

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.575 of 2015**

Arising Out of PS. Case No.-122 Year-2013 Thana- CHAPRA MUFFASIL District- Saran

Sanjay Kumar Singh S/o Late Pashupati Nath Singh, resident of village- Enai,
Post- Enai, P.S.- Revilganj, District Saran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Subodh Kumar Sinha, Advocate Mr. Divyam Verma, Advocate Mr. Sanjeet Kumar Singh, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP
For the Informant	:	Mr. Dewendra Narayan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 29-08-2023

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'the Code') challenging the order of conviction dated 22nd May, 2015 and order of sentence dated 28th May, 2015 passed by learned Additional Sessions Judge - IV, Saran, Chapra in Sessions Trial No. 678 of 2013/2631 of 2014 arising out of Chapra Mufassil P.S. Case No. 122 of 2013, G.R. No. 2300 of 2013, whereby the concerned Trial Court has convicted the present appellant for the



offences punishable under Sections 302 of I.P.C. and under Section 27(3) of the Indian Arms Act, 1959.

2. He has been sentenced to undergo rigorous imprisonment of life and a fine of Rs. 15,000/- under Section 302 of the I.P.C. and 5 years R.I. under Section 27(1) of the Arms Act and a fine of Rs. 5,000/- in default of fine 6 months S.I. Both the sentences have been ordered to run concurrently.

3. The factual matrix of the present case is as under:-

“The elder sister of the informant, namely, Rinku Devi was married to Sanjay Singh in the year 1992 and two sons and one daughter were born out of that wedlock. Sanjay Singh used to beat his wife. Recently, Sanjay Singh had badly beaten his wife, and upon getting this information the informant went to the matrimonial home ‘Enai’ and brought back his sister to his home. After that Sanjay Singh came there again and again but they did not send his wife with him because she was not ready to go to her *sasural* (in-laws house), due to which Sanjay Singh had threatened of dire consequences. On 30.05.2013 at about 11 O’clock in the morning, Sanjay Singh came to informant’s house on his motorcycle with his licensed rifle and started abusing, upon which the younger brother of the informant Sunil Kumar Singh came out of the house. Sanjay Kumar Singh murdered Sunil Kumar Singh at the verandah of the informant’s house by firing a gun-shot from his licensed rifle from the point blank range at the neck of Sunil Kumar Singh. Before they



came shouting out of their house, he (Sanjay Kumar Singh) ran away from the spot on his motorcycle.”

4. After registration of the F.I.R., the Investigating Agency has started investigation and recorded the statement of the witnesses. The dead body of the deceased was sent to the Doctor for conducting the *post mortem*. The Investigating Officer also seized the licensed rifle of the appellant/accused from which it is alleged that the firing took place and thereafter, the same was sent to F.S.L. for necessary analysis. After the investigation was over, the Investigating Officer filed the charge-sheet against the appellant before the concerned Magistrate Court. However, since the case was exclusively triable by the Court of Session, the learned Magistrate committed the same to the concerned Sessions Court where the same was numbered as Sessions Trial No.678 of 2013/2631 of 2014.

5. During the course of the trial, the prosecution had examined nine witnesses and also produced the documentary evidence. Thereafter, further statement of the appellant/accused came to be recorded under Section 313 of the Code and after conclusion of the trial, the Trial Court passed the impugned order, as observed hereinabove.

6. Heard Learned Advocate Mr. Subodh Kumar Sinha, assisted by Mr. Divyam Verma and Mr. Sanjit Kumar Singh



for the appellant/convict, Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the Respondent-State and Mr. Dewendra Narayan Singh for the Informant.

