

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.567 of 1994

Sessions trial no. 11 of 1994/27 of 1993 arising out of Nawada P.S. Case
No. 302/1992 District- NAWADA

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1. Bishwanath Passi @ Kullar Pasi Son of Ramji Passi
2. Vijay Passi Son of Bishwanath Passi @ Kullar Passi
Both resident of village Quadirganj, P.S. Nawadah District Nawadah
..... Appellant/s

Versus

State of Bihar
..... Respondent/s

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Appearance :

For the Appellant/s : Miss. Monika, Advocate

For the Respondent/s : Mr. Shiwesh Chandra Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 12-04-2018

1. Heard Miss. Monika, Advocate appearing for the
appellants as amicus curiae and Sri Shiwesh Chandra Mishra
for the State and perused the record.

2. This criminal appeal has been preferred against
the judgment of conviction and sentence order dated
22.09.1994 passed by the Addl. Sessions Judge I, Nawada in
Sessions trial no. 11 of 1994/ 27 of 1993 by which and
whereunder learned trial court convicted the appellants for
the offence punishable under section 302/34 of the Indian
Penal Code and accordingly, sentenced them to undergo



rigorous imprisonment for life.

3. PW10, namely, Ram Swaroop Manjhi gave his fardbeyan to PW14, Bandhu Shah, the then SI of Town police station on 29.12.1992 at about 5 a.m. at Sadar hospital, Nawada to this effect that 10 to 15 days ago, appellants had plucked leaves of **Tar** upon which he as well as his cousin brother Baldev Manjhi forbade the appellants to do so but they became furious and abused him and since then they used to threat and terrorize persons of **Mushar** community of village Dularpur. He claimed that on 28.12.1992, 3 to 4 persons of village Dularpur were returning to their home from Kadirganj Market and while they were on the way, appellants stopped them but any how they managed to escape from there but on the same day at about 6 p.m. while his father was returning to his home from Kadirganj Market and reached near Bichali press, on pitch road, appellants encircled him and started assaulting him by means of **Pajona**. His father raised alarm which attracted villagers including the informant and they rushed to the place of occurrence where they saw that the informant's father was lying on the road and the appellants were assaulting him by means of Pajona. Appellants, having seen the villagers and the informant, fled



away from there. Injured was brought to his home and fire warm was given to him. However, subsequently, he was taken to Nawada hospital where he died in course of treatment.

4. On the basis of the aforesaid fardbeyan, Nawada P.S. Case No. 302/1992 for the offence under section 302/34 of the Indian Penal Code was registered and on the same day, formal FIR was drawn up which was sent to the concerned Magistrate and the same was put up before the concerned Magistrate on 30.12.1992. However, after completion of investigation, police submitted charge sheet against both the appellants for the offence punishable under section 302/34 of the Indian Penal Code. The cognizance of the offence was taken in usual course and the case was committed to the court of sessions. Accordingly, appellants stood charged for the offence punishable under section 302/34 of the Indian Penal Code. They denied the charge.

5. In order to prove the charge, prosecution examined, altogether, 14 witnesses and also proved inquest report as well as post mortem report. The statements of the appellants were recorded under section 313 of the Code of Criminal Procedure in which they reiterated their innocence



as well as claimed their false implication. No evidence was adduced by the appellants in support of their defence but from perusal of the cross-examination as well as statements recorded under section 313 of the Code of Criminal Procedure, it would appear that defence of appellants was total denial of the prosecution story and further claim of the appellants was that the deceased sustained injuries accidentally when he fell from Tar tree. Learned court below, after scrutinizing and analyzing the evidences, passed the impugned judgment of conviction and sentence in the manner as stated above.

6. Learned amicus curiae appearing for the appellants challenged the impugned judgment of conviction and sentence order arguing that so-called eye-witnesses are not reliable as almost all the aforesaid witnesses said to have reached on the place of occurrence by chance. Learned amicus curiae, further, submitted that, as a matter of fact, PWs 7, 8, 9, 10 and 11 had not seen the actual assault of the deceased and that is why the informant (PW10) did not mention their names in his fardbeyan. Learned amicus curiae, further, submitted that there are so many contradictions in the statements of so-called eye-witnesses and, therefore, no



reliance can safely be placed upon the depositions of the prosecution witnesses nos. 7, 8, 9, 10 and 11.

7. Learned amicus curiae, further, submitted that doctor found only three injuries on the person of the deceased and out of them one injury was found on eye brow whereas second and third injuries were found on parietal region as well as right thigh respectively. She, further, submitted that only injury found on the right thigh was grievous in nature whereas injuries found on the left eye brow as well as right parietal region were simple in nature. She, further, submitted that, no doubt, after dissection of skull, hematoma was found beneath skull of the deceased and the aforesaid head injury was the cause of death of the deceased. She, further, submitted that the aforesaid facts clearly go to show that the appellants had no intention to commit murder of the deceased and, therefore, at best, it is a case of section 304 part II of the IPC. She, further, submitted that the appellants have already remained in jail custody for near about four and half years and, therefore, they should be released with the sentence to the period already undergone by them in course of trial as well as during the pendency of this criminal appeal.

