

PETITIONER:
ADYA SINGH

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 29/07/1998

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

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

Learned counsel for the appellant took us through the evidence of eye-witnesses who have said that the deceased was hit on his back by the shot fired by the appellant. But P.W.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, was deposed by the eye-witnesses. He submitted that in view of this inconsistency, the courts below ought not to have accepted their evidence.

This aspect was considered by the trial court and also by the High Court and they have rightly rejected the contention same. The Doctor, who performed the post-mortem examination, as 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, P.W. 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 evidence. This cannot be regarded as a case in which because of inconsistency between the ocular evidence and the medical evidence, the evidence of eye-witnesses should have been rejected.

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

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.

JUDIS