

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.412 of 2023

Arising Out of PS. Case No.-149 Year-2001 Thana- BIBHUTIPUR District- Samastipur

Shyam Sunder Chaudhary, aged about 58 years, male, S/o Deo Chandra Chaudhary, Resident of Village - Khamhar, P.S. - Bibhutipur, District - Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ashwani Kumar Tiwary, Adv.

For the State : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 11-09-2023

We have heard Mr. Ashwani Kumar Tiwari, the learned Advocate for the appellant and Mr. Dilip Kumar Sinha, the learned A.P.P. for the State.

2. The appellant stands convicted under Sections 302 and 326 of the I.P.C. *vide* judgment dated 07.04.2007 passed in Session Trial No. 290 of 2002,



arising out of Bibhutipur P.S. Case No. 149 of 2001, by the learned 1st Additional Sessions Judge, Samastipur and by order dated 09.04.2007, he has been sentenced to undergo imprisonment for life, to pay fine of Rs. 5,000/- and in default of payment of fine, to further undergo imprisonment for six months. No separate sentence has been awarded under Section 326 of the I.P.C.

3. The appellant is said to have killed his own uncle and injured his father and one of his cousins. In fact, the appellant had first started assaulting his own father/Deo Chandra Chaudhary (P.W. 6) for his having spread manure in the field, to which the appellant was opposed to, as he wanted to sell the land but assaulted the uncle/deceased/Ram Chandra Chaudhary, who came to the rescue of the father of the appellant. He also assaulted Braj Kishore Chaudhary (P.W. 1), his cousin, who too had accompanied his father to save the father of the appellant. The deceased died after a week of



treatment in the hospital. The F.I.R. was lodged by the father of the appellant/Deo Chandra Chaudhary, who has alleged that the appellant was a wayward as also a drunkard, who did not do anything in his life. He and his wife always troubled P.W. 6. On the day of the occurrence, *i.e.*, on 04.12.2001 at around 7:00 A.M., the appellant, in protest against P.W. 6 having spread manure in the field, started fighting with him. When the brother of P.W. 6, namely, the deceased and P.W. 1 arrived at the place of occurrence, they intervened but they were also assaulted by the appellant with the aid of his wife/Anita, who does not appear to have been put on trial. Because of the *farsa* injuries received by the deceased, he died after about a week in the hospital.

4. The police, after investigation, submitted charge-sheet against the appellant, whereupon cognizance was taken against him and the case was committed to the Court of *Sessions* for trial.

5. The Trial Court after having examined nine



witnesses on behalf of the prosecution and one on behalf of the defence convicted and sentenced the appellant as aforesaid.

6. The learned counsel for the appellant drew the attention of this Court to the fact that the judgment and order of conviction and sentence dated 07.04.2007 and 09.04.2007 respectively was never challenged before Appellate Court and the appellant remained in jail for twenty-one years. However, when the son of the appellant visited him in jail, he was handed over a copy of Memo No. 6441, dated 28.12.2022, informing him that the Government had decided not to give remissions to him as he had committed the murder of his uncle and had seriously injured his father and cousin. The Government, therefore, was of the view, considering the nature of the offence and the manner in which it was executed, that the appellant did not deserve any benefit of remission.

7. It further appears that decision of the



Remission Board has also been challenged by the appellant; nonetheless even though the case was hopelessly time barred, this Court condoned the delay, admitted it and fixed it for hearing. The only reason was that everyone ought to get all opportunities of defending himself.

8. We have examined the records of this case and we have found that the informant, who is the father of the appellant, has been declared hostile as he did not support the prosecution case.

9. The Trial Court has given cogent reasoning in disbelieving P.W. 6 for the reason of his having shown undue sympathy for his son who had injured him also and had been behaving in truant fashion before the occurrence also.

10. P.W. 1, who is one of the injured witnesses and a cousin of the appellant, has categorically stated that the appellant assaulted his own father, him and his father, who ultimately succumbed to the injuries.



11. P.Ws. 2 and 3, namely, Chandrama Devi and Nand Kishore Chaudhary respectively are the widow and another son of the deceased/Ram Chandra Chaudhary. They too have supported the prosecution case in its entirety. Both of them have but testified to the fact that the appellant had dispute with his father and not with the deceased or P.W. 1.

12. Guneshwar Ram (P.W. 5) is a formal witness who has identified the handwriting of the *Jamadar*, namely, R.B. Ram, who had signed the *Fardebayan* (Ext.-1).

13. P.W. 7, namely, Rakesh Chaudhary has been declared hostile.

14. Similarly, Mahalakshmi Devi (P.W. 8), who is sister-in-law of the deceased, has also not supported the prosecution version and has been declared hostile.

15. The I.O. of this case, namely, Arjun Paswan, has been examined as P.W. 9. He has proved the inquest report. He recorded the statement of the



witnesses. He found the case true against the appellant and, therefore, submitted charge-sheet against him.