8. On the other hand, learned Additional Public



Prosecutor appearing for the State refuted the above stated submissions arguing that PWs 7, 8, 9 and 10 being eye-witnesses clearly stated that both appellants mercilessly assaulted the deceased and, therefore, the aforesaid fact goes to show that the appellants had intention to commit murder of the deceased. He, further, submitted that there is no plausible and reasonable ground on the basis of which the testimony of eye-witnesses PWs 7, 8, 9 and 10 could be disbelieved. He, further, submitted that post mortem report as well as inquest report corroborate the factum of assault and moreover, Investigating officer proved the place of occurrence and, therefore, there is no ground to interfere into the impugned judgment of conviction and sentence order.

9. Having heard rival contentions of both parties, we went through the record. As we have already stated that, altogether, 14 prosecution witnesses were examined by the prosecution in course of trial and out of them, PW2, PW5 and PW6 have been declared hostile whereas PW1, is a formal witness who has proved formal FIR as exhibit 1 and fardbeyan as exhibit 2. PWs 3 and 4 are witnesses on the inquest report and they proved their respective signatures as well as inquest report. PWs 7, 8, 9 and 10, who happens to be



the informant of the case, claimed themselves to be eye-witnesses of the alleged occurrence. PW11 also claimed himself to be eye-witness. All the aforesaid witnesses stated that having reached at the place of occurrence, they had seen the appellants assaulting the deceased by means of Pajona. Although there are minor contradictions in the depositions of the aforesaid prosecution witnesses but the aforesaid contradictions do not go to the root of the present case.

10. PW12 is the doctor who had conducted the post mortem examination on the corpus of the deceased. PW12 stated that on 29.12.1992 at 11.30 a.m., he did post mortem examination on the corpus of the deceased Janak Manjhi and found following antemortem injuries:-

- i) Lacerated wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x muscle deep over left eye brow outer aspect.*
- ii) Lacerated wound 2" x 1" muscle deep over right parietal region of skull.*
- iii) Generalized swelling over right thigh with fracture of softened femur.*

11. This witness, further, stated that on dissection he found clot under scalp over right side and on removal of skull bone, there was subdural hematoma over right side. This witness opined that cause of death was head injury and the



injuries might have been caused by hard and blunt substance such as Pajona. He also opined that subdural hematoma and congestion of brain were due to injury no.2 and a man can die, if such antemortem injuries are given to him. This witness proved the post mortem report as exhibit 3.

12. PW13 is a formal witness who proved OD slip as exhibit 4. PW14 is Investigating officer and stated that he recorded the statements of the witnesses, inspected the place of occurrence and thereafter, submitted charge sheet.

13. No doubt, prosecution witnesses nos. 7, 8, 9, 10 and 11 supported the story of assault and stated that it were the appellants who assaulted the deceased on the alleged date of occurrence but admittedly, only three antemortem injuries were found on the person of the deceased and out of the aforesaid three injuries only one injury was on the vital part of the body i.e. on the head of the deceased whereas remaining two injuries were on left eye brow as well as right thigh which are not vital parts of the body. Furthermore, we find that out of the aforesaid three injuries, only injury no.3 which was found on the right thigh was grievous in nature whereas injury no.1 and injury no.2 were simple in nature, though injury no.2 was dangerous to life. It is obvious from



the materials available on record that only single blow was given on the head of the deceased that is too, with no much force because no fracture was found on the head of the deceased. However, unfortunately, due to the aforesaid blow deceased developed hematoma which became fatal for his life.

14. However, it is well settled that to constitute the offence under section 300 of the IPC, it is essential that the act by which death is caused is done with the intention of causing death or if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom harm is caused or if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death or if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse or incurring the risk of causing death or such injury as aforesaid.

15. In the present case, according to the prosecution case itself, only one injury was found on the head of the



deceased whereas remaining two injuries were found on other parts of the body. Injury found on the head was simple in nature as neither there was any cut nor any fracture injury was found on the head of the deceased. Therefore, the aforesaid circumstances go to show that much force had not been used in giving the blow which caused injury on the head of the deceased.

16. No doubt, due to the aforesaid injury clotting of blood developed inside skull but in view of the above stated discussions, it is obvious that the intention of the appellants was not to cause such bodily injury which may cause death of the deceased in the ordinary course of nature.

17. No doubt, grievous injury was found in right thigh of the deceased but admittedly, right thigh of the deceased was not vital part of the body. Therefore, in our view, present case comes under purview of section 304 part I of the IPC and accordingly, conviction of the appellants is converted to section 304 part I from section 302/34 of the IPC.

18. From perusal of the record, we find that the appellants were sent to judicial custody on 30.12.1992 and they remained in judicial custody till 11.04.1997 and the



aforesaid fact goes to show that appellants had already suffered a lot by remaining in jail custody for more than four and half years. The alleged occurrence took place in the year 1992 and the appellants are pursuing this criminal appeal since the year 1994. Therefore, in our view, ends of justice would meet, if the appellants are sentenced to the period already undergone by them in course of trial as well as during the pendency of this criminal appeal. Accordingly, they are sentenced to the period already gone by them in course of trial and during pendency of this appeal.

19. On the basis of the aforesaid discussions, this criminal appeal stands dismissed with modification in the judgment of conviction and sentence order in the manner as stated above.

20. Let first and last page of the copy of this judgment be handed over to Miss Monika, Advocate for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Shahid

AFR/NAFR	NAFR
CAV DATE	NA
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