

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.517 of 2012

Arising Out of PS. Case No.-109 Year-2009 Thana- JALALGARH District- Purnia

=====

Bidyanand Rishi S/O Late Mangal Rishi R/O Village - Misari Nagar Dansar,
Police Station - Jalalgarh, District - Purnea (Bihar)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ajit Rayan Kumar, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)
Date : 07-11-2017

This appeal has been preferred against the judgment of conviction dated 19.04.2012 and order of sentence dated 20.04.2012 passed by Additional Sessions Judge-1st, Purnea, in Sessions Trial No. 481 of 2010 arising out of Jalalgarh P.S. Case No. 109 of 2009 by which the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life with a fine of Rs.10,000/- and in default of payment of fine, he has to serve further imprisonment for six months.

2. The prosecution case, in brief, is that on 25.12.2009 at about 8 P.M. Babulal Hansda, Dewar of the



informant, came from Sirsiya brick-kiln after taking weekly wages with other labourers. Due to ten rupees less payment of labour charges, hot discussion took place between Babulal Hansda and the accused persons, namely, Bidyanand Rishi, Jadiya Rishi and Bhima Rishi. On hearing hulla, the deceased Dipu Hansda alongwith his wife, informant, came out and asked his brother to come down from hot discussions. In the meantime, the accused persons started assaulting the deceased, namely, Dipu Hansda. It is alleged that accused-appellant gave 3 / 4 blows on the neck of the deceased with a knife and other accused persons also assaulted with lathi, fists and slaps upon which the deceased died on the spot.

3. On the basis of aforesaid fardbeyan, Jalalgarh P.S. Case No.109/09 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 under Sections 302/34 of the Indian Penal Code. Thereafter, the Chief Judicial Magistrate, Purnea, took cognizance and committed the case to the court of sessions, where charges were framed under Sections 302/34 of the Indian Penal Code, to which the accused person pleaded not guilty. Thereafter, trial started against the



appellant.

4. During trial, the prosecution has examined altogether seven witnesses in support of its case. P.W. 1 is Chhotelal Hansda, P.W. 2 is Jeewachha Hansda, P.W. 3 is Marang Marandi, P.W. 4 is Babu Lal Hansda, P.W. 5 is Talakuri Hembram, P.W. 6 is Dr. Lalit Mohan Prasad and P.W. 7 is Ram Bilash Singh.

5. The defence has not examined any witness on his behalf.

6. 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 accordingly, impugned judgment of conviction and order of sentence has been passed.

7. 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?

8. Altogether seven witnesses have been examined, out of which, informant has been examined as P.W. 5 and brother of the deceased, namely, Babulal Hansda, with whom



some altercation had taken place and quarrel was going on with accused-appellant and other persons, has been examined as P.W.4. P.W.1 is the father of the deceased. In the FIR itself, the informant, who is the widow of the deceased Dipu Hansda, has claimed that the appellant had assaulted the deceased on his neck and had given 3 /4 blows from his knife and other accused persons assaulted him by lathi, fists, slaps etc. It is alleged that the deceased died due to aforesaid assault. However, his medical evidence, the post mortem examination report, does not support the aforesaid version. It is clearly stated in the post mortem examination report that there is only one excise injury upon the neck due to which carotid arteries and jugular veins were cut resulting in enormous bleeding and which is the cause of death. The injury caused by sharp cutting weapon has been found to be the cause of death. Repeated blows version, as has been given in the F.I.R., is not supported in the post mortem examination report. However, version in the F.I.R. that the deceased was assaulted by lathi, fists, slaps etc. is also not supported by medical evidence as no injuries were found on his body.

9. The doctor, who had done autopsy, has been examined as P.W. 6. In his examination he has also repeated the



same version. In our view, the aforesaid facts raise serious question upon the manner of occurrence which has been described in the FIR.

10. The informant has been examined as P.W.5. In her examination also she has stated the same version that there were three blows from knife on the neck which of course is not supported by medical evidence as has been discussed above but version further raises serious doubt as she being the eye witness coupled with the facts that the brother of the deceased, with whom there was some quarrel with appellant and other accused persons, has been examined as P.W.4 and he has stated in his examination that nobody was present at the time of occurrence. Then, he has stated that nobody could come before the accused person, namely, Bidyanand Rishi, who is the appellant and others escaped from the place of occurrence. It further shows that informant, who is claiming to be eye witness to the occurrence, is found to be under serious doubt. However, the same witness, P.W.4, who is definitely an eye witness, as some sort of altercation and quarrel had taken place between appellant and his brother with respect to dispute of wages was undoubtedly an eye witness and he has simply said that the appellant had given a single blow by knife. Thus, even though



the version of the FIR has been found to be doubtful, at least this witness is an eye witness and there was single blow caused by the appellant to the deceased and such stand has been corroborated by medical evidence. Thus, there is no doubt, in our mind, that single blow was given by the appellant.

11. However, now question would be as to whether the act of the petitioner can not be held to be an act of murder or culpable homicide which would not amount to murder? Section 300 of the Indian Penal Code curves out exception regarding the culpable homicide in what circumstances would not amount to murder. The first exception is that culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident, would amount culpable homicide and would not amount to murder.

12. From the versions of the prosecution witnesses one thing is clear that the appellant did not come to the place with an intention to commit murder of the deceased. There was some dispute related to distribution of money between brother of deceased and the accused persons and when quarrel and altercation started between them, then brother of P.W.4, namely,



Dipu Hansda, the deceased, intervened into the matter and tried to specify both of them and at that time under sudden provocation it appears that appellant had given blow from his knife upon the neck of the deceased, which proved to be fatal. Thus, in our view, if the occurrence would be held to be accidental, even then it can be held as outcome of sudden provocation and at that point of time the offender lost control over his mind and on such provocation the act was done. Further, had there been intention to kill the deceased, there might have been repeated blows by the appellant but there was only a single blow and story of other persons also assaulted by fists and slaps stands falsified by medical evidence. According to P.W.4, he and appellant were present when quarrel was going on between them. So the prosecution version that other persons were also present and they had also assaulted is not only stands falsified by the medical evidence but also by the version of exclusive sole eye witness, i.e., P.W. 4 and perhaps this is the reason due to which such persons have been acquitted of charges.

13. Thus, in our view, the offence would be covered under Part-II Section 304 of the Indian Penal Code as the



occurrence took place without any intention to cause death but with the knowledge that the same was likely to cause death. Appellant is in custody since 08.01.2010 and has completed about seven years nine months twenty-nine days as reported by the office. In our view, it is a fit case in which the judgment of conviction should be altered from Section 302 to Section 304 Part II and sentence should be modified to the period already undergone by the appellant in custody.

14. In the result, this appeal stands dismissed with the aforesaid modification in the judgment to the effect that conviction is altered from Section 302 IPC to Section 304 Part-II IPC and in the order of sentence, to the period which has already been undergone by the appellant in custody. The appellant who is admitted in jail custody would be required to be released forthwith, if not wanted in any other case.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

sudip

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	01.02.2018
Transmission Date	01.02.2018

