

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.145 of 2017

Arising Out of PS. Case No.-92 Year-2012 Thana- CHAINPUR District- Kaimur (Bhabua)

Ashok Bind Son of Late Munni Bind, Resident of Village- Jarma Pur, P.S. Chainpur, District- Kaimur at Bhabua.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Vikram Deo Singh, Advocate
Mr. Sadanand Roy, Advocate
Mr. Shankar Kumar, Advocate
For the Respondent : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 17-01-2023

The appellant has preferred this appeal under Section 374(2) of the Cr.P.C. putting to challenge the judgment of conviction dated 06.12.2016 and order of sentence dated 12.12.2016/13.12.2016, passed by the learned Additional Sessions Judge- 6th , Bhabua in Sessions Case No. 18 of 2013, Trial No. 116 of 2014 arising out of Chainpur P.S. Case No. 92 of 2012, whereby the sole appellant has been convicted and sentenced as under:-

Convicted under Sections	Sentence		
	Imprisonment	Fine(Rs.)	In default of fine
302 of the Indian Penal	R.I. for Life	25,000/-	R.I. for six months



Code			
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2. We have heard Mr. Vikram Deo Singh, learned counsel appearing on behalf of the appellant and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

3. A *fardbeyan* of the informant (PW-3), recorded at 09:00 AM on 14.06.2012 by the Sub-Inspector of Police of Chainpur Police Station is the basis for registration of Chainpur P.S. Case No. 92 of 2012 on 14.06.2012. It is the prosecution's case, as disclosed by the informant, that at 07:00 AM on 14.06.2012, when the informant was preparing meal inside the house and her husband (the deceased) was ready to leave the house with his *Rikshaw*, the appellant and co-accused Ramdhyan Bind started abusing him in connection with an existing land dispute. When the deceased forbade them from doing so, the appellant Ashok Bind, co-accused Ramdhyan Bind and Guddu Bind started assaulting the deceased. The appellant is said to have assaulted the deceased with *ballam*, which he was carrying, in his lumbar region whereupon he fell down. Co-accused Guddu Bind assaulted the informant with *lathi*. It is noteworthy that in the FIR there was no specific allegation that co-accused Ramdhyan Bind and Guddu Bind had also assaulted the deceased with *lathi*.

4. The police, upon completion of investigation, submitted its chargesheet, whereupon cognizance was taken of the



offences punishable under Sections 341, 323 and 302 read with 34 of the Indian Penal Code by an order dated 20.04.2012. The case was subsequently committed to the court of Sessions for trial whereafter charges were framed against this appellant and co-accused Ramdhyan Bind for commission of the offences punishable under Sections 302/34, 307/34 and 307 of the Indian Penal Code. At the trial, altogether 10 witnesses came to be examined including the informant (PW-3), I.O. (PW-5), the doctor, who had conducted the *postmortem* examination (PW-8), and the Doctors who had prepared the injury report of the injuries on the persons of the informant and the injured Ramawati Devi as P.Ws 9 and 10 respectively. P.Ws 4, 6 and 7 came to be declared hostile at the instance of the prosecution.

5. Based on the appreciation of evidence adduced at the trial, the trial court by its impugned judgment of conviction dated 06.12.2016 has acquitted the co-accused Ramdhyan Bind and Guddu Bind giving them benefit of doubt. The appellant, however, has been convicted of the offence punishable under Section 302 of the Indian Penal Code, as has been noted at the very outset.

6. Assailing the impugned judgment of conviction recorded by the trial court, Mr. Vikram Deo Singh, learned counsel appearing on behalf of the appellant has submitted that if the evidence of the prosecution's witnesses are closely scrutinized, it can be easily inferred that none of them are the eye witnesses to



the occurrence. He has further submitted that based on same set of evidence, the trial court has considered it fit to acquit the co-accused Ramdhyan Bind and Guddu Bind, giving them benefit of doubt. In such circumstance, it was not just and proper on the part of the trial court to have convicted the appellant as the entire case of the prosecution was found to be doubtful to the trial court so far as the same related to the co-accused Ramdhyan Bind and Guddu Bind. He has submitted that as the prosecution failed to prove its case beyond all reasonable doubts at the trial, benefit of doubt ought to have been extended to the appellant also. He has further submitted that the prosecution miserably failed to prove the manner of occurrence. Further, the ocular evidence is not consistent with the medical evidence. In such view of the matter, he contends, the finding of conviction recorded by the trial court against the appellant is unsustainable and warrants interference by this Court.

