

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.517 of 1994

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Sudama Bin, Son of late Narayan Bin, Resident of Village-Domain Garh, P.S.
-Manjhi, District-Saran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mr. Shobha Nath Jha, Advocate
For the State : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 20-01-2018

Heard Mr. Shobha Nath Jha, learned counsel for the
appellant and Mr. Abhimanyu Sharma, learned APP for the
State.

Sudama Bin, the appellant has been convicted under
Section 302 of the Indian Penal Code and has been sentenced to
undergo R.I. for life by the Judgment and order dated
28.09.1994, passed by the 3rd Additional District and Sessions
Judge, Saran at Chapra in Sessions Trial No. 179 of 1992.

The appellant is said to have assaulted the deceased,
Chandrama Bin, by means of lathi on his head, leading to his
death. From the Judgment, it appears that the appellant, on the
date of Judgment i.e., on 28.09.1994, was 60 years of age.



The prosecution case is based on the fardbeyan of Prabhu Bin (P.W.-7), who has alleged that on 24.04.1991, he heard noises coming from Janki Brahm Asthan. When he went there, he found that the deceased, Chandrama Bin was being assaulted by the appellant on his head and he (deceased) was bleeding profusely. Seeing this, it has been alleged that P.W.-7 prevented the appellant from assaulting Chandrama Bin. On this, he was assaulted by Kapil Bin by lathi on his hand. His hand was fractured. Thereafter, one other accused person, namely, Mahanth Bin assaulted him by lathi on his head and he became injured. Other persons are also alleged to have come to the place of occurrence and they assaulted Deep Narayan Bin (PW-2), Ramdeo Bin (PW-4) and Kalika Bin (P.W.-6). Because the deceased was found to be seriously injured, he was taken to hospital. At the time of recording of FIR, it was stated by the informant (P.W.-7) that there was little chance of his surviving due to the severity of the assault. At the time of the recording of the FIR, the informant, P.W.-7 did not know about the cause of occurrence. With the death of the deceased, the FIR was lodged under Sections 323, 325, 307, 302/34 of the Indian Penal Code against four accused persons including the appellant.

Be it noted that accused persons namely, Mahanth



Bin, Laktu Bin and Kapil Bin were charged for the offences under Sections 302/34, 323 and 325 of the Indian Penal Code, but they have been acquitted for the charges under Sections 302/34 and 325 of the Indian Penal Code but have been convicted under Section 323 of the Indian Penal Code and have been released on probation of good conduct for a year.

At the trial, nine prosecution witnesses were examined, out of whom, Deep Narayan Bind (P.W.-2), Ramdeo Bin (P.W.-4), Kalika Bin (P.W.-6) and Prabhu Bin (P.W.-7) are the injured eye witnesses to the occurrence of assault.

In order to appreciate the prosecution version, we deem it appropriate to first see as to what injuries were received by the deceased, which led to his death.

N. K. Keshav, the doctor, who examined the deceased and also conducted post-mortem on his dead body, has been examined as PW- 8. He has deposed that after the death of the deceased, he had held post-mortem on 25.04.1991 and found lacerated wound on the occipital area which was scalp deep and the aforesaid injury was found to be ante-mortem in nature. On the dissection of the scalp, fracture of both the parietal bones with laceration of brain tissues were also found. The cause of death was stated by him to be hemorrhage and shock due to the



head injury caused by hard and blunt substance. From the evidence of P.W.-8, it stands established that it was homicidal death and cause of death was injury on the occipital region of the deceased by hard and blunt substance. The injury was so grave that it had the impact of fracturing the parietal bones and laceration of brain tissues.

What is to be seen now is the manner of assault and whether the appellant intended to kill the deceased.

With profit, the evidence of P.W.-2 need to be scrutinized as it would throw light on the reason for the occurrence. Deep Narayan Bin (P.W.-2) has, in his examination-in-chief, stated that on the day of the occurrence, he was coming back home on a boat after scraping grass. On the boat, one of the accused persons viz Laktu Bin and the mother of one Thakur Mallah were also there and they were fighting amongst each other. The mother of Thakur Mallah had given Rupees One Hundred to the family of Laktu Bin and had taken in lieu of the aforesaid money, a silver ornament. The mother of aforesaid Thakur Mallah was asking Laktu Bin for return of the money, which had led to the hot discussion between Laktu Bin and the mother of Thakur Mallah. When the P.W.-2 intervened, Laktu Bin is said to have assaulted him by fists. After the boat came to



the shore, he got down from the boat, but in the meantime, the appellant and others had also reached there. The fight continued and all the accused persons as well as the deceased, while fighting came near Brahm Asthan. At that place, many other persons also arrived. At that place, it has been alleged the appellant assaulted Chandrama Bin by lathi on his head, as a result of which he was injured and he fell down. Other accused persons are also said to have assaulted him and others. All the assault is said to have been caused by means of lathis. The accused persons are then said to have run away. P.W.-2 has also stated that the deceased was brought to hospital, but in the same night he died.

