

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.271 of 1995

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Sambal Ram, Son of Sri Gulbchand Ram, resident of Village Amouna, P.S. Karakat (Kachhuwan), District Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Surya Nilambari, Amicus Curaie
For the Respondent/s : Ms. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 30-11-2021

By this appeal, the appellant/accused is challenging the Judgment and order dated 01.08.1995 and 04.08.1995 respectively, passed by the 7th Additional Sessions Judge, Rohtas, Sasaram, in Sessions Trial No. 154 of 1991 between the parties, thereby convicting him of the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life. For the sake of conveyance, the appellant/accused shall be referred to in his original capacity as an accused.

2. The facts in brief leading to the prosecution case projected from the police report can be summarized thus;

A. Parmanand Paswan (since deceased) was



resident village Amouna, P.S. Karakat (Kachhuwan), District Rohtas, Sasaram. P.W.4 Bucha Paswan is the first informant, who lodged the First Information Report regarding murder of his father Parmanand Paswan on 11.12.1990 at Karakat (Kachhwan) Police Station and the same was recorded by P.W. 7 Shashi Bhushan, the Investigating Officer of Karakat (Kachhwan) Police Station, which has resulted in registration of Crime No. 110 of 1990 for the offence punishable under Section 302 of the Indian Penal Code against accused, Sambal Ram. P.W. 5, Budhan Paswan is brother of deceased Parmanand Paswan. These two witnesses are claiming to be an eye witnesses to the incident of murder of Parmanand Paswan by the appellant/accused.

B. It is case of prosecution that accused Sambal Ram is also resident of village Amouna. On 11.12.1990, at about 11 P.M., food was being cooked at the house of Parmanand Paswan (since deceased). His son P.W 4 Bucha Paswan was also present at the house. He heard loud cry of Parmanand Paswan for help. Parmanand Paswan was shouting that accused Sambal Ram is killing him. P.W.4 Bucha Paswan along with his brother Badshah Paswan rushed for help and saw that accused Sambal Paswan was assaulting their father Parmanand Paswan by means



of butt of rifle. This incident was taking place in front of house of P.W.3 Lal Muni Mahto. When P.W.4 Bucha Paswan and his brother Badshah Paswan attempted to intervene for saving Parmanand Paswan, the appellant/accused pointed a rifle at them. In the meanwhile, other resident of the village such as P.W.5 Budhan Paswan, P.W. 2 Krishna Sao, Mahendra Shah etc. arrived at the spot. The appellant/accused ran away from the spot. Injured Parmanand was then taken to the clinic of Dr. Bhola Singh, where he died during course of his medical treatment. That is how, P.W.4 Bucha Paswan went to Police Station Karakat (Kachhwan) and lodged FIR with P.W.7 Shashi Bhushan.

C. During course of investigation, the dead body of Parmanand Paswan was sent for autopsy to Sadar Hospital Hospital, Sasaram. P.W.6 Dr. Kumar Chitranjan Singh conducted the postmortem examination. The spot was inspected and blood as well traces of vomiting came to be seized. Statement of witnesses were examined and on completion of investigating, the accused came to be charge sheeted.

D. The charge for the offence punishable under Section 302 of the Indian Penal Code was framed and explained to the appellant/accused, who adjured the guilt and claimed trial.



E. In support of prosecution case, in all seven witnesses came to be examined. Defence of the accused was that of total denial. It is contended by the defence that the deceased was under intoxication and had suffered a fall leading to his death.

F. After hearing the parties, the learned trial court was pleased to convict the appellant/accused and to sentence him as indicated in the opening para of the Judgment.

3. We heard Ms. Surya Nilambari, the learned Amicus Curiae appointed by this Court vide order dated 30.07.2019. She argued that evidence of P.W.4 Bucha Paswan is not consistent with that of P.W.5 Budhan Paswan, though they both are claiming to be eye witnesses of the incident. She further argued that in all probability, P.W. 4 Bucha Paswan had not seen the incident as house of P.W.3 Lal Muni Mahto is situated at the distance of about 100 yards from the house of P.W.4 Bucha Paswan. The dead body, according to the learned Amicus Curiae was only having two injuries and as such, by the time P.W.4 Bucha Paswan reached on the spot of the incident, the incident must have been over. It is further argued that it is not probable that the deceased was in a position to cry. The learned Amicus Curiae further argued that P.W.5 Budhan



Paswan is already disbelieved by the learned trial court for valid reasons and as such, the appellant/accused is entitled for acquittal.

