

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.391 of 1995

Against the Judgment dated 18th November, 1995 passed by the 2nd
Additional Sessions Judge, Purnea, in Sessions Trial No.462 of 1993

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Mohammad Taslim son of Late Sheikh Layeef, resident of village Chand Bhatti,
Police Station Sadar, District Purnea. Appellant/s

Versus

State of Bihar Respondent/s

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Appearance :

For the Appellant/s : Ms. Pretty Kunwar-Advocate

For the Respondent/s : Mr. A.Sharma-APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 10-04-2018

Challenge in the present Criminal Appeal is to the
impugned Judgment dated 18th November, 1995 passed by 2nd
Additional Sessions Judge, Purnea, in Sessions Trial No.462 of 1993
(hereinafter refereed to as the learned 'trial Court').

2. The learned trial Court has convicted the sole
appellant for the offence under Section 302 of the Indian Penal Code
and ordered him to undergo a sentence of life imprisonment.

3. It is worth mentioning that on the date of
pronouncement of the judgment by the learned trial Court this
appellant was aged about 55 years and, therefore, by an assessment of
his age presently he is almost 79 years old.

4. The prosecution case is based on Fardbeyan of Md.
Safique (P.W.8) who alleged that on 12.03.1993, at about 02.00PM,
father of the informant had put the she-buffalo of Md. Taslim (the
appellant) inside the cattle pound because the she-buffalo had been



grazing his wheat crop. The father of the informant had taken the she-buffalo of the appellant to Argarha (a place where such cattle are kept confined by way of punishment). It is alleged that while the father of the informant was returning from Argarha, this appellant along with Md. Ahsan, Md. Shamim and Md. Zubed met him on the way and attacked his father abusing him for sending the she-buffalo to Argarha. The informant alleged that his father was brutally assaulted, on hulla when he along with other persons went there, found that Md. Ahsan and Md. Shamim had caught hold of his father whereas, Md. Taslim was assaulting him. It is alleged that when the informant and others went to rescue him, they were also beaten by fists and slaps as also by Lathi resultantly his father became seriously injured due to the assault and became unconscious, he was brought to the Sadar Hospital, Purnia, for treatment.

5. After the investigation police submitted a charge-sheet against all the accused persons and cognizance was taken pursuant to the said charge-sheet, thereafter, the case was committed to the Court of Sessions for trial. Charges were framed under Sections 302/34 of the Indian Penal Code against the accused persons namely Taslim and Md. Zuber for causing the murder of Md. Sadique. The accused pleaded not guilty and claimed to be tried.

6. On behalf of the prosecution, altogether 10 witnesses were examined. The learned trial Court examined the evidence of P.W.1, Md. Muslim who reached near the house of Taslim on hearing



alarm for saving him. He claimed himself to have seen Taslim assaulting the deceased with a Khanti. In his cross-examination, however, this witness stated that in the assault Taslim had also sustained injuries but this witness had not seen who had assaulted him. He stated that Sub-Inspector had come on the next day and had seen blood on the place of occurrence but he did not go to the courtyard or the field.

7. P.W.2, Md. Nasir has also deposed as an eye-witness. He has stated that he was coming from the field after ploughing his field and had seen Taslim assaulting Sadique with Khanti. Taslim assaulted Sadique by Khanti on his head, several persons assembled there but the accused persons ran away.

8. Similarly, P.W.3 Abdul Wazir had stated that he heard Hulla from the north of his house. Taslim, Shamim, Zuber and Ahsan were assaulting his father there. Taslim assaulted his father with Khanti on his head and his sons assaulted him with Lathi.

9. P.W.4, Md. Martaba alias Mustaque has also supported the prosecution case. The defence, however, challenged the identity of this witness and the trial Court accepted the objection of the defence holding that he is not the right person to whom the prosecution has presented as witness so the defence of the witness cannot be considered and was rejected outrightly.

