

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.583 of 2017

Arising Out of PS. Case No.-54 Year-2008 Thana- MAJORGANJ District- Sitamarhi

Chandeshwar Paswan, Son of Batahu Paswan, resident of Village- Dumri Kala, P.S.- Majorganj, District- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jagdish Prasad, Mr. Virendra Kumar
For the Respondent/s : Mr. S.N. Prasad, APP

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date : 30-10-2017

We have heard both sides.

2. Sole appellant has filed the appeal to challenge the judgment of conviction dated 18.04.2017 rendered by the Fast Track Court No. 2, Sitamarhi in S.T. No. 161/10/20/17 whereby he was held guilty under section 302 IPC and sentenced to suffer R.I. for life with imposition of fine having default clause. He was also held guilty under Section 324 IPC but no separate sentence was awarded.

3. Prosecution case, in brief, as spelt out by the informant (P.W.7) in the fardbeyan (Ext.2) lodged on 12.05.2008 and recorded by the Station House Officer of Majorganj Police Station is that on 12.05.2008 at about 8 p.m., the informant was sitting in



his courtyard along with his son Ramdeo Paswan (deceased) and his two cousin brothers (P.Ws. 2 and 6). The appellant along with his son and two wives came there and started demanding some amount from the deceased who had come recently from Punjab. The father-in-law of the appellant later also joined them. The deceased was not agreeable to pay the amount citing reasons. It is alleged that an altercation took place whereafter the appellant took out the knife from his waist and inflicted a blow in the chest of the deceased. A pandemonium broke out. P.W. 1, the brother of the deceased, on hearing hulla, came in the courtyard and saw the victim having received injury in his chest. It is further alleged that he too was inflicted one blow on his face by the appellant. After the incident, the accused persons retreated from the scene of occurrence. The victim was carried to the Referral Hospital where in course of treatment, he died. The Police was summoned and the fardbeyan was recorded at the Referral Hospital itself. P.W.10 was assigned the investigation of the case. He conducted the death inquest proceeding and prepared the report (Ext.4) witnessed by P.W.2 and P.W.9. The dead body was sent for autopsy which was performed by Dr. Prem Pushp Lohiya (P.W.8) on 13.05.2008 at 8 a.m. who found the following external injury on the body of the deceased:-



“Incised wound 2 ½” X 1” X cavity deep over 4th and 5th intercostal space just medial to nipple on Lt. Side of chest.

4. The post mortem report provided by the doctor after autopsy is Ext.1. According to the Autopsy Surgeon, haemorrhage and shock caused by the said injury led to cardio-respiratory failure which resulted in his death. The injury found on the deceased was caused by sharp pointed object. On conclusion of the investigation, the charge-sheet was led whereon cognizance was taken and on commitment, the case was placed on the file of the learned Trial Judge for disposal. Charges were framed against the appellant which was abjured. The defence of the appellant was complete denial of the occurrence. A defence witness was also examined to state that it was a fight between two brothers of the deceased which resulted in causing injury to the victim as a result whereof he died.

5. The prosecution, in order to discharge the burden of proving the case beyond reasonable doubt, examined 10 witnesses besides proving the documents such as the post mortem report (Ext.1), fardbeyan (Ext.2), formal F.I.R. (Ext.3) and the inquest report (Ext.4), P.W.1 Jagdeo Paswan is the own brother of the deceased. He is said to have received injury on his face caused by knife. P.W.2 Surat Paswan is the uncle of the deceased. He is a witness to the occurrence as also a witness to the inquest. P.W.3



Deorati Devi is the mother of the deceased. P.W.4 Chandrakala Devi is the wife of the deceased. P.W.5 Sukhari Paswan is a co-villager. P.W. 6 Bharos Paswan is again a co-villager who has given an hearsay account of the occurrence. P.W. 7 Jagarnath Paswan @ Langru Paswan has also supported the prosecution and identified the accused. P.W.8 is the Autopsy Surgeon who proved the post mortem report (Ext.1). P.W.9 Nageshwar Paswan is a co-villager who also witnessed the inquest report. On the factum of occurrence, he has been declared hostile by the prosecution. P.W. 10, as noted above, is the Investigating Officer of the case. In appreciation of the evidence on record, the Trial Court found that the evidence of P.Ws. 1, 2, 6 and 7, in the light of the documentary evidence placed on record, conclusively proved the guilt of the appellant.

6. Learned counsel for the appellant submits that the prosecution has failed to produce independent witness to support the prosecution case. The evidence of P.W.2 would not give credence to the prosecution case as indisputably he was not present at the place of occurrence. Reading his cross-examination, it has been submitted that this witness has admitted about his non-presence at the place of occurrence. He heard the *hulla* while in the lane and then rushed to the place of occurrence where he saw the victim having received the injury caused by knife. Lastly, it has



been urged that the conviction of the appellants, in the setting of facts proved at the trial, under section 302 IPC, is wholly unsustainable. There is nothing on record to demonstrate that there was any premeditation on the part of the appellant to commit murder of the deceased who was none else but nephew of the appellant. The conviction of the appellant under Section 302 IPC is wholly unjustified.