7. Learned Advocate for the appellant has referred to the depositions of PW-2, PW-3, PW-5 and PW-6 who are claiming to be the eye-witnesses to the incident in question. After referring to the deposition of the said witnesses, it is submitted that, in fact, the aforesaid prosecution witnesses have not actually seen the incident in question and they reached the spot after the occurrence took place and they have seen that the appellant fled away from the place of occurrence. Thus, in fact, there is no eye-witness to the incident in question. It is also submitted that, in fact, the appellant came to the house of the first informant with his licensed rifle. However, he was not having any intention to kill the deceased and a sudden quarrel took place between the deceased and the appellant and accidentally the firing took place in which the bullet hit the deceased, as a result of which he died. Learned counsel, therefore, submitted that even assuming, without admitting, that the death of the deceased was caused in the incident in question, there was no intention or knowledge on the part of the appellant to kill the deceased and, therefore, alternatively it is submitted that the case of the appellant falls under Exception 4 of



Section 300 of the I.P.C. and, therefore, it is punishable under Section 304 Part-II of the I.P.C. The maximum sentence for the same is 10 years' imprisonment. It is submitted that the appellant/convict is in jail since 04.06.2013 i.e. more than 10 years and, therefore, the conviction be substituted from 302 to 304 Part -II and when the appellant is in jail since more than 10 years, he may be immediately released from jail.

8. On the other hand, learned APP has opposed this appeal. Learned APP would mainly submit, after referring to the deposition of four eye-witnesses, that all the four eye-witnesses are the family members of the deceased and they were present in the house at the time of occurrence and, therefore, their presence was natural as the incident took place at 11:00 a.m. in the morning. Learned APP has also pointed out the conduct on the part of the appellant as he has fled away from the place of occurrence immediately after the incident took place. It is also pointed out by learned APP about the motive on the part of the appellant to commit the murder of the deceased. It is submitted that there was an ill treatment on the part of the appellant to his wife who is sister of the first informant and who is also sister of the deceased Sunil Kumar Singh. The wife of the appellant was brought to the house of the first informant and immediately after 2-3 days, the appellant



came to the house of the informant with his licensed rifle which was fully loaded with the cartridges. Learned APP has also referred to the deposition given by PW-8, the Doctor who had conducted the *post mortem* of the deceased and submitted that the firing took place from a very close range. Learned APP has also referred to the report given by the F.S.L. in support of his submission that the appellant has committed the offence punishable under Section 302 of the I.P.C. At this stage, learned APP has also submitted that the alternative submission canvassed by the learned Advocate for the appellant may not be accepted for the reason that the appellant came at the place of occurrence with his licensed rifle and there was no occasion to use the said rifle. It is also submitted that there was no grave and sudden provocation as contended by the learned counsel for the appellant. He, therefore, urged that the alternate submission canvassed by the learned counsel appearing for the appellant may not be entertained. Learned APP, therefore, urged that this appeal be dismissed. Learned counsel for the informant has also supported the arguments canvassed by the Learned APP.

9. We have considered the submissions canvassed by the learned counsel appearing for the parties. We have also perused



the entire evidence produced by the prosecution before the concerned Trial Court.

10. PW-1 Ashutosh Kumar Singh is a witness of the seizure memo and he has stated in his examination-in-chief that the blood-stained clothes of the deceased was seized and the *panchnama* was prepared and he had signed the same *panchnama*. He has also signed on the *panchnama* of the seizure of the cartridges which were seized from the house of the deceased and the mobile phone.

11. PW-2 Alka Singh, who is the wife of the first informant, has stated in her examination-in-chief that the incident took place at 11:00 a.m. on 30th May, 2013. At that time, she was in her house with her family members. They were sitting in the hall. At that time, the accused came at their residence with a rifle. When Sunil Kumar Singh interrupted him, immediately the appellant opened fire from his rifle and in the said incident, Sunil Kumar Singh sustained injury and immediately thereafter, the accused fled away from the spot on his motorcycle. The said witness had specifically stated that she had seen the incident in question. During cross-examination of the said witness, she had stated that when they heard the sound of firing, they immediately rushed to the place and saw that Sanjay Singh has fled away from



the place of occurrence. She has denied the suggestion that a scuffle took place between Sunil Kumar Singh and the appellant and the incident in question had taken place.