10. P.W.5, Shakura Khatun, happens to be the wife of the deceased. She deposed that this occurrence took place in the



month of Ramjan before “Aftari”. She was going with his daughter-in-law when she heard hulla from the road. She had seen Taslim with a Khanti in his hand and Zubair and Ahsan with lathi and Samim with rod. Taslim assaulted her husband with the Khanti on his head and rest assaulted him with lathi and rod.

11. P.W.6, Jahida Khatoon, and P.W.7, Jubeda Khatun were tendered by the prosecution.

12. P.W.8, Safique Alam is the informant who has deposed in support of his case. He has stated that Taslim assaulted his father with the Khanti on his head and others assaulted him with lathi. The injured father was taken to the hospital where he died later on. This witness has proved his signature on the Fardbeyan as Exhibit-1 and the receipt of the cattle pound as Exhibit-2. In his cross-examination he has deposed that there is a Rasta in between his house and the house of Taslim and Taslim had taken forcible possession of some of his land for which there were cases between them. He had shown the Investigating Officer (I.O) the grazed field which was about 2 to 3 decimals of land.

13. In his cross-examination, P.W 6 deposed that his father was assaulted after 10 minutes after returning from the cattle pound. None of the accused had caught his father at the time of the assault on his head with the Khanti. He had not told to the I.O, that Ahsan, Samim had caught his father and Taslim had assaulted him. The Sub-Inspector had seen the dead body before the postmortem.



14. Dr. R.P.Singh, P.W.9, deposed that on 16.3.1993 he had done the postmortem over the dead body of the deceased of this case and had found the anti-mortem injury on his person. The injury found was lacerated wound over the left occipital perital bone area just near the fusion line of two perital bones $2\frac{1}{2}$ x $1\frac{1}{2}$ scalp deep. On dissection, there was commuted fracture of occipital and left perital bone. The cause of death is the head injury caused by hard and blunt substance (upper portion) such as Khanti which was sufficient to cause death.

15. The Assistant Sub-Inspector, P.W.10, Shyam Bihari Choudhary, who had investigated the case had also deposed and stated that he had recorded the further statement of the informant as well as the statement of Wasi, Md. Muslim, Nasir, Md. Mustaque, Md. Ali. He had inspected the place of occurrence and had also gone to the Sadar Hospital, Purnia where he had found Sadique unconscious on the bed no.6. He had instructed the Medical Officer to inform him after Sadique regains his consciousness. He recorded the statement of Sakura, Saisa and Jubeda Khatun. Jubeda Khatun had given the Investigating Officer a receipt of the cattle pound which was marked as Exhibit-2. He had prepared the inquest report of the deceased which was proved as Exhibit-6. The Investigating Officer has stated that Md. Nasir had stated before him that Taslim had assaulted Sadique with Khanti on his head. He had stated before the Investigating Officer that Wali had thrown Khuta which hit his head



but Taslim was hit by Khuta. According to this witness, Abdul Wasir has not stated before him that the she-buffalo had grazed his wheat crop.

16. On behalf of the defence , Dr. Kamal Kumar Sah, was examined who had deposed that he had examined the persons of the accused Md. Taslim of this case and found the following injuries:-

(I) Lacerated wound over scalp 2"x 2"x bone deep.

(II) Swelling left forearm and 2 centimeter in diameter.

The injuries were simple and caused by hard blunt substance, such as lathi and iron rod.

17. This witness was the Civil Assistant Surgeon at Sadar Hospital, Purnia, on 12.03.1993 when he had examined the persons of accused Md. Taslim of this case. The defence has also brought on record Exhibit-A which is the Fardbeyan of Taslim in Sadar P.S.Case No.96 of 1993. Exhibit-B is the injury report of Taslim, which shows that there was a head injury on his head caused by hard and blunt substance which is simple in nature.

18. The learned trial Court found that P.Ws.1,2, 3 and 5 are only natural witnesses and their presence at the place of occurrence cannot be doubted because the place of occurrence is very near to the house of these witnesses. The trial Court believed the prosecution case, and refused to accept the defence version that the time of occurrence given in the F.I.R is incorrect. The plea of the defence was that there was no investigation on the point of grazing of



the field or putting the she-buffalo in the cattle pound and the cattle pound keeper was not examined by the prosecution was also rejected. The trial Court believed the Exhibit-2 which was the cattle pound receipt.

