

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.265 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SARAN

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Suresh Sharma son of Bindeshwari Sharma resident of village Sobhepur, P.S.
Nayagawan, District Saran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Madhaw Prasad Yadav, Adv.

For the State : Mr. S.N. Pd. APP

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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: 18-05-2016

1. The Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for life by judgment of conviction and order of sentence dated 18.01.2011 and 19.01.2011 passed in S.T. No. 489 of 2009 respectively, corresponding to Doriganj P.S. Case No. 8 of 2009 G.R. No. 652 of 2009 by the Addl. Sessions Judge, 4th, Saran at Chapra.

2. The case of the prosecution according to P.W. 3 Surendra Rai is that on 01.03.2009 at about 9 a.m he along with his nephew Ramadhar Rai had gone to Simri Ghat where the deceased Ramadhar Rai asked the Appellant as to why his boat had not been completed. This led to an altercation between both the persons in course of which the Appellant assaulted the deceased Ramadhar Rai with an

instrument used in carpeting i.e. Barma.

3. On going through the evidence and hearing the parties we are of the opinion that in the facts of the case at best an offence under Section 304 is made out for which reason we shall discuss the evidence of the witnesses accordingly.

4. During trial the prosecution examined seven witnesses.

5. P.W. 1 Surya Bansi Sah is said to be an eye-witness who stated that on the date of occurrence he saw that deceased and the Appellant altercating with each other over completion of his boat in course of which two accused Bijendra Rai and Sipahi Rai caught hold of the hands of the deceased whereas Appellant Suresh Sharma assaulted the deceased on stomach with Barma. The deceased Ramadhar Rai then died in the Hospital.

In cross-examination he stated that earlier there was no dispute between the parties

In cross-examination there is nothing which is of further note.

6. P.W. 2 Krishna Rai also stated that on the date of occurrence he had gone to Simri Ghat and he saw the deceased demanding an explanation from the Appellant as to why his boat had not been completed even though he had paid money to him much earlier at which an altercation took place in course of which accused Sipahi Rai and Bijendra Rai caught hold the hands of the deceased

whereas Appellant Suresh Sharma assaulted him with 'Barma' on stomach after which he was taken to the Hospital and declared dead. He further stated that Appellant Suresh Sharma also went to the police station where he was assaulted and handed over to the police.

Also that the Appellant was constructing the boat of Sipahi Rai since 10-12 days. It was when the deceased came and started to force the Appellant to construct his boat and he replied that he would do so later and not immediately that the occurrence took place. He confirmed that the deceased had been assaulted only once and he had been examined 15-20 days later.

7. P.W. 3 Surendra Rai is the informant who stated that about 6-9 months ago at 9 a.m while he along with deceased nephew Ramadhar Rai had gone to Ganga Ghat where the Appellant Suresh Sharma was manufacturing boat of Bijendra Rai and Sipahi Rai, the deceased started to force Appellant Suresh Sharma that he had already paid him money and therefore, his boat should be constructed first at which the Appellant replied that he would not do so. Then the deceased asked him an explanation from him as to why he would not done so at which the Appellant got angry and assaulted the deceased with 'Barma' on stomach. He fell down injured and thereafter was taken to the Hospital where he was declared dead. He proves his signature on the *fard beyan* as Ext. 1 and the inquest report as Ext. 2.

In cross-examination he stated that the deceased was his nephew and that the Appellant Suresh Sharma had instituted Doriganj P.S. Case No. 9 of 2009 in which he and his family members were accused. It was suggested to him that in fact it was the prosecution party who assaulted the deceased with Barma in course of which the deceased sustained injury and died but he denied such suggestion.

8. P.W. 4 Ram Pravesh Rai stated that while he was at 'Ganga Ghat' he saw the deceased asking the Appellant to manufacture his boat and when he denied to do so, an altercation arose between them at which the Appellant assaulted him with Barma on Stomach. He stated that he was about ½ Km away. He denied the knowledge about any counter case having been instituted. He also denied that he was an accused in the said case but confirmed he had been examined by the Investigating Officer about 3-4 days later

He also stated that when he reached he saw the deceased fallen in an injured condition meaning thereby that he is not an eye witness.

9. P.W. 5 Jai Lal Rai once again stated that on the date of occurrence the deceased came and demanded an explanation from the Appellant as to why he had not manufactured his boat in spite of taking money for it. Then the Appellant replied that he would do the work of others first and that he was at that point of time

manufacturing the boat of Sipahii Rai and Bijendra Rai. At this an altercation took place in which the aforesaid two accused caught hold him of the deceased whereas the Appellant assaulted the deceased with Barma on the stomach.

There is nothing else which is of note in his cross-examination.

10. P.W. 6 Dr. Muneshwar Prasad Singh conducted the post-mortem and proved the report as Ext 3 and found the following injuries on his person.

“I. one sharp penetrated wound above Amlitious 1/22x1/2”.

II Abdominal cavity deep after dissection the doctor has found one abdominal cavity of full of blood and blood clots. There were multiple injuries small bowees 1/22x1/2” eventuary mucosis at three places.

III There are multiple injuries in the nosantry in musrs three in number 3”x1/2” size”.

11. P.W. 7 Arom Malakar is the Police Officer who stated that he was the Officer- in-Charge of Doriganj Police Station and on 1.3.2009 instituted the formal first information report which is proved as Exts. 4 and 5 respectively. He also stated that he assumed the investigation and prepared the inquest report as Ext 6. He inspected the place of occurrence which was ‘Ganga Ghat’ and that

an altercation had taken place when the accused refused to manufacture the boat of the deceased.

In cross-examination he stated that the Appellant had been locked up in a room from where he was arrested and during his entire investigation he was in the Hospital but he did not record his statement.

12. From the evidence aforesaid, we find that admittedly the manner of occurrence was quite another than that depicted by the prosecution which is only part of the actual occurrence. The Investigating Officer confirmed that the Appellant had also sustained injuries and in the Hospital he was for a considerable period of time. P.W. 2 also admitted that the Appellant had been assaulted and handed over to the police.

13. There is an indication that the Appellant had instituted a counter case in which the informant and other witnesses were accused, thus, confirming the aforesaid position. In such circumstances, we find it highly difficult to rely on the prosecution case as put forth. Even conceding that the Appellant had indeed assaulted the deceased in course of quarrel and caused his death, at best he would be punishable under Section 304 (II) IPC.

In such circumstances, the conviction of the Appellant is converted from one under Section 302 to 304 (II) and his sentence is

reduced to the period already undergone by him i.e is about 7 years.

With the aforesaid modification in conviction and sentence,
the Appeal is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Prakash/-

AFR/NAFR	NAFR
CAV DATE	NA
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