

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.772 of 2012

Arising Out of P.S. Case No.-31 Year-1992 Thana- CHHATAPUR District- Supaul

Binod Khatwe, S/O Musharu Khatwe Resident of village- Rajeshwari, P.S-
Chhatapur, District- Supaul. Appellant/s

Versus

The State Of Bihar Respondent/s

Appearance :

For the Appellant/s : Mr. Arun, Advocate
For the Respondent/s : Mr. A.K.Sinha, A.P.P.

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 10-04-2018

We have heard parties and have perused the records of
this case.

The appellant has filed this appeal assailing the
judgment of conviction dated 21.06.2012 and order of sentence
dated 30.06.2012 passed by Adhoc Additional Sessions Judge,
IV, Supaul in S.T. Nos. 49 of 1993 / 5 of 1993 / T.R. No. 90/2009,
arising out of Chhatapur P.S. Case No. 31/1992 by which the
appellant has been convicted for the offence punishable under
Section 302 of the Indian Penal Code and has been sentenced to
undergo imprisonment for life with a fine of Rs. 10,000/- and in
default of payment of fine he has further been sentenced to
undergo simple imprisonment for six months.

The prosecution case, in brief, is that on 17.4.1992 at
about 8.30 A.M., when the uncle of the informant, namely,



Chulhai Khatwe (deceased) was constructing a *Gohal* on his purchased land which is adjacent to *Darwaja* of informant, all the accused persons including the appellant came and objected to do the same but the deceased did not stop construction. In the meantime, the co-accused Baku Khatwe went to his house and brought a spade and handed over to the appellant and ordered him to kill the deceased. Thereafter, the appellant gave spade blow which hit the right neck of the deceased, as a result of which, he fell down and died on the spot.

On the basis of aforesaid fardbeyan, the FIR was registered under Sections 302/34 of the Indian Penal Code against all the accused persons including the appellant. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the all accused persons including the appellant under Section 302/34 of the Indian Penal Code. Thereafter, cognizance was taken and the case was committed to the court of sessions, where charges were framed, to which, the accused persons pleaded not guilty. Thereafter, trial started against the accused persons including the appellant.

During trial, the prosecution has examined altogether five witnesses in support of its case. P.W. 1 is Parmeshwari



Khatwe, P.W. 2 is Jagdish Khatwe, P.W. 3 is Dr. Jageshwar Lal, P.W. 4 is Lala Khatwe and P.W. 5 is Hari Mohan Khatwe.

The defence has also examined Bindeshwari Khatwe as D.W. 1 on its behalf.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellant and, as such, judgment of conviction and order of sentence have been passed against him.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

On appreciation of the evidence as mentioned above as well as the allegation set out in the first information report and, thereafter, evidence led by the prosecution, it appears to us that there was admitted land dispute between the parties. Though it is alleged in the first information report that the case of the prosecution is that seven persons, namely, Musharu Khatwe, Binod Khatwe, Maheshwari Khatwe, Ganeshi Khatwe, Bauku Khatwe, Bindeshwari Khatwe and Ram Chandra Ram assembled there and asked the uncle (deceased) not to construct his house on



the land as the same belong to other side but he did not respond and continue to construct the house due to which there was heated exchange between the parties and under passion of hit co-accused Bauku Khatwe brought spade from his house and gave it in the hands of the appellant Binod Khatwe and ordered to kill him and, on order having been given, Binod Khatwe assaulted the deceased on the neck and as a result of which he sustained fatal injury causing his death.

It has to be kept in mind that though these persons assembled there but they did not come with a premeditated mind to kill the deceased as they were not armed and after the quarrel between the parties with respect to construction of the house by the deceased under hit of passion one of the co-accused Bauku Khatwe brought spade from his house and ordered Binod Khatwe to kill the deceased. There is no repetition of blow also. Thus, according to us it does not appear that the accused persons assembled there for the predetermined purpose for killing the deceased. It has further to be kept in mind that the trial court has acquitted five out of six accused persons and they have not been convicted even under section 34 of the Indian Penal Code.



Now in the aforementioned facts and circumstances, it has to be ascertained as to whether the offence is culpable homicide amounting to murder or not amounting to murder?

From perusal of the materials on record including the evidence led by the prosecution, it does not appear that the accused went there with premeditated mind to commit murder of the deceased rather under the hit of passion on sudden quarrel or upon the sudden provocation the co-accused Bauku Khatwe brought a spade from his house and ordered Binod Khatwe (appellant) to kill the deceased upon which the appellant gave a spade blow on the neck of the deceased but it has to be noted that there was no repeated blow rather there was only one blow. So it appears that the act was done with the knowledge that it is likely to cause death but absence of repeated blow suggests that it was without any intention to cause death. Of course, blow was on vital part but that was on the fit of anger and on sudden provocation. Thus, in our view, this case would come under the Exceptions 1 and 4 carved out under Section 300 IPC and, as such, it can be held to be culpable homicide but not amounting to murder as it appears that the evidence produced does not suggest that the appellant was having any intention to cause death as there was only one injury which had been inflicted by him.



From perusal of the evidence of prosecution witnesses and materials on record, it appears that the prosecution has proved its case with regard to the occurrence but a careful scrutiny of the entire evidence makes it clear that it is a case of culpable homicide not amounting to murder. So, his conviction is required to be altered from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code.

Considering the facts and circumstances of the case, the appeal preferred by the appellant is dismissed with modification/alteration in conviction from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code and his sentence is reduced to the period already undergone by him in custody as the office has reported that he has already remained in jail custody for 9 years, 11 months and 16 days.

The appellant, who is admitted in jail custody, would be required to be released forthwith, if not wanted in any other case.

(Dr. Ravi Ranjan, J)

Spd/-

(Prakash Chandra Jaiswal, J)

AFR/NAFR	N.A.F.R.
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