal is hereby dismissed.

12. Let L.C.R. be send back to the Court below mentioned aforesaid.