7. Learned APP, on the other hand, supported the finding of guilt recorded by the learned Trial Court. He submits that the evidence of P.Ws.1, 3, 4 and 7 unerringly proved the guilt of the appellant. These witnesses have consistently deposed that the appellant had arrived in the Courtyard on the relevant date and demanded a help of Rs. 5,000/- from the deceased which was denied whereafter a scuffle ensued between them for sometime and the appellant, took out the knife and pierced into the chest of the victim which resulted in his death.

8. The evidence of the doctor (P.W.8) clearly establish that the death of the victim had occurred due to injury sustained by him on his chest caused by knife. The injury caused on him resulted in haemorrhage and ultimately the cardio-respiratory failure. We have no doubt in our mind that it was a homicidal death of the deceased due to the injury caused to him by knife. The evidence of P.Ws.1, 3, 4 and 7 (informant) proved that the author of the said injury was



none else than the appellant. No major contradiction in their evidence has been shown to us. What transpires from the evidence, particularly, that of P.W.1 (own brother of the deceased) that the prosecution and the appellant belonged to one family. They live adjacent to each other. Both parties had constructed houses under the Indira Awas Yojna. They belonged to lower strata of the society. The victim had recently returned from Punjab. The appellant had to marry his son. He was uncle of the deceased. He had gone to the deceased for some monetary help which was being denied by the victim. Almost all the witnesses have testified that a scuffle had ensued between them. P.W.3 is the mother of the deceased who has gone to the extent of stating that the scuffle between them continued for nearly half an hour whereafter the appellant gave a singular blow in the chest of the deceased. Barring few minor contradictions, the evidence of P.Ws. 1, 3, 4 and 7 prove the prosecution case on all material aspects beyond pale of reasonable doubt.

9. Learned counsel has submitted that on the basis of the aforesaid facts, it shall distinctly appear that there was no premeditation to commit the murder. Had the victim agreed to give the monetary help to the appellant, who was his uncle, the assault would not have been inflicted on him. It was after a hot tiff the appellant inflicted the solitary blow on the chest of the deceased



which proved fatal. In the case of *Mavila Thamban Manbiar vs. State of Kerala (1997 Cri. L. J. 831)*, the Apex Court, in paragraph 10, held as follows:-

“Mr. Lalit then, seriously challenged the conviction of the appellant under Section 302 of the Indian Penal Code. He urged that the appellant had neither intention nor knowledge that such an injury would result into the death of Madhavan. He, therefore, urged that the appellant at the most could be convicted for any other minor offence. Mr. George, appearing for the State of Kerala urged that the appellant was rightly convicted under Section 302 of the Indian Penal Code and no interference was called for. After giving our careful thought to the nature of offence, we are of the considered view that the offence of the appellant would more appropriately fall under Section 304, Part II of the Indian Penal Code. The appellant had given one blow with a pair of scissors on the vital part of the body of Madhavan and, therefore, it would be reasonable to infer that he (appellant) had knowledge that any injury with the pair of scissors on the vital part would cause death though he may not have intended to commit the murder. We accordingly alter the conviction of the appellant from S. 302, IPC to one under Section 304, Part II of the IPC.”

10. Intention is the soul of the offence. If the facts proved at the trial do not indicate the required intention on the part of the appellant, then the conviction of the appellant under section 302 IPC cannot be sustained. No special arrangement for assault was made. In *Hem Raj Vs. State (Delhi Administration) (1990) Supp. SCC 291*, the accused inflicted single stab injury landing on the chest of the deceased. The occurrence admittedly had taken place in the spur of the moment and in heat of passion upon a sudden quarrel. According to the doctor the injury was sufficient in the



ordinary course of nature to cause death. The Apex Court observed as under in paragraph 14:

“14. The question is whether the appellant could be said to have caused that particular injury with the intention of causing death of the deceased. As the totality of the established facts and circumstances do show that the occurrence had happened most unexpectedly in a sudden quarrel and without pre-meditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither Clause I nor Clause III of Section 300 IPC will be attracted.....”

11. Counsel for the State has, however, rightly submitted that if the appellant had inflicted dagger blow in the chest of the victim, he had the knowledge that by such act it was likely to cause death or to cause such bodily injury as is likely to cause death. On the basis of the evidence on record, the appellant cannot escape the liability of having caused such bodily injury to the victim which was likely to cause his death.

12. On a careful perusal of the evidence on record, we are unable to find any convincing material to infer that the injury was



inflicted by the appellant on the deceased with an intention to kill him.

13. In the light of the discussions made above, in our considered view, the offence of the appellant would more appropriately fall under section 304 Part-II of the I.P.C. We, accordingly, alter his conviction from Section 302 IPC to one under Section 304 Part-II IPC. The appellant is sentenced to suffer R.I. for 10 years with a fine of Rs. 5,000/- and in default whereof he would additionally suffer R.I. for four months.

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

(Kishore Kumar Mandal, J)

(Madhuresh Prasad, J)

Pankaj/-

AFR/NAFR	NAFR
CAV DATE	N/A
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