4. As against this, the learned Additional Public Prosecutor supported the impugned Judgment and order of conviction and resultant sentence.

5. We have carefully considered the submissions so advanced and also perused the record and proceedings including oral as well as documentary evidence. We have also perused the impugned Judgment and order. It is noted by us that P.W.5 Budhan Paswan is disbelieved by the learned trial court with a reason that he had not even claim before P.W.7 Shashi Bhushan – Investigating Officer that he was an eye witness to the incident. The learned trial court after assessing his evidence came to the conclusion that he must have reached on the scene of the occurrence just after the incident took place. However, the learned trial court relying on the testimony of P.W.4 Bucha Paswan, was pleased to hold that his version regarding the incident is acceptable. Ultimately the appellant/accused was held guilty of the offence punishable under Section 302 of the Indian Penal Code.

6. Now let us examined independently whether



the prosecution has proved that the accused has committed murder of Parmanand Paswan. The defence is setting up a case of accidental death of Parmanand Paswan caused by a fall. On this background, it is a evidence of P.W.7 Shashi Bhushan, Investigating Officer that he prepared inquest notes by inspecting dead body of Parmanand Paswan in presence of P.W.5 Budhan Paswan and sent the dead body for autopsy to Sadar Hospital, Sasaram. The autopsy was conducted by P.W.6 Dr. Kumar Chitranjan Singh, Civil Assistant Surgeon of the Sadar Hospital, Sasaam. It is in evidence of P.W.6 Dr. Kumar Chitranjan Singh that during autopsy of the dead body, he found following injuries;

- a. Lacerated wound of size 2' X 1/2" X Skin deep over left parietal bone.
- b. Lacerated wound of size 1" X 1/2" X bone deep over left temporal bone.

Evidence of P.W.6 Dr. Kumar Chitranjan Singh further shows that extensive internal damage was caused by these wounds. His evidence shows that there was fractured at the left side of temporal bone of the dead body of size 4" X 1/2". Blood cloths were noticed by him at the left parietal region of the dead body. P.W.6 Dr. Kumar Chitranjan Singh



further noticed that laceration of brain substance of the dead body. He noticed undigested food in the stomach of the dead body. With these findings, P.W.6 Dr. Kumar Chitranjan Singh concluded that Parmanand Paswan died due to head injury caused by hard and blunt substance. He testified that the injuries noted by him on the dead body can be possible by the butt of the gun. P.W.6 Kumar Chitranjan Singh vouched that the injuries noted by him on the dead body were sufficient in the ordinary course of nature to cause death of a human being. In cross-examination, he stated that human body digest the food in six hours. He stated that injuries noted by him on the dead body are possible by push on hard and blunt surface with great force. It is thus clear that deceased Parmanand Paswan died because of head injuries suffered by him. Even if it is assumed that deceased Parmanand Paswan was pushed with great force on hard and blunt surface as suggested by the defence then also the death is certainly homicidal and not accidental. There are no circumstances on the record to infer otherwise than to conclude that with such evidence, homicidal death of Parmanand Paswan is proved by the prosecution.

7. Now let us examine whether it is proved by the prosecution that the accused persons has caused death of



Parmanand Paswan and the act of the accused falls within the definition of the term murder as seen from Section 300 of the Indian Penal Code. For giving finding on this aspect, evidence of P.W.4 Bucha Paswan is relevant. He claims to be an eye witness who has lodged the First Information Report of the incident. He is son of the deceased. He was residing with the deceased in the same house at the time of the incident. The incident took place in the neighborhood of the house of the deceased. Time of the incident has coming on record from the mouth of the prosecution witnesses is about 8 P.M. P.W.4 Bucha Paswan, a rustic villager is claiming that he was present at the house at the time of the incident. It is a matter of common knowledge that in villages after a days work, people are generally at their houses. As the incident in question took place in the vicinity of the residential house of the deceased and P.W.4 Bucha Paswan, he is the most natural witness of the incident in question. Undoubtedly he is a related witness and therefore, his testimony is required to be scrutinized carefully but at the same time, it is to be noted that being a related witness does not mean that such a witness is an interested witness. Witness is mean only when he derives some benefit as a result of the litigation. In the case in hand, it is not even



