

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.427 of 2009

Arising out of PS.Case No.-44 Year-2007 Thana-Chewara District- SHEIKHPURA

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Chhotelal Ram, Son of Late Mangal Ram, Resident of Village Gadua, P.S.
Chewara, District Sheikhpura.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Dr. Anjani Prasad Singh, Advocate

For the State : Sushri Shashi Bala Verma, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 08-04-2015

The solitary appellant Chhotelal Ram has set up a challenge to the judgment of conviction and order of sentence respectively dated 09.02.2009 and 11.02.2009 passed by the learned Presiding Officer, Fast Track Court No. IV, Sheikhpura in Session Trial No. 761 of 2008 by which the appellant was held guilty of committing the offence under Section 302 of the Indian Penal Code and was directed to suffer rigorous imprisonment for life. The learned trial judge did consider imposition of fine as sentence which is mandatorily required under Section 302 of the Indian Penal Code but was of the view that the appellant was a poor fellow having no means to afford paying fine and as such did not impose the sentence of fine.

2. The facts of the case lie in a very narrow compass. The deceased Lal Keshwar Ram the elder brother of the present appellant Chhotelal Ram was hurling abuses while he was sitting in his house with his wife the informant, Shila Devi (P.W.5) and probably that was thought by the appellant to be targeted at him. The appellant was infuriated and while sitting in his section of the house – the house of the two brothers being situated on either sides of a *Gali* – the appellant threw a challenge to the deceased by shouting from there "should I come". The deceased accepted the challenge and invited the appellant. The deceased himself ejected from his house and, as per the prosecution story, when he was on the *verandah* of the section of his house the appellant had reached there by that time with a *Barchi* to pierce it in the left side of the chest of the deceased.

3. The wife of the informant Shila Devi (P.W.5) stated that she could not move out his husband to a hospital or a doctor in the night and invited probably a quack who stitched up the wound and when it was morning time the deceased was taken to the clinic of Dr. M.P. Singh in between 8-8.30 a.m. but the deceased died there in the clinic of the doctor by 9 a.m.

4. As may appear from the very evidence of P.W.5 after having taken her husband to the clinic of Dr. Singh, the



doctor had informed the police telephonically and it was how Jai Prakash Tiwari (P.W.6) arrived there to record the *fardbeyan* (Ext.2) of P.W.5 and himself took up the investigation. P.W.7 stated that he had held inquest upon the dead body and prepared the inquest report and thereafter came to the house of the deceased to make an inspection of the place of occurrence. He had described the place as the courtyard of the deceased which was situated on one side of a lane which was separating the house of the deceased and this appellant. Blood on soil as also blood stains were found on *Sheesham* leaves and the *Barchi* was also found there. Those substances were seized by preparing the seizure memo and the seizure was witnessed by Dinesh Singh (P.W.3). The dead body was sent for post-mortem examination and Dr. Yogendra Kumar Divakar (P.W.7) had held post-mortem examination and had prepared the document (Ext.5) in that behalf. Witnesses were questioned and after close of the investigation the appellant was sent up for trial who had been arrested by the police during investigation.

5. There does not appear any definite defence taken by the appellant except that he was innocent and appears implicated on account of certain land dispute which was existing between his brother, the deceased and himself. At any rate it does

not appear disputed that the relationship between the deceased and the present appellant was not good.

6. Eight witnesses were examined during trial, P.W.5 Shila Devi being the informant of the case. Nisha Kumari (P.W.2) was 20 years old daughter of the deceased and she deposed as an eye-witness to the occurrence. Likewise, Gobardhan Manjhi (P.W.1) appears also an eye witness as he, being one of the friends of the deceased was sitting very much inside the house of the deceased with him when the incident had occurred. Shakuntala Devi (P.W.4) was not an eye-witness and she was attracted on some commotion but had seen the deceased lying injured there at the spot. Chandrama Prasad Yadav (P.W.8) was the *Malkhana* In-charge of *Chobara* police station and he had produced material exhibits from the *Malkhana* lying seized *Barchi* into the court and that *Barchi* was marked material Ext-i.

7. Dr. Anjani Prasad Singh, the learned counsel appearing on behalf of the appellant took us through the evidence of witnesses and submitted that there was no intention nor there could be any knowledge which could be imparted to the appellant as regards the commission of the offence. The act was committed by the appellant at the spur of the moment in the heat of passion and the facts do not indicate that the appellant had acted in any

way cruelly or had taken some advantage out of the situation. Submission was that lack of intention may bring the offence under Section 326 of the Indian Penal Code and it was contended that the single blow given on the upper part of the chest and it was accidental that the weapon has pierced to lacerate the lungs which ultimately caused the death of the deceased after more than 12 hours of the incident.

