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NAVAL KISHORE SINGH

v.

STATE OF BIHAR

AUGUST 4, 2004

B

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

Penal Code, 1860 :

C

S. 304—During an altercation one of the accused thrusting a spear in abdomen of victim—Injury causing death of victim—Trial court convicted the two accused u/s 302 r/w s.34—High Court acquitted one of them and convicted the other u/s 304—Held, evidence of prosecution proves that appellant caused injury to deceased—Court not inclined to interfere with the conviction and sentence.

D

Code of Criminal Procedure, 1973 :

E

s.113—Trial court examining the accused—Only three questions put to accused—Plea that there was serious error in not properly examining the accused—Held, Supreme Court deprecates the practice of putting together in a single question the entire evidence against the accused and asking him to explain the same, as the accused may not be in a position to give a rational and intelligent explanation—Trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence—s. 313 examination is part of a fair trial and should not be done in slipshod manner—However, as the accused did not raise the plea before the High Court that he was prejudiced by the way the s. 313 examination was conducted, the Court is not inclined to accept the plea at this stage.

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Rama Shanker Singh & Ors. v. State of West Bengal, AIR (1962) SC 1239; Bhalinder Singh alias Raju v. State of Punjab, AIR (1994) 1 SCC 726; State of Maharashtra v. Sukhdev Singh & Ors., [1992] 3 SCC 700 and Lallu Manjhi & Anr. v. State of Jharkhand, [2003] 2 SCC 401, relied on.

H

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1331 of 2003.

From the Judgment and Order dated 1.8.2002 of the Patna High Court A
in Cr. A No. 589 of 1987.

Upendra Mishra and Kanhaiya Priyadarshi for the Appellant.

B.B. Singh and Kumar Rajesh Singh for the Respondent. B

The following Order of the Court was delivered :

The sole appellatant was tried along with six other accused and the
appellant and one another were found guilty by the Sessions Court for the
offence for murder punishable under Sections 302/34 IPC. Both the C
convicted persons filed appeal and the High Court acquitted one of them
and present appellatant was found guilty under Section 304 and was
sentenced to undergo seven years imprisonment.

The incident happened on 17.11.1974. Deceased Baijnath Singh son
of PW-1 Lal Deo Singh was engaged in cutting leaves of banana. The case D
of the prosecution is that the appellatant along with other co-accused came
to the place of incident and the present appellatant was armed with spear.
The accused persons asked Baijnath why he was putting banana leaves near
the house of the accused. The deceased gave some reply. The further case
of the prosecution is that the present appellatant thrust the spear in the E
abdomen of the deceased Baijnath Singh. Meanwhile, PW-1, PW-2 and
others came to the scene of occurrence. PW-2 also was attacked by one
of the accused. The injured Baijnath was taken to the hospital where he
succumbed to the injuries. PW-1 later gave information to the police and
the case was registered against the accused. F

In the Sessions Court, 16 witnesses were examined. PWs 1, 2, 3 and
8 are the eye-witnesses. PW-1, the father of the deceased deposed that
when his son was cutting banana leaves, the accused came there and picked
up a quarrel with him and he saw the present appellatant thrusting the spear G
on the abdomen of this son. PW-2, brother of PW-1 also came to the place
of incident and saw the appellatant causing injury to the deceased.

The counsel for the appellatant submitted that there are series of
contradictions between the evidence of PW-1 and PW-2. We do not think
that the contradictions pointed out by the appellatant's counsel are sufficient H

A to disbelieve their evidence, especially, when the presence of these two witnesses cannot be doubted. PW-2 sustained injury on his face and PW-3 and PW-8 also were in the house and came to the place of incident at the time of occurrence. PW-3 deposed that she could see that her son Baijnath in the plantation grove and doing work and there is evidence of the prosecution to prove that the present appellant caused injury to deceased Baijnath.

Counsel for the appellant pointed out that the Sessions Court committed serious error in not properly examining the accused under Section 313 Cr.P.C. Our attention was drawn to the statement taken from the present appellant. Only three questions were put to the appellant. The first question was whether he heard the statement of witnesses and the second question was that the evidence given by witnesses showed that he committed the murder of the deceased and whether he had to say anything in defence. The questioning of the accused under Section 313 Cr.P.C. was done in the most unsatisfactory manner. Under Section 313 Cr.P.C. the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of question and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in slipshod manner, it may result in imperfect appreciation of evidence. In various decisions of this Court, the importance of the questioning the accused under Section 313 Cr.P.C. was given due emphasis, *Rama Shankar Singh & Others v. State of West Bengal*, AIR (1962) SC 1239; *Bhalinder Singh alias Raju v. State of Punjab*, [1994] 1 SCC 726; *State of Maharashtra v. Sukhdev Singh & Ors.*, [1992] 3 SCC 700 and

Lallu Manjhi & Anr. v. State of Jharkhand, [2003] 2 SCC 401.

In the present case, the appellant had not raised any contention in the High Court that he was seriously prejudiced by the way in which section 313 question was done. If this defect in procedure under Section 313 Cr.P.C. had been pointed out, the High Court could have very well remitted the case to the Sessions Court for a proper examination. At this stage, we are not inclined to accept this contention of the appellant especially when the accused was not able to show that he was in any way prejudiced by such irregular procedure.

The counsel for the appellant has lastly contended that in the case of sentence the appellant may be given leniency. The appellant was convicted by the Sessions Court under Section 302/34 IPC and the High Court converted the same to one under Section 304 IPC without specifying, whether it comes under part I & II of Section 304 IPC. The evidence of the prosecution shows that the appellant caused death of the young boy in a cruel and brutal manner. We are not inclined to interfere with the sentence of seven years imprisonment imposed on him. The appeal fails and is dismissed.

R.P.

Appeal dismissed.