16. One Dr. Baikunth Prasad Sinha has been examined as a Court witness. He has deposed that on 12.12.2001, he was posted at Sadar Hospital, Samastipur as Civil Assistant Surgeon and had conducted the post-mortem examination on the dead body of the deceased/Ram Chandra Chaudhary. He had found one stitched wound of the dimension 3" x 1/4", which was longitudinal in nature, over the middle of the occipito-parietal region of the scalp. There were abrasions over the left temporal region, left ankle, right heel and over the back of the chest. The injury No. 1, namely, the stitched wound on the occipito-parietal region was found to have been caused by a sharp and incised weapon which had also resulted in fracture of right parietal bone, preventing blood flow in the brain tissues. The time fixed for death was about thirty six hours from the time of the cross-examination. As a



Court witness, he stated before the Trial Court that he knew Dr. R.N. Chaudhary, the then Medical Officer posted at Sub-Divisional Hospital, Dalsinghsarai. He also identified his handwriting and signature over the injury report of Deo Chandara Chaudhary (P.W. 6) and Braj Kishore Chaudhary (P.W. 1). The injury reports have been marked as Exts.-6, 6/1, 6/2 respectively. One of such injuries is of the deceased. He admitted before the Trial Court that though the exhibit series were not written in his presence but since he identified the handwriting of Dr. R. N. Chaudhary who had prepared the reports, he proved the same.

17. Before the Trial Court, it was urged that in the absence of the examination of Dr. R.N. Chaudhary, who had examined the injured persons including the deceased, there cannot be any conviction under Section 326 of the I.P.C. In view of the claim of the defence that the deceased died in P.M.C.H. and not at Samastipur and there being no record of any death



certificate issued by P.M.C.H., the prosecution could not prove that the death was because of the injuries received in the same transaction about which the F.I.R. was lodged.

18. We find from the Trial Court judgment that such arguments have rightly been rejected in view of categorical assertion of P.Ws. 1, 2 and 3 about the deceased and P.W. 1 as also P.W. 6 having been assaulted by the appellant by means of *Farsa*. That P.W. 6 did not support the prosecution case is quite understandable as he is the father of the appellant and he had made statement before the Trial Court after the appellant had remained in jail for quite some time.

19. It may be noted that the appellant had all along been in jail after the occurrence.

20. However, it appears to us is that there was no intention of the appellant otherwise to cause any harm to the deceased or P.W. 1. Merely because they had intervened in a fight between the father and son,



that they too were assaulted. What is rather striking is that even though the appellant was armed with a *Farsa*, but the fact remains is that he was pitted against three other able bodied persons including his father.

21. Could the appellant not have been over-powered?

22. This again gives rise to a thought that perhaps the deceased and P.W. 1 also would have been on the side of P.W. 6 for not selling the land in question. Was that land where the manure was spread by P.W. 6 belonged to the family property or was it in the exclusive share of P.W. 6 and his son/the appellant remains unknown. No investigation has been done on that account.

23. With the evidence on record, therefore, the only inference that can be drawn is that the deceased perhaps was hit by the appellant, not with the intention of causing his death. However, he cannot be given the benefit of not having the intention of causing such bodily



injury which would be likely to cause death.

24. The learned counsel for the State, however, has argued that the case of the appellant would squarely fall under Section 300 *Thirdly* of the I.P.C., which provides that a culpable homicide would be a murder, if the act by which the death was caused is done with the intention of causing death or if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

25. In the present case, we find that using a *Farsa* to attack his father, uncle and cousin in the same transaction, the appellant must have had the intention of causing hurt to those persons having intervened but definitely not the intention of causing such bodily injury which would ultimately, an in ordinary course of nature, would cause death.

26. There is no element of dispute, if the evidence of P.Ws. 1, 2 and 3 is to be believed, with the



deceased. The deceased appears to have received five injuries, one of which proved to be fatal.

27. However, we do not find any material to hold the appellant guilty of harbouring an intention of causing such bodily injury with the intention that it would cause his death. We, therefore, are inclined to alter the conviction of the appellant into one under Section 304 (Part-I) of the I.P.C.

28. We order accordingly.

29. So far as the sentence of the appellant is concerned, we are of the view that since the appellant has been reckless in attacking his father, his own uncle (deceased) and his cousin over a petty dispute and that he repeated the blows, he does not deserve any leniency. Nonetheless in the absence of anything on record that he did not behave himself in the jail or that he has not shown any signs of transformation, it would only be appropriate that his sentence be altered to one for life but with remissions to which any other convict is



entitled.

30. As we have already noted above, the appellant has remained in jail for twenty one years and has not been given remission only on the ground of his having executed the murder of his own uncle and injuring his father and cousin, we direct that after giving remissions to the appellant, he be released from jail forthwith, unless his detention is required in any other case.

31. For the reason of the appellant having remained in jail for twenty one years, we waive the quantum of fine imposed upon him.

32. The appeal, thus, stands partially allowed.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Alok/Praveen-II

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