

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1321 of 2011

Arising Out of PS.Case No. -9 Year- 2010 Thana -null District- KATIHAR

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1. Md. Hadis S/O Sheikh Karmunia R/O Bairia, P.S.- Amdabad, Distt. Katihar

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjeet Kumar Singh, Adv.
Mr. Sanjeev Kumar Singh, Adv.

For the Respondent/s : Mr. Sujit Kr. Singh

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 10-04-2018

Heard the learned Advocates for the appellant and the State.

2. The appellant/Md. Hadis has been convicted under Section 304 part I of the Indian Penal Code by the judgment dated 13.12.2011 passed by the learned Additional District & Sessions Judge, Fast Track Court I, Katihar in S.Tr. No. 189/2010, arising out of Amdabad P.S. Case No. 09/2010 and by the order dated 15.12.2011, he has been sentenced to undergo R.I. for ten years, to pay a fine of Rs. 2,000/- and in default of payment of fine, to further suffer R.I. for six months.

3. The appellant is said to have given an iron rod blow on the head of the deceased leading to his death.



4. The prosecution case is based on the written report of Asia Khatoon (wife of the deceased), who has been examined as P.W.7 at the trial. She has alleged that on 18.01.2010, while she and her husband were sitting by the side of the fire after dinner, she and her husband (deceased) heard the sound of cries of her neighbour, viz. Ansari Khatoon (P.W.3). The informant/P.W. 7 and her husband (deceased) came out of their house and saw the appellant along with his mother going towards the house of P.W. 7 in an enraged condition. When the husband (deceased) of P.W. 7 questioned the appellant as to why he was in such a rage, the appellant gave an iron rod blow on his head, as a result of which he fell down. P.W. 7 thereafter raised hulla, on which persons of the neighbourhood arrived. Seeing the assembly of local persons, the accused persons, including the appellant/Md. Hadis ran away. It has also been alleged in the F.I.R. that P.W. 3/Ansari Khatoon was also assaulted by the appellant. The people of the neighbourhood are then said to have taken the husband of the informant and Ansari Khatoon to local hospital from where the deceased was referred to Katihar Sadar Hospital. During the course of treatment, the husband of P.W. 7 died.

5. The cause of the occurrence as stated in the F.I.R. is that the appellant was married to the daughter of Ansari Khatoon (P.W. 3). His wife Rubina Khatoon (P.W. 4) had fought with the



appellant and had come to her father's house. The appellant wanted to take back his wife to her matrimonial home.

6. On the basis of the aforesaid written report, a case vide Amdabad P.S. Case No. 09/2010 dated 19.01.2010 was instituted for the offences under Sections 302, 325/34 of the Indian Penal Code.

7. The police, after investigation, submitted charge-sheet; whereupon cognizance was taken and the case was committed to the court of sessions for trial.

8. The learned trial court, after examining seven witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

9. It may be noted here that charges were framed under Sections 302 and 325/34 of the Indian Penal Code but the conviction as stated earlier has been recorded under Section 304 part I of the Indian Penal Code.

10. Learned counsel appearing for the appellant has submitted that but for P.W. 7, who is the wife of the deceased, no body else has supported the prosecution version and most of the prosecution witnesses have been declared hostile. Though, the doctor (P.W. 1) has stated about the head injury of the deceased but he has not provided the details of the impact of the assault perpetrated by the appellant. The other ground of challenge is that the trial court did not



at all advert to the fact that neither was there any intention nor knowledge of the appellant that his act would cause the death of the deceased. In that view of the matter, even the conviction under Section 304 part I, it has been argued, is unjustified and unwarranted.

11. In order to appreciate the submissions made on behalf of the appellant, it would be necessary to briefly go through the deposition of the witnesses.

12. Dr. Md. Tanvir Haidar, who conducted the post-mortem of the deceased, has been examined as P.W. 1. He has deposed that he held the post-mortem on 19.01.2010 at 2:10 P.M. at Sadar Hospital, Katihar and found 8 sutures on the left side of the parietal region. On dissection of the skull, the brain and meninges were found congested. The cause of the death was stated to be shock and haemorrhage due to trauma over the skull. The time elapsed since death was assessed to be within 24 hours.