19. The next submission of the defence that the prosecution had not explained the injury on the person of the accused Taslim which has also been rejected saying that the medical evidence shows that the accused Taslim has sustained simple injury in course of occurrence and the prosecution is not bound to explain this. The plea as to right of private defence was rejected by the learned Trial Court holding that there is no evidence on the point by the prosecution rather it was the defence side which had assaulted the deceased because of putting the cattle in the cattle pound.

20. Holding that Taslim had assaulted the deceased on his head with Khanti which proved fatal later on, the learned trial Court convicted him for offence under Section 302 of the Indian Penal Code.

21. The son of the accused Taslim was acquitted from the charge under Section 302/34 of the Indian Penal Code because the allegation of assault as alleged against him was not proved from the medical evidence.

22. Learned counsel representing the sole appellant in the present appeal submits that the learned Trial Court has not been able to appreciate the evidence available on the record properly and the



finding of the learned Trial Court is that the sole appellant had committed murder of the deceased of this case is not based on cogent reason. It has also been submitted that even if the evidence led on behalf of the prosecution is believed, the medical evidence shows that only one injury was found to have been inflicted upon the deceased by Khanti. There was no repetition of blow, the quarrel had started all of a sudden on the issue of grazing of wheat crop of the deceased. It is submitted that the learned trial Court has already found that no charge under Section 302/34 of the Indian Penal Code was made out against the son of the appellant, therefore, it is also evident from the finding of the learned trial Court that in the sudden quarrel this appellant gave a Khanti blow from the back on the head which proved fatal. It is submitted that there is no evidence on the point that this appellant has intention to kill the deceased, Sadiq and, therefore, taking into consideration the evidence showing that assault had taken in the heat of passion, it was sudden and not premeditated, the appellant presently being 79 years old, his conviction may be altered from Section 302 of the Indian Penal Code to Section 304 Part-II of the Indian Penal Code.

23. On the other hand, learned A.P.P for the State opposed the plea of the appellant and submits that he is responsible for causing death of the deceased of this case and, therefore, the learned trial Court had rightly convicted him for the offence under Section 302 of the Indian Penal Code.



24. Having heard learned counsel for the appellant and the learned A.P.P for the State as also on perusal of the evidence available on record, we find that the prosecution witnesses are consistent in their statements from the very beginning, the evidence of eye-witnesses, such as, P.W-2 and P.W-5 cannot be discarded even though they are the family members of the deceased. The evidence available on the record clearly demonstrate that the quarrel had broken out when the deceased was coming from the cattle pound where the she-buffalo of the appellant was sent on the ground that the she buffalo was grazing the field of the deceased. Exhibit-2 is a reliable piece of evidence showing the fact that the she-buffalo was seen at the cattle pound and this was the reason for the quarrel. There is no doubt that in the spur of the moment Taslim had given a Khanti blow on the head from the back side of the deceased which ultimately proved fatal. No other fatal injury has been found on the body of the deceased meaning thereby that there was no repetition of blow by this appellant. In the heat of the moment he had assaulted the deceased over a petty issue, the prosecution has, however, not brought on record any evidence on the point of intention of this appellant to kill the deceased.

25. We are however of the view that the appellant while assaulting the deceased by a Khanti on the vital part of the body must be having knowledge that such assault may prove fatal and it may cause death of the person who is assaulted. The appellant has



remained in custody for about three and half years in connection with this case, presently he is about 80 years old, the occurrence in question had taken place 25 years ago, considering all these aspects of the matter, we are of the view that the conviction of the accused be altered from Section 302 of the Indian Penal Code to Section 304 Part-II of the Indian Penal Code and the sentence awarded to the appellant be reduced from life imprisonment to the period undergone.

26. In result, the appeal is partly allowed.

27. Since the appellant is on bail, he is discharged from the liability of his bail bond.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
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