

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.226 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

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Gouri Mahto, son of Ramdeo Mahto, resident of village Patahi tola, Harbhanga,
P.S. Patahi, District East Champaran

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ravi Shankar Sahay with
M/S Vijay Kumar No.1, Navin Kumar
Jha, Advocates

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 10-04-2018

Sole appellant stands convicted under Section 304 Part II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years, vide judgment and order dated 4.3.2003 passed by Sri Raghubar Sharan Pandey, the then 6th Additional Sessions Judge, East Champaran, Motihari, in Sessions Trial No. 91 of 1984/73 of 2002.

2. Prosecution case as per fardbeyan of Bharat Mahto (PW 1), in short, is that on the day of occurrence, i.e., 4.11.1981 at 2 P.M. his brother Sudarshan Mahto was digging the earth, which was protested by the appellant. However, he did not obey the same, as such, appellant threw a brick on Sudarshan, causing injury to his abdomen and he fell down and became unconscious and he was taken to hospital and later on he died.

3. On the basis of aforesaid fardbeyan police case was



registered and post investigation charge sheet has been submitted, cognizance of the offence was taken and after commitment the case ultimately traveled to the file of Sri Raghubar Sharan Pandey, the then 6th Additional Sessions Judge, East Champaran, Motihari for trial and disposal.

4. During trial altogether five witnesses have been examined on behalf of prosecution, they are PW 1 Bharat Mahto, informant, PW 2 Shambhu Mandal is villager, PW 3 Mauleshwari Devi, who is mother of deceased, PW 4 Jagdish Mandal and PW 5 Satya Narayan Sharma, who is a formal witness.

5. No evidence either ocular or documentary has been adduced on behalf of defence and the defence of the appellant is denial of occurrence and of innocence.

6. Learned trial court on conclusion of trial has convicted the appellant under Section 304 Part II IPC and sentenced him as stated above.

7. Learned counsel for the appellant has assailed the impugned judgment of conviction stating that the same suffers from inconsistencies and infirmities but learned trial court has not considered the same and moreover in absence of examination of Doctor and non-production of post mortem report on the record, the conviction of the appellant under Section 304 Part II does not appear to be sustainable in the eye of law as cause of death could not be ascertained and it was also not ascertained that injury caused by



pelting of brick, caused the death of deceased and, as such appellant may, at best, be held guilty under Section 323 IPC but learned trial court has not considered aforesaid aspect of the matter and convicted the appellant.

8. On the other hand, learned counsel for the State has defended the finding of guilt recorded by learned trial court and has submitted that evidence is consistent which shows that deceased received injuries and later on he died and, as such, it can safely be held that due to injury caused the deceased died and hence there is no infirmity in the impugned judgment.

9. On perusal of the evidence in the background of submission of both sides it appears that evidence is consistent so far assault is concerned except that FIR itself shows that appellant has assaulted the deceased by brick bats on the abdomen, whereas in the evidence it is stated that pelting of brick hit on chest. However, by and large the evidence is consistent so far assault is concerned. However, in this case Doctor has not been examined and post mortem report has not been brought on record and as such there is no finding of Doctor about cause of death. Hence, in absence of such finding it cannot safely be said that due to pelting of brick, he suffered injuries and later on he succumbed to those injuries. In such a situation at best the appellant can be held guilty for the offence under Section 323 IPC and not under Section 304 Part II IPC. However, learned trial court has not considered the aforesaid inconsistencies and infirmities and



convicted the appellant under Section 304 Part II IPC even in absence of finding of Doctor and post mortem report.

10. Accordingly, the conviction of the appellant under Section 304 Part II IPC is modified to a conviction under Section 323 IPC.

11. So far sentence is concerned, learned counsel for the appellant has submitted that appellant has remained in custody for three months during trial and during pendency of appeal and occurrence is of the year 1981 and further by now he is aged 87 years and considering all aspects of the matter his sentence may be reduced to the period already undergone in custody.

12. I find force in the submission of learned counsel for the appellant. Considering the submission of learned counsel for the appellant, the sentence under Section 323 IPC is modified to the period under which he has already remained in custody.

13. With the above modification in the conviction and sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

spa/-

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