13. In this connection, it would be relevant to look at the deposition of P.W. 7, the only eye-witness to the occurrence. P.W. 7, of course, is the wife of the deceased, who has supported the prosecution version and has clearly stated that on the deceased asking the appellant as to the cause for his being in such anger and moving towards the house of Ansari Khatoon, the appellant gave one iron rod blow on his head leading to the deceased falling down on the ground.



She has deposed before the trial court that many persons arrived on her call for help. After the deceased was taken to the local hospital, he was referred to the Katihar Sadar Hospital, where the deceased died on the next day, i.e. 19.01.2010.

14. From the deposition of the aforesaid two witnesses, it stands established that the deceased did not die a natural death; rather it was a homicidal death. The cause of death because of the assault perpetrated upon the deceased stands absolutely proved and established.

15. Now, what is to be seen is whether the appellant had the intention of killing the deceased or had the knowledge that his act would lead to the death of the deceased. Before referring to the aforesaid aspect, it is to be borne in mind that the other witnesses have not supported the prosecution version. There is a reason behind that. P.Ws. 3 and 4 are the mother-in-law and the wife of the appellant respectively. They are not expected to support the prosecution version. However, some initial dispute between the appellant and his mother-in-law gets reflected from the deposition of the aforesaid witnesses.

16. The choice of the prosecution for examining the I.O. of this case as P.W. 2 also appears to be curious. Because of the I.O. having been examined prior to the deposition of other witnesses,



it was difficult to draw the attention of the earlier statements of the witnesses to the I.O. However, since no objection has been raised on behalf of the defence, the same is not being commented upon here.

17. Now over to the intention of the appellant for causing the death of the deceased and in the alternative, the knowledge of the appellant that his act is likely to cause the death of the deceased. Admittedly, there had not been any prior dispute of the appellant with the deceased. P.W. 7 or the deceased were not even knowing the fact that the wife of the appellant had fought with her husband and had come to her father's house. The deceased as well as P.W. 7 could know about it only when the occurrence took place. According to the F.I.R. as well as the deposition of P.W. 7, Ansari Khatoon (P.W. 3) was shouting for help in the night. For ascertaining as to what was the cause of the distress, the deceased as well as P.W. 7 came out of their house. They saw the appellant running towards the house of Ansari Khatoon in rage. On being questioned the reason for the same, the deceased was struck on his head by the iron rod. If this statement of P.W. 7 is accepted as the correct version of the occurrence, there was no pre-meditation in the mind of the appellant; there was no attempt on the part of the appellant to repeat the blows and the appellant did not do anything to indicate that he took any advantage of the defenceless position of the deceased. The attack on



the deceased must have been in a flash of temper and that also for deceased having caused some obstruction to the appellant in going to the house of his mother-in-law. In such an event, it cannot be said that the appellant intended to cause the death of the deceased.

18. Thus, the case of the appellant falls within one of the exceptions of Section 300 of the Indian Penal Code. There was a sudden fight, and there was no pre-meditation. The appellant has not resorted to any diabolical means and circumstances do not reveal that the act committed was in the nature of a cloak for any pre-existing malice. The appellant did not have any animus against the deceased and likewise. Thus, it is culpable homicide not amount to murder. Accordingly, the judgment dated 13.12.2011 and order of conviction of the appellant dated 15.12.2011 under Section 304 part I of the Indian Penal Code is justified and hence the same is upheld.

19. However, looking at the manner of the occurrence, as also taking into account that there was absolutely no repetition of blows and there was no pre-existing malice, this Court is of the view that the interest of justice would be sufficiently met if the sentence imposed upon the appellant is reduced to the period of custody which the appellant has already undergone.

20. This Court has been informed that the appellant has remained in custody for about seven years by now.



21. Thus, the appeal is partially allowed, in as much as the conviction under Section 304 part I of the Indian Penal Code is upheld but the sentence imposed upon the appellant is reduced from ten years to the period of custody which he has already undergone.

22. The appellant is in custody as stated above. He is directed to be released from jail forthwith, if not wanted in any other case.

23. A copy of the judgment be sent to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
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