remotely suggested that P.W.4 Bucha Paswan was hostile to the accused or that he was having some enmity with the accused. With this, let us see what is stated by P.W.4 Bucha Paswan. As per his version when he was present at his house, he heard shout of his father at about 8 P.M. His father was shouting that Sambal Ram (the accused) is killing him. P.W.4 Bucha Paswan deposed that he then reached to this spot and saw accused Sambal Ram hitting on the head of his father Parmanand Paswan by means of butt of the rifle. P.W.4 Bucha Paswan claimed that when he tried to intervene, accused Sambal Ram pointed rifle at him and thereafter the accused ran away. His injured father was then taken to the clinic of Dr. Bhola where his father died. Then he lodged the report to the Police Station. Cross-examination of this witness shows that his father had not taken food prior to the incident. It is elicited from this witness that the rifle was of two cubits length and his father was being hit by both sides of that rifle. Wooden portion of that rifle was one and half cubit long. He expressed his inability to tell how many blows were delivered by the accused on his father. This line of cross-examination of P.W.4, Bucha Paswan cements the version of P.W.4 Bucha Paswan coming on record from the chief examination. Therefore, it is not



possible to infer that as house of P.W.4 Bucha Paswan was at a distance of 100 yards from the spot, he could not be an eye witness to the incident. Evidence of this witness shows that he rushed to the spot soon after hearing the shout of his father. However, that does not mean that his father started shouting after receiving the fatal blow. Deceased Parmanand Paswan might have shouted upon noticing that the accused is coming towards him with rifle in his hand. In cross-examination itself, it is brought on record from mouth of P.W.4 Bucha Paswan that at the time of the first blow of rifle on his father, he was present at the spot. This shows that the deceased had given a call for help upon noticing the approaching appellant/accused. The learned trial court who has seen P.W.4 Bucha Paswan in the dock has placed reliance on his version and as noted by us there is nothing in his cross-examination which can cast a shadow of doubt on his testimony. Hence, version of P.W.4 Bucha Paswan to our mind is fully trustworthy. The same is duly corroborated by the FIR lodged by him with promptitude to P.W.7 Shashi Bhushan, the Investigating Officer. It is thus clear that from evidence of P.W.4 Bucha Paswan, the prosecution has established that it was the appellant/accused who had inflicted blows of butt of the rifle on the head of



deceased Parmanand Paswan.

8. Evidence of P.W.7 Shashi Bhushan, the Investigating Officer shows that on the spot of the incident, which was at the front side of the door of P.W.3 Lal Muni Mahto, he noticed lot of blood so also traces of vomiting. P.W.3 Lal Muni Mahto so also P.W.1 Kameshwar Singh and P.W.2 Krishna Sao, though turned hostile to the prosecution have stated that they had seen injured Parmanand Paswan lying in front of house of P.W. 3 Lal Muni Mahto and that Parmanand Paswan died in that incident. The evidence of P.W.4 Bucha Paswan gains overwhelming corroboration from this evidence on record.

9. We have noticed that injuries found on the dead body while dealing with evidence of P.W.6 Dr. Kumar Chitanjan Singh, the Autopsy Surgeon. We have also noted extensive external damage caused by the wounds suffered by the deceased at the hands of the appellant/accused. To reiterate, a big fracture of 4”X1/2” was found on the left temporal bone of the deceased. Brain matter of the deceased was found lacerated. The deceased had suffered two lacerated wounds on left parietal as well as temporal bones.

10. One may argue that as butt of the rifle is



stated to have been used in the incident of murderous assault, the offence is not traveling up to the one punishable under Section 302 of the Indian Penal Code. We may note that the learned Amicus Curiae has rightly not pressed this point. However, we deem it appropriate to dwell on it.

11. Murder is a gravest form of culpable homicide, which has its peculiar characteristic required to be proved before a person is to be held guilty for committing murder as defined U/s 300 of the I.P.C. It requires judicial scrutiny of the prevailing facts. Merely the fact that death of human being is caused is not enough to constitute offence of murder. Unless one of the mental status mentioned in ingredient of Section 300 is present, the act causing death cannot amount to culpable homicide amounting to murder. It must be proved that there was an intention to inflict the particular bodily injury actually found to be present. The intention of the person causing the injury has to be gathered from careful examination of the facts and circumstances of each case. The intention to cause the requisite type of injury is a subjective inquiry and then there would be further inquiry whether injury was sufficient in ordinary course of nature to cause the death is of objective nature.



