

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.786 of 2016

Arising Out of P.S. Case No.-63 Year-2013 Thana-Biraul District- DARBHANGA

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Arjun Paswan, Son of Late Dayadas Paswan, Resident of village-
Kaladih, P.O.- Jagarnathpur, P.S.- Biroul, District- Darbhanga.

.... Appellant

Versus

The State of Bihar

.... Respondent/Opposite Party

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Appearance :

For the Appellant : Mr. Ajay Kr. Thakur, Adv.
Ms. Swati Sinha, Adv.
For the State : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 16-05-2018

The appellant/Arjun Paswan has been convicted for the offence punishable under Section 304 of the Indian Penal Code (*in short the **I.P.C.***) by judgment dated 26.08.2016, passed by the learned 2nd Additional Sessions Judge, Benipur, Darbhanga in Sessions Trial No. 12 of 2014, arising out of Biraul P.S. Case No. 63 of 2013, and by order dated 31.08.2016, he has been sentenced to undergo rigorous imprisonment for ten years, to pay a fine of Rs. 20,000/- and in default of payment of fine, to further suffer rigorous imprisonment for six months. Half the amount of



fine has been directed to be paid to the family members of the deceased.

2. The appellant is alleged to have killed the mother of the informant, viz. Jagiya Devi.

3. The case of the prosecution is based on the *fardbeyan* statement of Sanjay Paswan (P.W. 5). He has alleged that on 08.03.2013, at about 10 O'clock in the day, because of the old land dispute, the appellant and others variously armed with weapons came to his *darwaja* and started abusing him. When this was protested, the appellant is said to have assaulted him on his head by means of a wooden substance (*samath*). The informant/P.W. 5 claims to have been injured and fell down on the ground. When his mother/Jagiya Devi came to his rescue, the appellant is said to have assaulted her also with the same instrument, on her head, as a result of which she became seriously injured. The second assault hit the mother of the informant (deceased) in her cheeks. When the mother (deceased) of the informant/P.W. 5 fell down on the ground, other female accused persons assaulted her by means of bamboo sticks and *lathi*, leading to serious injuries on her person. On *hulla*, many persons of the neighbourhood arrived and the accused persons including the appellant ran away. With the help of the villagers, the mother of the informant was taken to



D.M.C.H., Darbhanga, where, during the course of treatment, she died on 09.03.2013 at about 2:30 hours in the morning.

4. On the basis of the aforesaid *fardbeyan* statement by the informant/P.W. 5, a case *vide* Biraul P.S. Case No. 63 of 2013, dated 09.03.2013, was instituted for investigation for the offences punishable under Sections 147, 148, 149, 323, 324, 307, 302, 448 and 504 of the I.P.C.

5. The police, after investigation submitted charge-sheet against the appellant and co-accused/Krishna Paswan, whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

6. The Trial Court, after examining seven witnesses on behalf of the prosecution and none on behalf of the defence, convicted and the sentenced the appellant as aforesaid. However, finding no cogent material against co-accused/Krishna Paswan, the Trial Court acquitted him.

7. The learned Advocate for the appellant, while assailing the judgment and order of conviction, has argued that no independent person has been examined in this case and the conviction has been recorded only on the deposition of the witnesses, who are highly interested and partisan. In that context, it has been submitted that the F.I.R. witnesses and the *Chowkidar* have not been examined at the trial and no explanation also has been offered for withholding them



from coming to the witness-box.

8. The other ground of challenge is that even the deposition of the witnesses are highly discrepant with respect to the manner of occurrence and none of the witnesses have supported the basic prosecution version. The *post-mortem* report of the deceased belies the prosecution version as only one injury on the left side of the forehead of the deceased was found. Thus, the allegations levelled against the appellant and others of having assaulted the informant/P.W. 5 and the deceased is not borne out by the medical evidence. There is no injury report of the informant/P.W. 5.

9. It has also been submitted that from the deposition of prosecution witnesses only, it could safely have been inferred by the Trial Court that there was a dispute between the two families, whose houses are situated contiguous to each other and in the process, people from the side of the appellant were also injured. In fact, it has been argued, Ram Sogarath Paswan (P.W. 2), who is the husband of the deceased, has admitted that the mother of the appellant was also injured in the occurrence and was treated in the D.M.C.H., where the deceased also was treated for sometime. Only after the death of the deceased, the mother of the appellant left the hospital. The appellant also is stated to have visited the hospital as deposed by the wife of the



informant/P.W. 5, who has been examined as P.W. 3 and only after the death of the deceased, he ran away from the hospital.