8. Sushri Shashi Bala Verma, the learned Additional Public Prosecutor was also concurring that it may not be a case under Section 302 of the Indian Penal Code but was contending that the act done with the intention of knowledge appears planted with the heat of passion and appears committed without premeditation and it may be an offence under Section 304 Part II of the Indian Penal Code.

9. Thus, what appears falling in our mind as to whether on evidence produced by the prosecution constitutes an offence under Section 302 of the Indian Penal Code or the one under Section 304 of the Indian Penal Code could be constituted.

10. Gobardhan Manjhi (P.W.1), Nisha Kumari (P.W.2) and Shila Devi (P.W.5) were eye witnesses to the occurrence and we do not have any doubt about that. There is some variance in the evidence of the witnesses but should not



witnesses vary if they are human being and they are narrating the instance in their own way after many months or years of the occurrence specially when they are victims of the offence who had lost one of the most important members of the family who had been their bread earners. The deceased had laboured in Jharia or Dhanbad. This evidence comes from Gobardhan Manjhi (P.W.1) who happened to be one of the close friends of the deceased. He had daughters of marriageable age and the issue which was being discussed by the wife was as subject line as to getting the daughter married and for that to arrange the resources. It is not unusual that the members of the family often discuss between themselves when they are confronted reality of life by other members of the family under a situation as was present before the deceased. He was probably abusing his wife and those abuses were treated to be directed or targeted upon or against the present appellant. The brothers entered into exchange of hot words, may be abuses and ultimately the appellant was throwing up a challenge from very much his section of the house by telling the deceased "should he come" and the deceased was accepting the challenge by inviting him to come. Some witnesses, like, Nisha Kumari (P.W.2) could say that the incident had occurred inside the room though the primary basic case was that the man had been stabbed in the



verandah of the house and we find from the evidence of Jai Prakash Tiwary (P.W.6) the Investigating Officer of the case it appears that the occurrence should have been occurred somewhere on the *verandah* as splattered blood was found in the courtyard as also spread upon leaves of *Sheesham* which were seized by the Investigating Officer. There is no dispute in it that the occurrence of piercing the *Barchi* had taken place there in the night on 19.12.2007 and we are slow in accepting the evidence of Nisha Kumari (P.W.2) that it could have occurred inside the room as Jai Prakash Tiwary (P.W.6) the Investigating Officer did not find any signs of the offence having been committed there.

11. However, at any rate as facts narrated above indicate that it was the loss of control on the part of the appellant. He had treated the abuses which were being hurled by the deceased targeted towards him. He had lost his own control and he was so upset on account of hearing the abuses being heard that he was throwing the first challenge by telling the deceased "should he come". The deceased was also infuriated as does not happen in such situations and he was accepting the challenge and was leaving out of the room into the *verandah*. By that time the appellant was there with his *Barchi* to pierce it on the upper left side chest. The deceased collapsed and what appears undisputed was that his



family members, like, the informant or P.W.2 or even his friend Gobardhan Manjhi (P.W.1) were helpless or probably had found themselves at a loss so much so that none of them could even imagine shifting the deceased to any clinic where he had been finally shifted in the next morning. A quack was hired to stitch up the wound so as to preventing the same from bleeding. These are some of the admitted facts which do not appear disputed by us or appellant or defence also. There was no further word spoken than what we have noted by the appellant when he was throwing a challenge to the deceased by speaking three words "should he come". It was sheer heat of passion and loss of self control that the appellant had moved out with a *Barchi* from his apartment into that of the deceased to pierce it at the part of the body which finally ensured the collapse of one of the lungs. There does not appear any repetition of the blow. There does not appear any word spoken which could give inkling as if the appellant had some motive of committing the murder of the deceased. He might be knowing the likelihood of the result of his act of piercing the *Barchi* and, as such, he may also be assumed to be knowing the result thereof. Section 299 by its third part and Section 300 by its clause IV consider with exception 4 in our opinion is fully attracted to the facts of the case and we are of the view that the

conviction of the appellant for an offence under Section 302 of the Indian Penal Code was not called for under the facts of the case. The act which was perpetrated by the appellant constitutes an offence under Section 304 Part II and we, as such, modify the judgment of conviction and convict the appellant for committing the offence under Section 304 Part II of the Indian Penal Code.

12. The above facts bring us to consider as to what offence we may impose upon the appellant. We were informed during the hearing of the appeal that the appellant is in custody since 31.12.2007 and we sentence him to the term he has remained in custody till date. With the above modification in the judgment of conviction and order of sentence, we dismiss the appeal. On account of the appellant having served out the sentence directed by us upon him, let him be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

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