12. The principal question therefore would be whether in the given facts and circumstances, the act caused by appellant/accused Sambal Ram can be said to amount culpable homicide amounting to murder as defined by Section 300 of the Indian Penal Code. Each and every circumstance reflecting from the record is required to be taken into account while drawing the conclusion as to whether the act of the accused amounts to culpable homicide amounting to murder or culpable homicide not amounting to murder or offence of any other nature. In the case in hand, evidence of P.W.4 Bucha Paswan shows that without any provocation by the deceased, the accused herein was giving blows of butt on head of the deceased. Those blows were undoubtedly with a great force as reflected from the evidence of Autopsy Surgeon, P.W. 6 Kumar Chitranjn Singh. This Autopsy Surgeon testified that Parmanand Paswan died due to head injury caused by hard and blunt substance. This expert witness, upon noticing the external as well as the internal injuries, on the head of the deceased gave his opinion that the injuries noted by him on dead body of Parmanand Paswan were sufficient in the ordinary course of nature to cause a death of a human being. From cross-examination of P.W.4 Bucha Paswan, it is brought on the record by the defence that at the time of



incident, the appellant/accused had not consumed liquor. The defence, in course of cross-examination of prosecution witnesses has not brought on record any circumstances to suggest that the accused was deprived of the power of self control because of grave and sudden provocation given by the deceased. It is not brought on record that there was sudden fight between the appellant/accused and the deceased, during which, without premeditation, blows of butt of the rifle were given. On the contrary evidence of the Autopsy Surgeon indicates that with great force, blows of the butt of rifle were given on vital part of the body of the deceased, which virtually crushed the left side of head of the deceased causing fracture injuries apart from laceration of the brain matter. Thus, we note that the appellant/accused was harbouring the intention of causing such injury on head of the deceased which he was knowing to be likely to cause death of Parmanand Paswan. That apart, even expert witness P.W.6 Dr. Kumar Chitranjan Singh has unequivocally stated that the injuries noted by him on the dead body were sufficient in the ordinary course of the nature to cause death of a human being. Giving forcefully blows on head of the deceased indicates that what was intended was to inflict such injuries as were sufficient in the ordinary course of nature



to cause death. Similarly giving forcefully blows by a rifle having two cubits length on head of the human being is undoubtedly an act which an offender certainly knows to be imminently dangerous to such an extent that in all probability, it can cause a death of a human being.

13. It is now well understood that in the scheme of the Indian Penal Code “Culpable homicide” is the genus and “murder” is the species and generally speaking “culpable homicide” sans “special characteristics of murder is culpable homicide not amounting to murder”. The Indian Penal Code recognizes three degrees of culpable homicide. The first degree of culpable homicide is “murder” which is defined by Section 300 and made punishable under Section 302 IPC. The second degree is culpable homicide as defined under Section 299 and made punishable under Section 304 Part I, IPC. The third degree of culpable homicide is made punishable under Section 304 Part II, of the IPC. The Hon’ble Apex Court in the case of **Willie Slancy V/s State of M.P. AIR 1956 SC 116** has stated that whether the accused causing the death of another and had no intention to kill, then the offence would be murder only if, (1) the accused knew that the injury inflicted would be likely to cause death, or (2) that it would be sufficient in the ordinary



course of nature to cause death or, (3) that the accused knew that the act must in all probability could cause death and if the case cannot be placed as high as that and the act is only likely to cause death and there is no special knowledge, the offences comes under Section 304(II), I.P.C. The Apex Court in the case of Kirkar Singh V/s State of Rajasthan (1993) 4 SCC 238 has again held that in a given case if the case does not fall in any of the exceptions, it is the duty of the prosecution to prove that the offence is of murder and the ingredients of clauses (1 to 4) of Section 300 are satisfied. Keeping in mind this position of law, we are of the firm view that the appeal is devoid of merit.

14. We put on record words of appreciation for the able assistance rendered by Ms. Surya Nilambari, learned Amicus Curiae, to this Court in arriving at the proper conclusion for deciding in that appeal. We direct the High Court Legal Services Authority to pay an amount of Rs.5,000/- to Ms. Surya Nilambari, learned Amicus Curiae, for service rendered by her.

15. In the result, we hold that the prosecution has certainly established that the accused had committed murder of the deceased Parmanand Paswan. We see no reason to interfere with the impugned Judgment of conviction dated 01.08.1995 and the order of sentence dated 04.08.1995 passed



in Sessions Trial No. 154 of 1991 by the 7th Additional Sessions
Judge, Rohtas, Sasaram and therefore, the order;

The appeal is dismissed.

A. M. Badar, J)

Sunil Kumar Panwar, J;- I agree.

Bhardwaj/-

(Sunil Kumar Panwar, J)

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