7. He has made an alternative submission to contend that, in any view of the matter, if the evidence of all the prosecution's witnesses are treated to be correct, at the most an offence punishable under part-2 of Section 304 of the IPC can be said to have been established against the appellant. Referring to the evidence of the prosecution's witnesses, he has submitted that intention to kill, which is an essential ingredient to establish commission of an offence punishable under Section 302 of the



IPC, is absent, and therefore, the conviction recorded by the trial court for the offence punishable under the aforesaid Section is not sustainable.

8. Learned Additional Public Prosecutor appearing on behalf of the State, on the other hand, has submitted that the informant is an eye witness, who has fully supported the prosecution's case. She has submitted that other eye witnesses have also supported the prosecution's case to the extent it relates to the assault made by the appellant on the lumbar region of the deceased with *ballam*, which is a sharp cutting pointed weapon. She has submitted that the appellant cannot claim parity with the co-accused persons, who have been acquitted by the trial court, considering the nature of evidence regarding their alleged participation in the commission of the offence in the background of the nature of the *antemortem* injuries sustained by the deceased.

9. We have carefully perused the impugned judgment and order of the trial court. We have also perused the lower court's records including the oral evidence of the prosecution's witnesses and the documentary evidence brought on record by the prosecution. We have given our thoughtful consideration to the rival submissions made on behalf of the parties.

10. As has been noted above, the informant, in her *fardbeyan*, had stated that in the background of a land dispute between this appellant and the deceased, an altercation was going



on between them during the course of which Ramdhyan Bind (co-accused) and Guddu Bind (co-accused) were also abusing the deceased with the appellant. From the First Information Report itself, it is evident that she claimed to be an eye witness to the occurrence. In the FIR, she alleged that she had seen co-accused Guddu Bind and Ramdhyan Bind armed with *lathi*. As against appellant, she alleged that he gave the deceased a blow with *ballam* in his lumbar region. The informant had sustained injury in her head because of *lathi* blow given by the co-accused Guddu Bind. The injuries sustained by the informant has been proved by PW-9, Dr. Kumar Ganga Nand, by proving injury report of the informant, exhibited as Exhibit-5 at the trial. The informant is, thus, an injured witness to the occurrence, as claimed by her. It is noteworthy that in her evidence at the trial she narrated about the occurrence as was disclosed by her in her *fardbeyan*. She deposed, in her cross-examination, that she had rushed to the place of occurrence with her mother-in-law and her co-sister (*Jethani*, PW-2). Mother-in-law of the informant was not examined. However, PW-2 supported the specific case of the prosecution of having seen the occurrence of the appellant giving blow with *ballam* in the lumbar region of the deceased because of which he sustained such injury causing his death. A niece of the deceased Jira Devi (PW-1) has also claimed to be an eye witness to the occurrence, who, too, has supported the prosecution's case that the appellant had



assaulted the deceased with *ballam*. With all fairness to learned counsel for the appellant, we must not miss at this juncture to mention that it has been argued by him that evidence of PW-1 is not reliable inasmuch as according to the evidence of PW-3, the informant and no one other than her mother-in-law and co-sister were present at the place of occurrence when the occurrence had taken place.

11. The *postmortem* was conducted on the very day of occurrence i.e. 14.06.2012. The doctor (PW-8), proved the postmortem report to the following effect:-

“2. External Injury – (I) Lacerated wound left parietal region 2” X depressed parietal bone deep.

(II) Sharp cut penetrating wound over left lateral side adjacent to the anterior axillary gland at the level of 5th and 6th rib 5th rib size about 2 ½ “x ½” chest cavity deep incised wound.

3. On dissection – Depressed fracture of left parietal bone of skull. Brain matter underneath lacerated meninges also lacerated. Dark blood collected in parietal cavity.

4. Neck – N A D

5. Chest – 5th and 6th rib of left side of chest fractured. Left pleura and pericardium and heart penetrating wound present. Thoracic cavity contain huge dark blood and clot present. Right pleura and lung intact and pale.