10. Lastly, it has been submitted on behalf of the appellant that there was no intention to cause death of the mother of the informant/P.W. 5. Had it not been true, the deceased would have been assaulted not only once but several times. It is rather unfortunate that the deceased died but no intention could be attributed to the appellant for killing the deceased. There is admitted land dispute between the parties and, therefore, it has been submitted that the possibility of false implication cannot be ruled out.

11. A suggestion was given to the witnesses that in the dispute between the informant and the appellant, the deceased had come to intervene when the informant himself got angry over her intervention and assaulted her, leading to her death.

12. In order to appreciate the contentions of the appellant, it would be first necessary to briefly refer to the deposition of the witnesses.

13. Suresh Paswan (P.W. 1) claims to have seen the assault on the deceased while going to the house of the local *Mukhiya*. He appears to be a chance witness and was not aware of the relationship between the appellant and the



informant. Though, he has stated that there was no land dispute between the parties, but the aforesaid statement appears to have been made without verifying the facts. Be that as it may, since he is a chance witness, it is difficult to rely upon him for coming to the conclusion that the appellant intended to kill the deceased.

14. Ram Sogarath Paswan (P.W. 2) is the father of the informant and the husband of the deceased. He has supported the prosecution version, but has admitted that there is a land dispute between his family and the appellant. A Title Suit is pending adjudication before a competent Court. But the scuffle did not take place on that account. He, in his cross-examination, has also stated that the mother of the appellant was injured in the occurrence for which she was treated in the hospital.

15. Kavita Devi (P.W. 3) has supported the prosecution version, but her disposition does not inspire confidence. She has stated that on the day of the occurrence, she was present at her home, when the appellant and others came to her house and abused the family members. When her husband protested, the appellant is said to have assaulted him on his head, as a result of which he fell down injured on the ground. When her mother-in-law went to his rescue, she too was assaulted by the appellant.



Thereafter, all others who came to the rescue of the aforesaid injured persons were assaulted. She has stated that her husband, after being injured in the occurrence, regained consciousness after a long time. This statement does not appear to be correct as only a day after the occurrence, the First Information Report was lodged by her husband (P.W. 5). She has admitted that the appellant and the deceased hail from the same stock of family and reside at one place only.

16. The factum of assault and resultant death has been supported by Dr. Praful Kumar Das (P.W. 4), who has conducted the *post-mortem* over the deceased. On removal of bandage from the head of the deceased, he found a stitched wound which was 2½ cm. in length on the right forehead extending to the lateral midline. The frontal and right temporal regions were found to be crushed. The right temporal and frontal bones also displayed fracture/crack. On removal of the skull-cap, extradural and subdural haematoma was found.

17. From the *post-mortem* report as also the deposition of P.W. 4, it is quite obvious that the deceased died a homicidal death. The death was only because of the injury suffered by the deceased on her head.

18. The informant/Sanjay Paswan (P.W. 5) has supported the prosecution version, but has admitted that he



and the appellant come from the same stock of family and there is a land dispute between the parties.

19. Thus, the ocular testimony and the medical evidence completely corroborate that the deceased died because of her having been assaulted by the appellant by means of a wooden instrument (*samath*).

20. However, it is clear from the materials available on record that there was no intention on the part of the appellant to have killed the deceased. This Court says so for the following reasons :

- (i) There is no re-petition of blows;
- (ii) There was no pre-meditation for attack;
- (iii) After the deceased was injured and was taken to hospital, the appellant also visited the hospital.
- (iv) There were injuries on the side of the appellant also;
- (v) The mother of the appellant also was injured; and
- (vi) The manner of assault by the appellant was also not such which would reflect any intention on the part of the appellant to have intended to kill the deceased.

21. Thus, the conviction of the appellant under Section 304 of the I.P.C. is modified to one under Section 304 Part-I of the I.P.C.

22. Considering the aforesaid circumstances in



which the death took place, this Court is further of the view that interest of justice would be met if the sentence of the appellant is reduced to a period of five years.

23. The amount of fine imposed upon the appellant is not interfered with and sustained.

24. Thus, the judgment of conviction dated 26.08.2016, against the appellant, is affirmed, but modified to be one under Section 304 Part-I of the I.P.C. The order of sentence dated 31.08.2016, awarded to the appellant, is reduced to the period of five years. The quantum of the fine as imposed is not interfered with.

25. The appeal stands partially allowed and disposed of accordingly.

26. The appellant/Arjun Paswan is in custody since 01.05.2013. He has completed five years in custody. He, therefore, is directed to be released from jail forthwith, if not wanted in any other criminal case.

27. Let a copy of this judgment be transmitted to the Superintendent of concerned jail for necessary compliance, record and needful.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.05.2018
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