Prabhu Bin, the informant who has been examined as P.W.-7 has stated that on the day of the occurrence, at about 6 O' Clock in the evening, he was at his house and he went to Brahm Asthan (Place of Occurrence) only on hearing hulla coming from that side. Along with him, the deceased as well as P.W.-4 (Ramdeo Bin) also went there. He claims to have seen all the four accused persons including the appellant assaulting the deceased. Other persons also were being assaulted by the other accused persons. The aforesaid prosecution witness has clearly stated that in the meantime, the appellant gave a lathi blow on



the head of the deceased as a result of which he started bleeding profusely and fell down on the ground. According to him, the deceased was assaulted again by the appellant. Similarly, Ramdeo Bin (P.W.-4), who also had reached the place of occurrence along with P.W.-7 has also supported the prosecution version and has repeated about the assault on the deceased by the appellant and assault by other accused persons on him and other witnesses namely, Din Narayan Bind (P.W.-2), Kalika Bin (P.W.-6) and Prabhu Bind (P.W.-7).

Kalika Bin, who is the son of the deceased, has been examined as P.W.-6 and he claims to have gone to the place of occurrence while coming back from Tajpur market. He has deposed that no sooner had he reached the place of occurrence, he saw that the appellant gave one blow with a lathi on the head of his father which led to his father falling on the ground. The other persons were also seen by P.W.-6, assaulting P.Ws. 2, 4 and 7. He too was assaulted by the accused persons.

Thus, from the perusal of the deposition of P.Ws.-2, 4, 6 and 7, it appears that all of them had seen the assault and they have supported the prosecution version that the appellant had caused the fatal injury on the person of the deceased. The deposition of the witnesses referred to above supports the



injuries found on the person of the deceased, which has been proved by P.W.-8 that the death was caused by the aforesaid injury. Thus, for all practical purposes, there can be no doubt about the deceased having been assaulted by the appellant which led to his death.

What is to be seen is whether the appellant intended to cause the death of the deceased. From the prosecution version, it appears that the dispute first began on the boat in the mid stream of the river when Laktu Bin had a fight with the mother of one Thakur Mallah over return of Rupees One Hundred, which was given to his family by her. P.W.-2, who was also available on the boat intervened and this led to fight between Laktu Bin and P.W.-2. By that time, the boat had reached the shore, but the fight continued. Thereafter, persons in favour of Laktu Bin came and started assaulting Dip Narayan Bin (P.W.-2), who had intervened. In that situation, the appellant who had also come to the place of occurrence assaulted the deceased, who actually wanted to intervene on behalf of P.W.-2. Deceased did not have any personal enmity with the appellant nor did appellant have any cause to assault the deceased. It so happened that when two groups were fighting near the village, the deceased was given one lathi blow by the appellant. In the circumstances, it is



difficult to presume that the appellant wanted to kill the deceased and had inflicted him with an injury which was, in all likelihood, sufficient to cause death. The injury by itself was sufficient to cause death but there was no intention on the part of the appellant to have inflicted such injury. As such, he can only be held guilty for his having caused the death of the deceased without intending to kill him, making him liable for being prosecuted and convicted for the offences under Section 304 Part-II of the I.P.C.

While saying so, we have taken note of the fact that the consistent prosecution case is of the deceased having been assaulted by the appellant by lathi on his head which fact gets corroborated by single injury on the occipital region of the deceased.

The Conviction of the appellant is altered to one under Section 304 Part-II of the Indian Penal Code.

From the records, it appears that the appellant had remained in jail for about six years before being released on bail during pendency of the appeal.

We feel that the interest of justice would be met, keeping in mind the age of the appellant today and that the occurrence took place about 26 years ago, that the sentence



imposed upon the appellant be reduced to the period which he has already been undergone.

The appeal stands partly allowed. The conviction under Section 302 of the Indian Penal Code is converted into Section 304 Part-II of the Indian Penal Code and the appellant is sentenced to a period of custody which he has already undergone.

Since the appellant has been released on bail, he is therefore, discharged from the liabilities of his bail bonds.

(Dinesh Kumar Singh, J)

(Ashutosh Kumar, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
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