6. Abdomen – Stomach empty. Small intestine contains liquid and gas. Large intestine contains faeces and gas. Liver, spleen and both kidneys intact and pale. Urinary bladder contain about 50 m.l. of urine.

7. Opinion – Above mentioned injuries are ante mortem in nature. Injury no. 1 is caused by hard and blunt substance whereas injury no. 2 is caused by sharp cutting penetrating object.

8. Cause of death – Haemorrhage and shock as resulting of above mentioned injuries.

9. Time elapsed between death and autopsy within 6 to 12 hours.

10. This P.M. report is of Chainpur P.S. Case No. 92 of 2012. This report is in my pen and signature. This is exhibited as 4.”

12. During the course of cross-examination, PW-8 opined that the death was caused due to both the injuries. However, referring to the injury no. 1, PW-8 opined that the same might occurred on having fallen from a higher place on brick. On careful scrutiny of the depositions of the prosecution's witnesses, particularly, PW-2 and PW-3, we are of the opinion, that they appear to be truthful and their evidence does not suffer from any kind of inconsistency. Their depositions stand corroborated by the *postmortem* report, which has been proved by the doctor (PW-8). The injury, on the person of the informant sustained during the



occurrence, has also been proved. In such view of the matter, in our opinion, the prosecution was able to establish beyond doubt before the trial court that the deceased died because of the injury caused by the appellant with *ballam* in the lumbar region of the deceased.

13. In such circumstance, the only question, which requires to be addressed by this Court in the present appeal, is, in the facts and circumstances of the case, as to whether the appellant's conviction for the offence punishable under Section 302 of the IPC, as recorded by the trial court, is justified or not. This aspect requires to be addressed in the light of the alternative submission made on behalf of the appellant, as noted above. To address the said issue, we need to take note of the definition of murder under Section 300 of the IPC, which is punishable under Section 302 thereof and reads as under:-

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—



3rdly.—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, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

14. Section 304 of the IPC provides for punishment for culpable homicide not amounting to murder and reads thus: -

—Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.



15. An intention to cause death can be gathered from the act of the person as proved at the trial. An intention to cause death was there or not may be culled out from the facts and circumstances emerging from the evidence adduced at the trial. In the present case, we notice, based on the evidence of the prosecution's witnesses, that at the time of occurrence, the appellant was carrying a *ballam* with him. There was some altercation going on between the appellant and the deceased. The occurrence appears to have taken place in the heat of the moment. The appellant is said to have given one blow with *ballam*, which hit the left side of the chest of the deceased. There was no repetition of blow. Had there been any intention of the appellant to cause death in all probability, he could have repeated the blow.

16. A murder is a culpable homicide, if it satisfies either of the four requirements mentioned under Section 300 of the IPC. Three, out of the four conditions, require existence of “intention of causing death” or “intention of causing such bodily injury as the offenders knows to be likely to cause death” or “intention of causing bodily injury to any person and bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death.” We do hold without any demur, based on prosecution's evidence, that the element of intention to cause death is absent in the present case. The fourth circumstance, when a culpable homicide amounts to murder is, when the person committing the



act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. In our considered view, the present case does not fall under the fourth circumstance of Section 300 of the Indian Penal Code. Whether an act of a person amounting to culpable homicide is murder or the same is a culpable homicide not amounting to murder within the meaning of Section 304 of the Indian Penal Code will depend upon the facts and circumstances of each case. In the present case, we notice that the assault was made on the spur of the moment without any premeditation. In such view of the matter, in our considered opinion, the conviction of the appellant deserves to be altered from Section 302 of the Indian Penal Code to Section 304 Part II thereof.

17. The maximum term of imprisonment prescribed for commission of offence punishable under Section 304 Part II of the IPC is 10 years. The appellant's sentence is modified accordingly and stands sentenced to imprisonment for a term of ten years with fine of Rs. 25,000/-. The appellant is in custody since 21.6.2012. He has, thus, undergone the maximum period of sentence prescribed under Section 304 Part II of the IPC. Accordingly, the appellant is directed to be set at liberty forthwith, if not required in any other case.



18. The appeal is partly allowed.

(Chakradhari Sharan Singh, J)

(Rajesh Kumar Verma, J)

gauravkr/Nitesh-

AFR/NAFR	NAFR
CAV DATE	NA
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