

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.322 of 1992

Against the judgment of conviction dated 18.06.1992 and order of sentence dated 19.08.1992 passed by Sri Shushil Kumar Duvedi, Sessions Judge, Gopalganj, in Sessions Trial No. 93 of 1991.

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Alagu Mahto, son of Sarbjeet Mahto, resident of village Dharambari, P.S.
Baikunthpur, District Gopalganj.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. B. N. Mishra, Advocate.

For the Respondent : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 05-01-2015

When this appeal was called out for hearing, learned counsel for the sole appellant produces before us a registered letter sent by him to the appellant recently, which has been returned with an endorsement thereon that 'the addressee is dead'. He, accordingly, submits that a report be called for from the lower court and/or Superintendent of Police of Gopalganj whether the appellant is dead or not and then to take up this appeal after receipt of the report. Having perused the records, this appeal being of the year 1992, in view of the facts, which would be noted hereunder, we do not think that it would serve any useful purpose in adjourning the matter.



2. This appeal has been filed against the judgment of conviction dated 18.06.1992 and order of sentence dated 19.06.1992 passed by the learned Sessions Judge, Gopalganj in Sessions Trial No. 93 of 1991, convicting the sole appellant under Section 302 of the Indian Penal Code (for short 'I.P.C.') for murdering Mahanth Mahto and sentencing him to undergo rigorous imprisonment for life. He was also convicted under Section 323 I.P.C. for injuring the informant, who is the daughter-in-law of the said deceased, but under this count, he was not awarded any separate sentence.

3. The prosecution case is based upon the fardbeyan of P.W.1 Ujia Devi, daughter-in-law of the deceased Mahanth Mahto, which was recorded by A.S.I. B. K. Dubey (not examined). It is, inter-alia, alleged that the informant saw her father-in-law Mahanth Mahto (deceased) having quarrel with the appellant under the Neem tree outside their house. She heard her father-in-law complaining why the appellant had drained out water from his farm land, which had been irrigated after being manured. Hearing this, informant also joined him and said that she would call for a Panchayati in the matter. This enraged the sole appellant, who, from the nearby hut, allegedly picked up a bamboo and struck Mahanth Mahto on his head, who fell down bleeding from his nose and mouth. When the informant came forward she was also struck and injured. They found Mahanth Mahto to have

died there itself. Upon this fardbeyan, a first information report was registered and after investigation charge-sheet was submitted. Cognizance having been taken, the case was committed to the Court of Session. The appellant having pleaded not guilty was tried, convicted and sentenced as aforesaid.

4. Learned counsel for the appellant points out that in support of the prosecution case, in all six witnesses were examined. Neither the Doctor, who conducted the post-mortem examination was examined nor was the post-mortem report proved. He further submits and rightly so that even if the allegation, as alleged by the prosecution, is accepted in its entirety, what it constitutes is at best an offence under Section 304 I.P.C., for the altercation and the assault were all spontaneous out of a dispute, which started then and there. As there was no pre-meditation, it cannot be a case of culpable homicide amounting to murder though it is a culpable homicide. He, accordingly, submits that at best it would be an offence punishable under Section 304 I.P.C. and not under Section 302 I.P.C., for it would fall within Exception 4 to Section 300 I.P.C. and, thus, for the purpose of punishment it would be Section 304 Part-II I.P.C..

5. Having seen the evidence, the submission advanced by learned counsel for the sole appellant appears to be correct. The trial court, in our view, wrongly, convicted the sole appellant under

Section 302 I.P.C. We, accordingly, alter the conviction of the appellant to Section 304, Part-II I.P.C. From the record, it is evident that the appellant had remained in custody for over six years when he was ultimately granted bail by this Court.

6. Considering the aforesaid facts and circumstances, we have no option but to dismiss this appeal with the modifications both in the conviction and the sentence. Accordingly, the conviction of the sole appellant is altered to Section 304, Part-II and his sentence is reduced to the period already undergone by him.

7. In the result, this appeal stands dismissed with the aforesaid modifications in the conviction and sentence.

(Navaniti Prasad Singh, J)

MPS/-

(Anjana Mishra, J)

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