

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.303 of 1993

Meghu Mahato, son of Laxaman Mahto, resident of village-Baswariya, P.S.-
Lauriya, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bashishtha Narayan Mishra, Advocate
For the Respondent/s	:	Mr. A. Sharma, A.P.P.

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 07-10-2017

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

The appellant has filed this appeal assailing the judgment of conviction and order of sentence dated 15.05.1993 passed by the Sessions Judge, West Champaran, Bettiah in Sessions Trial No. 108 of 1991 arising out of Lauriya P.S. Case No.59/1990 by which the appellant has been convicted for the offences punishable under Sections 302 and 452 of the Indian Penal Code and he has been sentenced to undergo rigorous imprisonment for



life under Section 302 IPC and also a fine of Rs.5000/- and in default, rigorous imprisonment for two years. He has been further sentenced to undergo rigorous imprisonment for two years under Section 452 of the Indian Penal Code. However, both the sentences were directed to run concurrently.

It is alleged in the fardbeyan (Ext.2) of Ram Brikchha Mahto, who succumbed to his injury on 9.07.1990 recorded by N.K. Prasad (not examined), S.I. on 8.07.1990 at 2.15 A.M. at Lauria State Dispensary that the occurrence took place at mid-night of 7-8.07.1990 while the deceased was sleeping after taking meal in the night. All of a sudden, the accused-appellant came and started removing the mosquito net under which the deceased was sleeping, due to which, the informant-deceased awoke. He asked the accused as to why he was removing the mosquito net then the accused asked him to keep mum. The accused-appellant is the cousin brother of the informant-deceased by relation. Thereafter, the appellant pierced the dagger near left portion of the chest of the deceased. The deceased tried to catch hold of the accused. The lamp was burning in the court-yard. The another associate, who is not known, was standing near the door as he could not be identified. Thereafter, the deceased and his wife raised alarm and both the



miscreants including the accused fled away. The cause of the occurrence was said to be the land dispute.

On the basis of aforesaid fardbeyan, Lauriya P.S. Case No.59/90 was registered under Sections 452, 324 and 307 of the Indian Penal Code. Thereafter, the deceased had died on 9.07.1990, as such, Section 302 of the Indian Penal Code was added. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellant under Section 302 of the Indian Penal Code. Thereafter, the Additional Chief Judicial Magistrate, Bagaha took cognizance and committed the case to the court of sessions, where charges were framed under Sections 302 and 452 of the Indian Penal Code, to which, the accused person pleaded not guilty. Thereafter, trial started against the appellant.

During trial, the prosecution has examined altogether eight witnesses in support of its case. P.W. 1 is Himayati Devi, P.W.2 is Jawahir Mahto, P.W. 3 is Dropadi Devi, P.W. 4 is Mohan Mahto, P.W. 5 is Bindeshwari Mahto, P.W. 6 is Dr. Sunil Kumar, P.W. 7 is Ram Narayan Mahto and P.W. 8 is Dukhi Mahto.

The defence has also examined Virendra Kumar Singh on his 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.

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?

P.W.6 is a doctor, who held the autopsy on the dead body of the deceased and found the following ante-mortem injuries on the person of the deceased :-

On external examination, the doctor had found that there was one penetrating injury bandaged and stitched on left side of chest. On cutting of the stitch, there was penetrating injury of size 1/2" x 1/2" x cavity deep. On dissection, the peritoneal cavity was full of blood. Spleen was cut 3/4" x 1/2" on lower lobe. There was also cut in splenic vein.

In the opinion of the doctor, the death was caused due to above-mentioned injuries by sharp penetrating instrument such as 'Chhura'. The injuries were found in ante-mortem in nature. The time elapsed since death and post mortem held was within 24 hours.



The doctor has stated, in his cross-examination, that nature of injury is not such that it will cause instantaneous death. He has also stated that an injured may be conscious or unconscious both in such type of injury. It depends on loss of blood.

P.W. 1 is the wife of the deceased. She has fully supported the prosecution case. She in paragraph 4 has stated that the informant had gifted 5 Kathas of land to his 'Phua' and the accused wanted to grab the land. She has further stated that she caught hold of the leg of the appellant who assaulted her by leg but no such statement was made before the Investigating Officer.

P.W. 2, who is own younger brother of the deceased, has admitted that he did not see actually causing assault. He was sleeping in western room in the same house. However, he saw scuffle between the deceased and the accused, who pushed down the informant over P.W. 2, as a result of which, he himself fell down. The house of the accused was nearby his house.

P.W. 3, who is the wife of P.W. 2, has stated that she followed her husband while coming out of the room hearing cry of the injured. She has stated like P.W.2. She claims that it is she who handed over the dagger to the Investigating Officer.

From the evidence of P.Ws. 1, 2 and 3, it appears that their evidence cannot be doubted as they were sleeping in the same



house and they reached there on hearing 'hulla'. Their evidence cannot be thrown because they did not see actual piercing of dagger in the chest of the injured.

P.W. 4 and P.W. 7 have given similar statement that they went to the place of the occurrence soon after the occurrence. They did not see the accused but the injured disclosed the name of the appellant and his overt act to them. The house of P.W. 7 was just after three houses of the informant. P.W. 4 in para 7 has stated that he saw blood fallen but no witness corroborates him nor the Investigating Officer found the bloodstained on the spot.

P.W. 5 is the father of the deceased and he has stated that on 'hulla' he reached there and saw his son injured.

P.W. 8 has been tendered and he did not support the prosecution case.

From the evidence of witnesses, we find that their evidence is natural, probable and trustworthy. Minor discrepancies do not affect the merits of the case.

It is well settled that if a person commits culpable homicide not amounting to murder then the court is required to see as to whether he had any intention of causing death or of such bodily injury is not likely to cause death.



It appears that the evidence produced do not show that the appellant was having any knowledge or intention to cause death as there was only one injury which had been inflicted by him. No successive dagger blows were given on the person of the deceased. Only one blow by means of dagger was given on the chest of the deceased.

Further, we have examined the factual aspect of the matter and found that that the injuries upon the body of the deceased were although serious in nature but death was not immediately caused because occurrence took place on the mid-night of 7.07.1990 and the injured died on 9.07.1990 during which statement of the deceased was recorded by the police and not by the Magistrate. Therefore, in our opinion, 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.

Office has reported that the appellant has completed about seven years and six months in custody.

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 he has already remained in jail custody for about seven years and six months.

The appellant is already on bail. He is discharged from the liability of the bail bond.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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