IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.648 of 2019

Arising Out of PS. Case No.-340 Year-2005 Thana- LAKHISARAI District- Lakhisarai

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DASRATH RAM Son of Late Anik Ram Resident of Village - Bikkam, P.S.- Lakhisarai, Dist.- Lakhisarai.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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Appearance :
For the Appellant : Mr. Jagdish Prasad, Advocate
Mr. Bhimsen Prasad, Advocate
For the Respondent : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 10-11-2023

This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (CrPC for short) putting to challenge the judgment of conviction and the order of sentence dated 27.03.2019 passed by-learned Fast Track Court-II, Lakhisarai, in Sessions Trial No. 604 of 2009, arising out of Lakhisarai P.S. Case No. 340 of 2005, whereby the appellant, Dasrath Ram, has been convicted and sentenced as under:

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Criminal Appeal (DB) No. 648 of 2019				
Appellant Name	**Penal provision**	**Sentence**		
		Imprisonment	**Fine (Rs.)**	**In default of fine**
Dasrath Ram	Under Section 302/34 of the Indian Penal Code	R.I. for life	20,000/-	S.I. for six months
	Under Section 27 of the Arms Act	R.I. for three years	--	--

2. Both the sentences have been ordered to run concurrently.

3. The mother of the deceased, Daresh Devi, who has been examined as the court's witness (CW-1) is the informant. Her written report addressed to the Officer In-charge, Lakhisarai Police Station, dated 11.10.2005, is the basis for registration of the concerned Lakhisarai P.S. Case No. 340 of 2005, disclosing commission of offences punishable under Section 302 read with Section 34 of the IPC and Section 27 of the Arms Act. According to the prosecution's case as disclosed in the said written report, on 11.10.2005 the informant (CW-1) was going with her sons Ajay Yadav (the deceased) and Pavitra Kumar Yadav (PW-6) to witness Durga Puja festival. It was on the initiative of the deceased that she and PW-6 were going on the motorcycle. As they had planned, they were going to Garsanda Railway Station on motorcycle to board the train to Lakhisarai. The

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moment, they reached Katorwa Kone, four persons, namely, Rajendra Rama, Ashok Rama and Sanjay Rama (co-accused) waylaid the deceased and this appellant and accused Umesh Rama fired in the stomach of the deceased, whereupon he died instantaneously. Extortion was being demanded by the accused persons, according to the FIR. The occurrence was witnessed by others, namely, Jawahar Yadav (not examined), Makeshwar Yadav (not examined) and wife of Kapil Yadav (not examined).

4. After completion of investigation chargesheet was submitted against Rajendra Rama, Ashok Rama, Sanjay Rama and Umesh Rama whereupon cognizance was taken, keeping the investigation pending against this appellant. From the records it transpires that accused Rajendra Rama, Ashok Rama and Umesh Rama faced trial before the court of learned Fast Track Court-II, Lakhisarai**,** who came to be convicted by the judgment and order dated 17.09.2009 for the offences punishable under Sections 302/34 of the IPC. The co-accused, Umesh Rama was convicted also for the offence punishable under Section 27 of the Arms Act by the trial court. The said accused persons were sentenced to imprisonment and fine by the trial court. The said judgment of the trial court is on record by way of Exhibit-3 of the trial court’s proceedings.

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5. It transpires that subsequently charge-sheet was submitted against the appellant also and upon taking of cognizance the case was committed to the court of Sessions for trial on 28.08.2009. The appellant was charged of commission of offences punishable under Section 302 read with Section 34 of the IPC and Section 27 of the Arms Act. The appellant denied the charges and claimed to be tried and accordingly he was put to trial.

6. To bring home the charge against the appellant, the prosecution examined seven witnesses including the father of the deceased, Ramashrya Yadav, the brother of the deceased, Pavitra Yadav. The appellant was a *chowkidar*. PW-1, PW-2, PW-3, PW-4 and PW-5 are also village *chowkidars* who deposed at the trial that the appellant was there at the police station at the time of occurrence discharging his duties and thus, did not support the prosecution's case, though they have not been declared hostile. PW-7, father of the deceased is a hearsay witness. The informant came to be examined as court's witness who supported the prosecution's case. PW-6, the brother of the deceased has supported the prosecution's case as an eye-witness. In addition to the oral evidence of the prosecution's witnesses, the prosecution also brought on record following documentary evidence:-

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Sl. No.	Details	Exhibit
1	Signature of PW-5 on Kamaan	Exhibit-1
2.	certified copy of deposition of Parsuram Prasad, Sadar Hospital, Munger	Exhibit-2
3.	Certified copy of Judgment in S.T.- 50 of 2006, PS Case no. 340 of 2005	Exhibit-3

7. After closure of the prosecution's evidence the appellant was questioned under Section 313 of the CrPC so as to enable him to explain the incriminating circumstances emerging against him based on the evidence adduced by the prosecutions at the trial. Following was the only incriminating circumstance explained to the appellant by the trial court.