12. PW-3 Kamla Devi is the mother of the deceased and the mother of the first informant. She has also stated in her examination-in-chief that the incident took place on 30th May, 2013 at 11:00 a.m. At that time also she was present in the hall in their house. The appellant Sanjay Kumar Singh came at the same place and used abusive language and when Sunil Kumar Singh asked him not to use such type of language, immediately the appellant Sanjay Kumar Singh started firing. In the said incident, the bullet hit Sunil Kumar Singh and, therefore, immediately he was shifted to Hospital where he was declared dead. She has specifically stated that she had seen the incident in question. She has also denied the suggestion that in a scuffle suddenly the firing took place.

13. PW-4 Sikander Singh is also *panch* witness of the seizure *panchnama*,

14. PW-5 Punam Devi, who is the sister of the deceased, has also supported the case of the prosecution while deposing before the Court and she has also denied the suggestion made by the defense that in a sudden quarrel which took place



between Sunil Kumar Singh and the appellant, the firing took place.

15. PW-6 Santosh Kumar Singh is the first informant who lodged the F.I.R. in which the said witness had specifically stated that he was present in the house at 11:00 a.m. when the incident took place. He has deposed that the appellant came to the house of the said witness and started using abusive language. At that time, his younger brother came from his room and immediately thereafter, the appellant started firing from his licensed rifle. In the said incident, his brother Sunil Kumar Singh sustained injury and the appellant immediately left the place of incident on his motorcycle. The injured was immediately shifted to the Hospital and when they reached the Hospital, he was declared dead. During cross-examination, he has stated that his working hours are 10:30 a.m. to 04:30 a.m. Specific question was asked to him that after hearing the sound of firing, he came out from the room, he said that the firing took place in his presence and he has seen the said incident. The said witness has also denied the suggestion that during the scuffle which took place between Sunil Kumar Singh and the appellant, suddenly the bullet hit Sunil Kumar Singh.



16. PW-7 Dr. Jyoti Saran is the Doctor who conducted the *post mortem* of the dead body of the deceased Sunil Kumar Singh. The said Doctor has stated in her deposition that the deceased sustained following injuries:-

External Examination:-

1. Lacerated wound 1/2" X 1/2" on Rt cheek X mouth deep charring margin (Entry wound).
2. Lacerated wound on Rt cheek 3" X 3" mouth entry deep (Exit wound).
3. Loss of Skin muscle bone on Right cheek.
4. Clotted blood present on mouth cavity both nostril and both ears.

On desertion:-

- (I) Fracture of mandibular bone maxillary bone
- (II) Fracture of palate.
- (III) All viscera were intact and pale.
- (IV) Stomach contained about 200 cc of liquid.
- (V) Bladder was empty.

In my opinion, the cause of death was hemorrhage and shock caused by fire arm injury.

17. PW-8 Subodh Kumar Singh is the Investigating Officer who had carried out the investigation. The said witness has narrated the manner in which he has carried out the investigation



and recorded the statement of the witnesses, seized the licensed rifle of the appellant/accused and the cartridges which were found from the spot and from his residence. The blood-stained clothe of the deceased was also seized by the said witness.

18. PW-9 Atul Raj was working as a Police Officer in Chapra Mufassil Police Station, and the said witness had produced seized material before the Court, including the rifle and the live cartridges.

19. It is also relevant to note that the Office of the Director, Forensic Science Laboratory, Bihar, Patna has given an opinion with regard to the rifle and the cartridges which read as under:-

“(a) The exhibit marked ‘A’ noted in item (1) is a IOF make .315/8 mm calibre regular rifle bearing no. AD07 12496. It is in perfect working order and can be used as an effective firearm. Its barrel was got chemically tested. As a result of chemical analysis fire arm discharged residue could be detected in inside its barrel indicating thereby sign of previous firing. However, on exact date and time of firing is not possible.

