

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.610 of 2017

Arising Out of PS. Case No.-94 Year-2013 Thana- JALALGARH District- Purnia

Md. Kalam Son of Late Md. Ajimuddin Resident of Village- Bakra P.S.
Jalalgarh, District Purnea.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Md. Ziaul Quamar, Advocate
	:	Mrs. Heena Naz, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 19-07-2023

1. Heard Md. Ziaul Quamar, learned advocate for the appellant and Mrs. Shashi Bala Verma, learned APP for the State.
2. The appellant has been convicted under Section 302 of the Indian Penal Code and has been sentenced to undergo R.I for life, to pay a fine of Rs.5,000/- and in default of payment of fine, to further suffer three months rigorous imprisonment vide judgment of conviction and order of sentence dated 04.04.2017/06.04.2017 respectively passed by the



learned 5th Additional District and Sessions Judge, Purnia in Sessions Trial No.1239 / 2013, CIS No. 4425/13 (TR. No. 109/13).

3. The appellant is said to have assaulted the deceased and thrust a lathi inside his mouth leading to asphyxia and injury near his epiglottis which was the cause of death.
4. The deceased was a young boy of ten years.
5. Md. Ziaul Quamar, the learned Advocate for the appellant has submitted that even if the entire prosecution case is accepted to be true, the offence would not fall within the mischief of Section 302 IPC. The conviction of the appellant under Section 302 IPC, therefore, is highly unjustified. Except for Aamna (PW-1), who is the grandmother of the deceased, and Bibi Minhaj (PW-8), who is the mother of the deceased, nobody has supported the prosecution case in any manner whatsoever. The deceased as well as the appellant are related also, though distantly. While having lost his temper, the appellant had not only



assaulted the deceased, his mother/Bibi Mihnaj but his wife also, who had tried to reason out with him and was asking him to calm down. The appellant did not continue to assault the deceased but ran away from the place of occurrence shortly after the assault. These facts would demonstrate that the appellant never had the intention of killing the deceased. He has further submitted that the occurrence took place out of a trifle and it appears that in fit of rage, the appellant assaulted the deceased but the deceased being a person of tender age could not withstand the said assault.

6. Ms. Shashi Bala Verma, learned advocate for the State, however, has submitted that there could be no two opinions that the death was because of the assault perpetrated by the appellant and even though he had not intended to cause his death, that would not completely absolve the appellant from his guilt. There was no sudden or grave provocation of the kind which would be a defence in favour of the appellant. For the



deceased having used the hand pump for drawing water belonging to the appellant, the occurrence has taken place. The appellant did not even accede to the advice of his wife, who too was assaulted by him. Under such circumstances, if not 302, the appellant would surely be held guilty under Section 326 of the IPC.

7. Bibi Minhaj (PW-8) has alleged in her fardbeyan that on 18.08.2013, at about 4 'O' clock in the evening, the deceased, her ten year old son, was assaulted by the appellant. When she confronted the appellant, she too was assaulted. The appellant had very severely assaulted her son. During the assault, the wife of the appellant also had arrived who tried to reason out with him but to no avail. The appellant is said to have assaulted his wife as well. Seeing the condition of the deceased deteriorate, the appellant ran away.

8. On the basis of the aforementioned fardbeyan statement of Bibi Minhaj (PW-8) Jalalgarh P.S. Case No. 94 of 2013 dated 19.08.2013 was instituted for



offence under Section 302 IPC.

9. During the trial, as noted above, Aamna (PW-1), who is related to the deceased as also the appellant and Bibi Minhaj (informant) supported the prosecution case in its entirety mainly of the appellant having assaulted the deceased, Bibi Minhaj (PW-8) .

10. The Doctor/Permanand Thakur (PW-6) who conducted the postmortem on the dead body of the deceased, found that the upper surface of the tongue had scratches. Epiglottis was found to be inflamed. The larynx contained some blood clots. In his opinion, the death was caused by trauma of mouth leading to swelling of epiglottis and blood clots and consequent the asphyxia. The time of death has been fixed within 6 to 36 hours from the time of the postmortem examination. However, he did not find any external injury on the body of the deceased.

11. Ajit Prasad Singh (PW-9), who is the I.O. of this case has deposed that when he had conducted the inquest, he had found that the right cheek of the



deceased was swollen and he was bleeding from his nose. Froth also was coming out of his mouth. He had received an information on telephone on 19.08.2013 at about 9 'O' clock that a person has been murdered but no further details were made known to him. Then he had come to the house of the informant, seen the dead body of the deceased in the courtyard, where after the inquest was prepared.

12. From the injury suffered by the deceased, it becomes very clear that a stick like substance was thrust in his mouth leading to injuries in the trachea, larynx and epiglottis which ultimately led to the asphyxial death of the deceased.

13. Though all other witnesses except PW-1 and PW-8 have not supported the prosecution version and have been declared hostile but the deposition of PW-1 and PW-8, referred to above, clearly bring out the case against the appellant that he, in a fit of rage, assaulted the deceased severely. That there would not have been any intention to kill the deceased is but



evident from the fact that the deceased has not suffered any injury on his body. The deceased was first assaulted by the appellant and when questioned by PW-8, he was again assaulted. This reflects that without any reason, the appellant had been caught in a rage and could not control his temper.

14. In such a situation, we are inclined to accept the statement of Aamna (PW-1) and Bibi Minhaj (PW-8) that stick like substance was inserted in the mouth of the deceased. No sooner the condition of the deceased began to deteriorate, the appellant ran away from the place of occurrence.

15. From the surrounding circumstances, we do not find that the appellant was overpowered by an intention to cause the death of the deceased. Unwittingly, a stick appears to have been used which damaged the larynx of the deceased. Had the deceased been taken to hospital straightaway, he would have been saved. That there was no enmity between the parties is further evident from the fact



that the wife of the appellant had come-out in open, much to the chagrin of her husband, to calm him down. It may not be a sudden and grave provocation for the appellant to justify his act but, for sure, it is not a case of murder.

16. We find from the accusation proved against the appellant that he has made himself liable for being convicted and sentenced for the offence under Section 326 of the IPC which provides for punishment for voluntarily causing grievous hurt by dangerous weapons or means.

17. We, therefore, convert the conviction of the appellant from one under Section 302 IPC to under 326 IPC.

18. The appellant is in custody for around ten years.

19. Considering the circumstances in which the occurrence was committed and the age and family background of the appellant, we are of the view that justice would be served if the appellant is sentenced to



the period of custody which he has already undergone upto now.

20. The appeal, thus, is partially allowed and conviction under Section 302 IPC is converted under Section 326 IPC with a sentence of the period already undergone by the appellant.
21. The appellant is directed to be released forthwith from the jail, if not required or detained in any other case.
22. This appeal is partially allowed.
23. Let a copy of this judgment be dispatched to the Superintendent of the concerned jail for record and compliance.
24. Let the records of this appeal be return to the trial Court forthwith.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

Sunilkumar/-

AFR/NAFR	NAFR
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