

Adya Singh

Vs

State of Bihar

Criminal Appeal No. 203 of 1988

(G. T. Nanavati, S. P. Kurdukar JJ)

29.07.1998

### JUDGMENT

1. The appellant is challenging in this appeal his conviction under Section 302 read with Section 34 IPC and Section 27 of the Arms Act, 1959 recorded by the Sessions Court, Patna in Sessions Case No. 86 of 1976 and confirmed by the High Court in Criminal Appeal No. 57 of 1976.

2. Learned counsel for the appellant took us through the evidence of eyewitnesses who have said that the deceased was hit on his back by the shot fired by the appellant. But PW 5, Doctor Kalwar, who had performed post-mortem examination has deposed that entry wound was on the chest and the exit wound was on the back. Learned counsel submitted that the medical evidence clearly establishes that the assailant had fired a shot when the deceased was facing him and not when his back was towards the assailant, as deposed by the eyewitnesses. He submitted that in view of this inconsistency, the courts below ought not to have accepted their evidence.

3. This aspect was considered by the trial court and also by the High Court and they have rightly rejected the contention. The doctor, who performed the post-mortem examination, has admitted that he had prepared the post-mortem report subsequently in his office on the basis of notes which he had prepared earlier and which were destroyed thereafter. He also admitted that the appellant was working as a compounder in a government hospital. That explains the reason why there is an inconsistency in the evidence of Dr. Kalwar and of Dr. Singh, who first examined deceased Mahinder Singh. PW 6, Dr. Singh, not only in his evidence but also in the injury certificate which he had issued soon after examining Mahinder Singh has described the wound on the back as an entry wound and the wound on the chest as the exit wound. Nothing was elicited in his cross-examination which could create a doubt regarding the correctness of his evidence. An attempt by the doctor who had performed post-mortem examination to help the appellant is quite evident. This cannot be regarded as a case in which because of inconsistency between the ocular evidence and the medical evidence, the evidence of eyewitnesses should have been rejected.

4. We see no reason to differ from the findings recorded by the High Court. The evidence of the eyewitnesses clearly establishes that the appellant had caused the death of Mahinder Singh by firing a gun.

5. This appeal is, therefore, dismissed. The appellant's bail is cancelled and he is ordered to surrender to custody to serve out the remaining sentence.