"प्रश्नः आपके विरूद्ध साक्ष्य है कि आपने अन्य अभियुक्तों के साथ एक राय होकर दिनांक 11.10.2005 को संध्या 7 बजे सुचिका के पुत्र अजय यादव उर्फ़ किटमन यादव की ग्राम टीक्कम स्थित कटोरमा कोण के निकट गोली मारकर हत्या कर दिए। क्या कहना हैं?"

8. The trial court, after having appreciated the evidence of the prosecution's witnesses, particularly PW-6, Pavitra Kumar Yadav and CW, Daresh Devi, the informant, has convicted the appellant of the offence punishable under Section 302 read with 34 of the IPC and Section 27 of the Arms Act and sentenced him to imprisonment and fine as has been noted above.

9. It has been argued on behalf of the appellant that in the present case, neither the Investigating Officer nor the doctor was ' the trial court has committed gross

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error by taking into evidence, deposition of the doctor made in the separate trial, i.e., Sessions Trial No. 50 of 2006. He has further submitted that there has been no due compliance of the requirement under Section 313 of the CrPC which has greatly prejudiced the appellant's case. Thirdly, non-examination of the Investigating Officer has also prejudiced the appellant's case as he did not have the opportunity to obtain contradictions in the evidence of the prosecution's witnesses.

10. Learned Additional Public Prosecutor appearing on behalf of the State, on the other hand has submitted that there is no illegality in the finding recorded by the trial court which is based on the evidence of the eyewitnesses who have consistently deposed at the trial, the manner in which the appellant with others killed the deceased in a gruesome manner. It has been argued that the trial court has duly appreciated the evidence of the prosecution's witnesses as well as the defense witnesses and has rightly come to the conclusion that the prosecution has successfully proved beyond all reasonable doubts, the charge of commission of the offences punishable under Section 302 of the IPC and Section 27 of the Arms Act.

11. After having perused the impugned judgment and order of tl s well as the lower court's records,

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we are of the opinion that this appeal should succeed mainly on two aspects. Firstly, that the trial court relied upon the deposition of the doctor in a different trial though arising out of the same judgment and order. Secondly, the trial court has taken into consideration such circumstances also which were not explained to the appellant while examining him under Section 313 of the CrPC, while holding him guilty of the offences.

12. We find substance in the submission made on behalf of the appellant that there has been no substantial compliance of Section 313 of the CrPC in the present case.

13. Examination of an accused under Section 313 of the CrPC is an important stage where the court precisely explains to the persons, put on trial, the incriminating materials emerging against him based on the evidence of the prosecution's witnesses. A vague question was put to the appellant by the trial court as has been quoted above, as if it was a mere formality which was being done to comply with the requirement of the Section 313 of the CrPC.

14. It has recently been reiterated by Supreme Court in the case of ***Kalicharan Vs. State of U.P.*** reported in ***(2023) 2 SCC 583***, that the accused must be explained the circumstances appearing in the evidence against him so that

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accused can offer an **explanation.** The Supreme Court in the case of ***Kalicharan (supra)*** has referred to the celebrated Supreme Court's decision in the case of ***Sharad Birdhi Chand Sarda (supra),*** wherein, it has been conclusively held that the circumstances which are not put to the appellant in his examination under Section 313 of the CrPC, have to be completely excluded from consideration.

15. We could have chosen the option of remanding the matter back to the trial court for taking additional evidence and due compliance of Section 313 of the CrPC, but for the reason that it is an old matter and relates to an occurrence which had taken place, 18 years ago, we refrain from adopting such course. For the failure on the part of the prosecution to examine the doctor, the Investigating Officer and to prove the postmortem report at the trial which the appellant was facing, benefit of doubt shall have to be extended to him.

16. Accordingly the appellant stands acquitted of the charge of the offence punishable under Section 302/34 of the IPC and Section 27 of the Arms Act by giving him benefit of doubt. The impugned judgment of conviction and the order of sentence dated 27.03.2019 passed by the learned Fast Track Court-II, Lakhisarai, in Sessions Trial No. 604 of 2019,

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arising out of Lakhisarai P.S. Case No. 340 of 2005, are hereby set aside.

17. The appellant, Dasrath Ram, is in custody. Consequent upon his acquittal by the present judgment, let him be released forthwith, if he is not required in any other case.

18. This appeal is accordingly allowed.

(Chakradhari Sharan Singh, J)

I Agree.
Nawneet Kumar Pandey, J: -

(Nawneet Kumar Pandey, J)

Nishant/Suraj-

AFR/NAFR	NAFR
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