

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.177 of 2011

(Against the Judgment of conviction and Order of sentence dated 05.01.2011 passed by the Sessions Judge, Sitamarhi, in Sessions Trial No.311 of 2008).

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Ram Babu Mahto, son of Sri Basudeo Mahto, resident of village-Rusulpur, P.S. Majorganj, District-Sitamarhi.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : M/s. Azhar Mustafa, Murad Ashraf, Intekhab Hassan & Fahad Khurshid, Advocates.

For the State : Mr. A. K. Sinha, A.P.P.

For the Informant : M/s. Ravindra Kumar and Sanjeet Kumar Singh, Advocates.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 08-04-2016

The sole Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.10,000/-, in default of which, to further undergo rigorous imprisonment for two years vide Judgment of conviction and Order of sentence dated 05.01.2011 passed by the Sessions Judge, Sitamarhi, in Sessions Trial No.311 of 2008.

2. The case of the prosecution, according to the Fardbeyan of the Informant Nand Kishore Mahto (P.W.7), is that on 21.02.2008 at about 08.00 A.M. an altercation took place between his brother Appellant and deceased cousin brother Om Prakash for taking the



water from a certain Hand-pump. Thereafter, the Appellant took out the handle of the Hand-pump saying that he would not let the deceased using the water from the same. While the hot exchange of words was going on, the deceased moved from there and then Appellant assaulted the deceased on his head with the handle of the Hand-pump on account of which, the deceased was injured. The Informant removed the deceased to the Majorganj Hospital and from there to Sadar Hospital, Sitamarhi, but he died on the next day on 22.02.2008 at 07.30 A.M. at P.M.C.H., Patna.

3. During trial, the prosecution examined altogether 12 witnesses.

4. P.W.1 Ramchandra Mahto is the father of the deceased, who supported the fact of altercation between the deceased and the Appellant where many persons gathered and, thereafter, the Appellant is said to have assaulted the deceased on his head with the handle of the Hand-pump. The injured was taken to Majorganj Hospital and, thereafter, to the Sadar Hospital, Sitamarhi, and then to P.M.C.H., Patna, where he died on the next day.

In cross examination, he stated that he was examined by the police on 02.03.2008, i.e., after eight days later of the occurrence. He stated that the Appellant used to led a claim over the Hand-pump asserting that it was on his land.



5. P.W.2 Ram Pravesh Mahto is the brother-in-law of the deceased, who stated that on the date of occurrence, the deceased had gone to have a bath at the Hand-pump and a dispute arose between the Appellant and the deceased in course of which the Appellant opened the handle of the Hand-pump to prevent its use and also assaulted the deceased on his head. He was removed to the Majorganj Hospital by the own brother of the Appellant, namely, Nand Kishore Mahto, and from there to the Sitamarhi Sadar Hospital but he died on the next day at the P.M.C.H., Patna. He proved his signature on the Fardbeyan as Ext.1/1 and also the signatures of the witnesses on the Inquest Report as Exts.1/2 and 1/3. He stated that after the death of the deceased, his last rites was performed and, in cross examination, he denied the knowledge about a dispute over the Hand-pump. While the injured was being treated at Majorganj Hospital, the police was not informed.

6. P.W.3 Pan Kumari Devi is the mother of the deceased, who also supported the fact of her son having been assaulted on the head by the Appellant and his removal to the various hospitals whereafter he died. In her cross examination, there is nothing of note except that there was a dispute over the use of Hand-pump amongst the villagers.

7. P.W.4 Meera Sundaram is the wife of the deceased, who supported the factum of assault by the Appellant and his death in

the hospital later on. She also conceded that there was a dispute over the use of the Hand-pump between the parties.

8. P.W.5 Ramchandra Mahto is a chance witness who had gone to the P.O. village and had seen the Appellant assaulting the deceased. He has supported the manner of occurrence to some extent. He conceded that he was examined after 20 days of the occurrence.

9. P.W.6 Shambhu Mahto also supported the factum of occurrence and stated that, the Appellant assaulted the deceased with a handle of the Hand-pump from behind on his forehead.

In cross examination, he stated that all the villagers were taking the water from the same Hanpump and there was never any dispute between the parties.

10. P.W.7 Nand Kishore Mahto, the Informant, is the brother of the Appellant and is also cousin brother of the deceased, who reiterated his statement given in the Fardbeyan.

From the evidence of this witness, it appears that some dispute arose between the parties with regard to the drawing water from the Hand-pump and also a dispute as to whether it was the own lands of the Appellant or the deceased.

11. P.W.8 Sabita Devi, who is the wife of the Informant, is a hearsay witness.

12. P.W.9 Ram Prasad Mahto has been declared hostile.

13. P.W.10 Shivanand Mishra was the Investigating Officer, who started investigation from 06.06.2008 and submitted the Charge-sheet.

14. P.W.11 Sahdeo Prasad Sinha had assumed the investigation on 02.03.2008, i.e., about 10 days after the occurrence and had received the Fardbeyan and Inquest Report. He examined the place of occurrence and the disputed Hand-pump. It was only on 27.03.2008 that he received the Post-Mortem Report.

Surprisingly, he did not examine any of the witnesses whose lands belonged to the adjacent area nor was the handle of the Hand-pump recovered from the house of the Appellant.

15. P.W.12 Dr. Bishundeo Prasad had performed the Post-Mortem Examination of the deceased on 22.02.2008 at 02.30 P.M. and found the following injury on his person:

(I). Stitched wound of size 2.5" was present on the right parietal region of the head.

On dissection of head, chest and abdomen, the comminuted fractured of size 3" X 2" X 1" was present on the right parietal bone. The extra dural haemotoma was present on the brain. The stomach contained about 50 Ml. watery food. The urinary bladder was found empty. The liver, spleen, kidney was found pale.

He conceded that the nature of violence could not be

ascertained due to surgical interference. He proved the Post-Mortem Examination Report as Ext.3. He also proved the Fardbeyan, which was in the pen of Brij Nandan Singh, A.S.I. of Pirbahore Police Station as Ext.4 and the Inquest Report, also prepared in his pen, as Ext.5.

16. We find from the evidence of the witnesses that even though the occurrence had taken place on 21.02.2008 at 08.00 A.M. in the morning, no report was given to any authority till the next day on 22.02.2008 at 11.30 A.M. We also find that the First Information Report was forwarded to the concerned Police Station only on 02.03.2008, whereafter, the investigation was started. The Police Officer who had reportedly forwarded the Fardbeyan also did not corroborate as to whether, in fact, the Fardbeyan was given on 22.02.2008 at 11.30 A.M. It is only left to over imagination as to when it was exactly given. We also find that the Post-Mortem Report of the deceased reveals a single injury on the head but the nature of the weapon could not be ascertained since there was surgical interference. Admittedly, the occurrence had taken place in the midst of the assault which was not repeated and the parties are close relatives. The element of the intention is missing in the facts of the case.

17. Under the aforesaid facts and circumstances, we are

inclined to convert the conviction of the Appellant from one under Section 302 of the Indian Penal Code to one under Section 304 Part-1 of the Indian Penal Code and reduce his sentence to the period which he has already under gone.

18. With the aforesaid modification in the Judgment of conviction and Order of sentence passed against the Appellant, this appeal is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.F.R.

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