

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.599 of 2014

Arising Out of PS. Case No.-26 Year-2009 Thana- AURAI District- Muzaffarpur

Sanjay Kumar Sharma, son of Ramchandra Sharma, resident of Bedaul Asli,
P.S.-Aurai, District- Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Pramod Kumar Singh, Advocate Mr. Rudal Singh, Advocate
For the Respondent/s	:	Mr. Ashwani Kumar Sinha, A.PP.

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 11-11-2017

We have heard parties and perused the records of this case.

This jail appeal has been filed assailing the judgment of conviction dated 17.06.2014 and order of sentence dated 18.06.2014 passed by Ad-hoc Additional Sessions Judge-1, Muzaffarpur in Sessions Trial No. 880 of 2009 arising out of Aurai P.S. Case No.26/2009 by which the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and has been sentenced to undergo imprisonment for life and also liable to pay a fine of Rs.10,000/- and in default, he has further been sentenced to undergo imprisonment for three months.



The prosecution case, in brief, is that, the deceased Vijay Kumar Sharma and accused Sanjay Kumar Sharma, Ajay Sharma, Dhananjay Sharma were full brothers and living in joint family. The accused Sanjay Kumar Sharma after matriculation fell in company of antisocial elements and became addicted to toxic substances. He was unmarried. He used to demand money from his family members as well as from the villagers. The deceased objected to the accused and refused to give any money. The accused had threatened to kill the deceased at several occasions for non-fulfillment of demand. The deceased was practising as a Homeopathic doctor. On the alleged date of occurrence, i.e., on 5.05.2009 in the evening 7 to 8 P.M. while the deceased was returning to home from his dispensary and reached near the house of Ramu Rai, the accused followed behind to the deceased and gave two blows by means of heavy bamboo piece (mugri) on the head of the deceased. As a result of which, the deceased died instantaneously. On hue and cry, the villagers assembled there. The accused fled away uttering a threat with moving bamboo piece in air.

On the basis of aforesaid fardbeyan, the FIR was registered under Section 302 of the Indian Penal Code vide Aurai P.S. Case No. 26 of 2009 against the appellant. The police took up the



investigation of the case. After investigation, the police submitted charge sheet against the appellant, Thereafter, the Chief Judicial Magistrate took cognizance and committed the case to the court of sessions, where charges were framed, to which, the accused person pleaded not guilty. Thereafter, trial started against the appellant.

During trial, the prosecution has examined altogether seven witnesses in support of its case. P.W. 1 is Chandra Kishore Rai, P.W. 2 is Bhagya Narayan Pandey, P.W. 3 is Dhananjay Kumar, P.W. 4 is Renu Devi, P.W. 5 is Amarchandra Kumar Tiwary, P.W. 6 is Dr. Vijay Pratap Singh and P.W. 9 is Md. Amanullah Khan.

The defence has not been examined any witness on its behalf.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellant and, as such, judgment of conviction and order of sentence, as aforesaid, has been passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

Learned counsel for the appellant has submitted that the death of the deceased caused by the appellant is not intentional as



weapon used is 'mungari' which is not a dangerous weapon. Therefore, the offence if any made out is culpable homicide not amounting to murder.

Now, it has to be seen as to whether the offence is culpable homicide amounting to murder or not amounting to murder?

From perusal of the materials on record including the evidence led by the prosecution, it appears that the act was done with the knowledge that it is likely to cause death but absence of repeated blow suggests that it was without any intention to cause death. The accused has also confessed that he had assaulted the deceased who died but he had no intention to kill him. Of course blow was on vital part but that was on the fit of anger. Thus, in our view, this case would come under the exception carved out under Section 300 IPC and as such, it can be held to be culpable homicide but not amounting to murder as it appears that the evidence produced do not show that the appellant was having any intention to cause death.

It appears that the prosecution has proved its case with regard to the occurrence but a careful scrutiny of the entire evidence makes it clear that it is a case of culpable homicide not amounting to murder. So, his conviction is required to be altered



from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code.

Considering the facts and circumstances of the case, the appeal preferred by the appellant is dismissed with alteration in conviction from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code and his sentence is reduced to the period already undergone by him in custody as the office has reported that he has already remained in jail custody for more than eight years and five months.

Since, the appellant is in jail custody, he is directed to be released forthwith, if not wanted in any other case.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	28.05.2018
Transmission Date	28.05.2018

