

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.57 of 1994

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BASABAN RAM, son of Late Sita Ram, Resident of village- Belodi, Police
Station-Mohaniya, District- Bhabhua

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae
For the Respondent/s : Mr. S.B.Verma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-09-2017

Challenging the conviction for an offence under Section 302 of the Indian Penal Code and sentencing him to undergo life imprisonment, this appeal has been filed by the sole appellant, Basaban Ram.

2. The case of the prosecution, in short, is that the Fardbeyan was got recorded by Basmati Devi, P.W.6, wife of deceased Gaya Ram and it was alleged that on 14.3.1988 at 4.00 P.M. she-goat belonging to the appellant Basaban Ram entered the *Khalihan* of the informant, P.W. 6 Basmati Devi and it is said that while she and her husband Gaya Ram started removing the she-goat grazing in the field, the appellant Basaban Ram along with accused Tukar Ram, Dular Ram, Sahadur Ram, Rajgriti Ram and Bigaru Ram



came there armed with *Lathi* and *Balla* and quarrel took place, in the midst of which Basawan Ram, the appellant assaulted Gaya Ram on the head with *Lathi* which proved fatal.

3. Based on the aforesaid, all the accused were put to trial. Except the present appellant, Basawan Ram, all other accused were convicted under Section 323 IPC, the present appellant has been convicted for offence under Section 302 IPC.

4. The entire allegation of the prosecution is based on the incident that took place arising out of a quarrel between the parties due to grazing of the she-goat in the village of the informant and the deceased.

5. Having considered the statement of P.W. 6, Basmati Devi and the facts of the case, it is clear that agitated by the act of P.W.6 and her husband in removing the she-goat in forceful manner, the incident took place, it was not pre-determined and from the statement of P.W.7, Dr. B.M. Srivastava, it is seen that one lacerated wound $\frac{3}{4}$ cm x $\frac{1}{4}$ cm was only caused on the head in the right side deep 11 cm away from the right eyebrow, which was the only injury caused.

6. No motive, planning or any other evidence is available on the record to show that the assault was pre-planned. The incident as is evident from the material available on the record, happened at



the spar of moment due to quarrel that took place between the parties on account of grazing of the goat in the field of the informant.

7. In view of the above, as to whether offence under Section 302 IPC is made out or it would be an offence amounting to culpable homeside and not amounting to murder under exception 4 to Section 300. In the case of **Mahesh Vs. State of M.P.: (1996) 10 SCC 668** similar and identical situation was considered where also death of the deceased took place on account of single blow made by *Farsa* in view of the sudden fight that took place in an agricultural field on account of grazing of cattle. The Supreme Court found that the incident took place and consequential assault was without any premeditation which was at the spar of moment and the case was brought under exception 4 of Section 300. In the present case also perusal of the judgment goes to show that the trial court took note of the fact that the appellant Basaban Ram was a rustic villager, it is his first offence and he is not a harden criminal.

8. Taking note of the aforesaid and the totality of the circumstances, we are of the considered view that the appellant cannot be convicted under Section 302 IPC. It is a fit case where conviction should be made under Section 304 IPC. The appellant



is sentenced to undergo imprisonment for 10 years in view of the judgment of the Apex Court in the case of **Mahesh** (supra). The appellant shall undergo jail sentence of 10 years.

9. On going through the record, we find that the appellant has already undergone sentence of 11 years as the incident took place on 14.3.1988 and he was released on bail only after he was granted bail by this Court on 29.1.1999. If that be so, the appellant is discharged from the liability of bail bond and set free as he has already completed jail sentence of 11 years.

10. With the aforesaid modification in the impugned judgment of conviction and order of sentence, the appeal is partly allowed.

(Rajendra Menon, CJ)

spandey/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2017
Transmission Date	19.09.2017