(b) The exhibits marked B₁, B₂, B₃, B₄, B₅, B₆, B₇, B₈, are K.F. make live rounds of .315/8 mm calibre rifle cartridges. B₁ and B₂ were fired and tested and found effective. These are ammunition.”

20. From the aforesaid oral as well as the documentary evidence produced by the prosecution, it is revealed that PW-2, PW-3, PW-5 and PW-6 are the eye-witnesses to the



incident and their presence at their house at 11:00 a.m. was natural. The defense has not disputed the occurrence which took place at the house of the first informant. The only defense which was taken by the appellant before the concerned Trial Court was that though the appellant came at the place of occurrence i.e. the parental house of his wife, house of the informant (who is the brother of the wife of the appellant), there was no intention on his part to kill Sunil Kumar Singh, brother of the informant. It is the defense of the appellant that the incident took place in a sudden quarrel and, therefore, the appellant, at the most, be convicted under Section 304 Part-II of the I.P.C. as the case of the appellant falls under Exception 4 of Section 300 of the I.P.C. The appellant had also not disputed the place of incident and his conduct of fleeing away from the place of occurrence on his motorcycle immediately after the occurrence took place. Thus, in the present case, we have to examine the evidence produced by the prosecution and the defense taken by the appellant in the aforesaid context.

21. At this stage, we would like to refer to the provisions contained in Section 300 Exception 4 of the I.P.C. which provides as under:-

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the



act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.”

22. Thus, from the aforesaid provision, it can be said that the culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a



sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

At this stage, this Court would like to refer and rely upon the decision rendered by the Hon'ble Supreme Court in the case of **Sukhlal Sarkar Vs. Union of India & Ors.** reported in **2012 (5) SCC 703** wherein, the Hon'ble Supreme Court has observed that person claiming the benefit of provocation has to show that the provocation was grave and sudden, that he was deprived of power of self control and that he caused the death of the person while he was still in that state of mind.

23. In the case of **Arun Raj Vs. Union of India & Ors.** reported in **2010 (6) SCC 457**, the Hon'ble Supreme Court has observed that to take into consideration situations wherein a person with normal behaviour reacts into the given incident of provocation. Thus, the protection extended by the Exception is to the normal person acting normally in the given situation.

24. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the evidence of the prosecution and even the defense of the appellant/accused/convict is carefully examined, it is revealed that the appellant came at the place of occurrence i.e. the parental house of his wife and the informant (who is the brother of the wife) with loaded rifle with live



cartridges only because of the fact that the first informant brought his sister to his house because the appellant was giving ill treatment to his wife i.e. the sister of the informant. Immediately after reaching the house of the first informant, the appellant used abusive language and, therefore, the deceased Sunil Kumar Singh who is also brother of the wife of the appellant came from his room and requested him not to use abusive language and, thereafter, the appellant used his licensed rifle. In the incident, the deceased sustained gun-shot injury on his vital part of the body. Thus, we are of the view that the defense taken by the appellant is that the incident took place in a sudden quarrel and in a sudden fight which took place between him and the deceased cannot be accepted.

25. We have also perused the further statement of the appellant/accused recorded under Section 313 of the Code and in the said statement also, he has not raised this defense that because of the provocation made by the deceased in the sudden fight, the incident took place.

26. Thus, from the aforesaid evidence, we are of the view that the prosecution has proved the case against the appellant beyond reasonable doubt, that the appellant has committed the offence punishable under Section 302 of the I.P.C. and the case of



the appellant does not fall under Exception 4 of Section 300 of the I.P.C. and, therefore, he cannot be convicted under Section 304 Part-II of the I.P.C. as alternatively contended by the learned counsel for the appellant. Thus, no error is committed by Learned Trial Court while passing impugned order.

27. In view of the aforesaid discussion, we are not inclined to entertain the present appeal.

28. Accordingly, this appeal is dismissed.

(Vipul M. Pancholi, J)

(Chandra Shekhar Jha, J)

Sachin/Sanjeet/-

AFR/NAFR	
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