

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.189 of 1993

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Bishwanath Mehta, son of Late Ruplal Mehta, resident of village-Udai Nagar,
Raharia Khutti, P.S.-K. Nagar, District- Purnea.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Parmeshwar Mehta, Advocate
For the Respondent/s : Mr. A.K. Sinha, A.P.P.

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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 26.02.1993 passed by 8th Additional Sessions Judge, Purnea in Sessions Trial No. 974 of 2001 arising out of Barhat P.S. Case No.270/1989 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 rigorous imprisonment for life.

The prosecution case, in brief, is that, on 29.11.1987 at about 8.00 A.M., Tarni Pd. Mehta (husband of the informant)



had gone to 'Mushahari Tola' in search of labourers for harvesting paddy crops. The father of this appellant, namely, Rup Lal Mehta had also gone to 'Mushahri Tola' with *lathi* in his hand. It has been alleged that altercation took place in between Ruplal Mehta and Tarni Mehta in front of door of the house of Suresh Rishideo. On hulla, Pankha Devi, wife of the deceased ran there and wanted to pacify the matter. In the meantime, accused Ruplal Mehta called his son upon which the appellant reached there armed with *Farsa*. Thereafter, the appellant assaulted Tarni Prasad Mehta by means of *Farsa*. The accused Ruplal Mehta also assaulted by means of lathi. Thereafter, Tarni Pd. Mehta (the deceased) fell down on the earth. On hulla, Krishna Jha, Jitan Rishideo, Suresh Rishideo, Radhe Rishideo reached there. Tarni Mehta became senseless. Thereafter, he was brought to hospital for his treatment but he succumbed to the injury. The motive for the occurrence was said to be outstanding land dispute for which a case was pending in the court.

On the basis of aforesaid fardbeyan, the FIR was registered under Sections 302/34 of the Indian Penal Code. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellant, Ruplal Mehta and



Bhushan Mehta. 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 only as accused Ruplal Mehta had died and accused Bhushan Mehta was facing the trial in the juvenile court.

During trial, the prosecution has examined altogether nine witnesses in support of its case. P.W. 1 is Jittan Rishi, P.W. 2 is Rama Nandan Yadav, P.W. 3 is Baijnath Viswas, P.W.4 is Suresh Prasad Mehta, P.W. 5 is Suresh Rishideo, P.W. 6 is Radhe Rishideo, P.W. 7 is Pankha Devi, P.W. 8 is Harivansh Singh and P.W. 9 is Dr. Thakur K.K. Singh.

The defence has not 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.

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?



It appears that P.W.7 is the informant and wife of the deceased Tarni Pd. Mehta. P.W. 8 is the Investigating Officer. P.W.9 is doctor, who did autopsy on the dead body of the deceased. P.W. 6 has been tendered from cross-examination. P.W. 4 is the son-in-law of the deceased, who is not the eye witness to the alleged occurrence. P.W. 2 has been declared hostile at the behest of prosecution. P.Ws. 1, 3 and 5 are said to be the eye witness to the alleged occurrence.

P.W. 7 has supported the prosecution case as narrated in the fardbeyan. She has stated that the appellant had assaulted the deceased by means of *Farsa* on the head, as a result of which, he fell down on the earth. The blood was oozing out of his head and he became unconscious. The son-in-law of the informant came there and both of them brought the deceased to the hospital where he succumbed to the injury in course of treatment. She has also stated that the motive of the occurrence was that she deprived of male child and the accused intended to grab her land. In her cross-examination, she has corroborated her earlier statement made before the police that there was litigation pending in the court pertaining to land. She has stated that she had seen the blood marks on the spot. Her evidence appears to be trustworthy and reliable.



P.Ws. 1, 3 and 5 have stated that accused-appellant assaulted the deceased by means of *farsa* on his head. Both P.Ws. 1 and 5 are own brothers. The place of occurrence was situated just in front of the house of P.W. 5. P.W.1 has fairly admitted in his cross-examination that he is labourer of deceased. Even P.W. 3 has stated that he was getting his mustard (Tori) uprooted near the place of occurrence when he saw the infliction of *Farsa* blow on the head of the deceased by the accused.

P.W.9 is the doctor, who had found loose stitch in parietal region and it was six in number with sharp cutting margin of skin. In his opinion, death was caused due to shock and haemorrhage of the aforesaid injury. On dissection of the dead body, he found fracture of left parietal bone in multiple pieces. Brain was congested with presence of blood clot.

P.W. 8 is the Investigating Officer of the case. He has stated that he took down the fardbeyan of the informant and sent it K. Nagar Police Station for institution of a case on 29.11.1987. He has exhibited the inquest report (Ext.2) prepared by him. He visited the place of occurrence which is the field of Bishwanath Biswas having an area of 4 kathas. He found the mustard plant trampled by the foot prints. He also found blood on the earth at



the place of occurrence which was seized in presence of two independent witnesses. The cross-examination of this witness did not make the place of occurrence doubtful. From the evidence of this witness, it appears that he has supported the prosecution case to the hilt.

Now in the aforementioned materials on record, it has to be ascertained 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 would appear that some altercation took place between Ruplal Mehta and Tarni Mehta in front of the door of the house of Suresh Risedeo and people came there to pacify, however, it does not appear that the accused went there with premeditated mind to commit murder of the deceased rather under the hit of passion on sudden quarrel or upon the sudden provocation his father called him to bring 'farsa' and he came and gave a blow but it has also to be noted that there was no repeated blow rather there was only one blow. So 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. Of course blow was on vital part but that was on the fit of anger and on sudden



provocation. Thus, in our view, this case would come under one of the exceptions 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 does not suggest that the appellant was having any intention to cause death as there was only one injury which had been inflicted by him.

The trial court also found that no successive farsa blows were given on the person of the deceased. Only one blow by means of farsa was given on the head of the deceased.

From perusal of the evidence of prosecution witnesses and materials on record, 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 he has already remained in jail custody for about six years.



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

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

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

