

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.426 of 2006

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Ram Dular Singh, S/o Late Kanhai Singh, Resident of Village- Chabara, P.S.-
Adhaura, District, Kaimur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Prabhakar Singh, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 02-04-2024

We have heard Mr. Prabhakar Singh, the
learned Advocate for the appellant/Ram Dular Singh and
the learned APP for the State.

2. The appellant has been convicted under
Sections 302/34 of the Indian Penal Code *vide*
judgment dated 27.02.2006, passed by the learned



Additional Sessions Judge, F.T.C No. II, Kaimur at Bhabua in Sessions Trial No. 76 of 2003 / 245 of 2004, arising out of Adhaura P.S. Case No. 11 of 2002. By separate order dated 27.02.2006, he has been sentenced to undergo R.I. for life, to pay a fine of Rs. 3,000/- and in default of payment of fine, to further suffer R.I. for three months.

3. The FIR has been lodged by Ram Nagina Singh (P.W. 2), who is the son of the deceased. He has alleged that on 10.06.2002, his father along with other villagers were attempting to remove the silt from the village well because in the summer season, the water level had gone down and the villagers were finding it difficult to get potable water from the same very well. This was objected to by the appellant and his brother/Lallu Rai (since dead). Because of the protest by the appellant and his brother, the villagers left the work and went back to their respective houses. Thereafter, the appellant and his brother again started filling the



well with the silt which had been removed. On seeing this, the father of P.W.2 tried to reason out with the appellant and his brother, but they got furious.

4. Co-accused/Lallu Rai (since dead) exhorted his brother/appellant to kill the father of the informant. On such orders, the appellant is said to have assaulted the deceased by means of *lathi* on his head, as a result of which he fell down on the ground injured. He became unconscious immediately. Thereafter, Lallu Rai assaulted his father on his neck and elbow.

5. P.W.2 went to the rescue of his father and pleaded with the appellant and his brother. Anyhow, he could convince the appellant and his brother not to assault his father any further.

6. The father of P.W. 2 was brought home with the help of villagers. In the evening, he died. Because of lack of communication facilities, the FIR was lodged on 11.06.2002 at about 08:15 P.M. at Adhaura



Police Station.

7. On the afore-noted *fardbeyan* of P.W. 2, Adhaura P.S. Case No. 11 of 2002 dated 11.06.2002 was registered for investigation for offences under Sections 302/34 of the IPC.

8. The police after investigation submitted charge-sheet against both the brothers including the appellant and they were put on Trial. The Trial Court, after having examined nine witnesses on behalf of the prosecution and two on behalf of the defence, convicted and sentenced the appellant as aforesaid.

9. It may be necessary here to recall that along with the appellant, his brother/Late Lallu Rai also was convicted. In fact, he had preferred an appeal also *vide* Cr. Appeal (DB) No. 346 of 2006. During the pendency of the appeal, Lallu Rai died and, therefore, his case stood abated.

10. Most of the witnesses though supported



the prosecution case but did not claim to have seen the actual part of the assault.

11. Shanti Devi (wife of the informant and daughter of the deceased) did not support the prosecution case and she was declared hostile.

12. P.W. 2, though supported the prosecution version in its entirety but in his cross-examination, he has stated that he had himself not seen the occurrence and had reported the matter to the police on hearsay information of the villagers.

13. Kabutari Devi (P.W. 3), who is the wife of the deceased, has also supported the prosecution case but has declared before the Trial Court that because of her poor eye sight, she cannot see anything beyond few meters. She had learnt that the appellant and his brother had assaulted her husband, as a result of which he had died.

14. The grandson of the deceased, viz.,



Laxmi Singh has also supported the prosecution version but without claiming to be an eyewitness to the occurrence.

15. Similar is the situation with other witnesses, viz., Rajendra Singh, another son of the deceased (P.W. 5), Ram Lakhan Singh (P.W. 6), Agunu Singh @ Fagunu Singh (P.W. 7) and Rameshwar Singh (P.W. 8). They too have supported the prosecution case but without claiming to be the eyewitnesses of the occurrence.

16. This takes us to the deposition of the Doctor, viz., Dr. Kaushal Kishore Prasad Srivastava (P.W. 9) who had conducted the post-mortem examination. The post-mortem examination on the dead-body was performed on 12.06.2002 at about 07:00 A.M. The Doctor had found two bruises on the person of the deceased with swelling over shoulder and the elbow joint. The third injury, which proved to be fatal, was a lacerated wound over the right fronto-



parietal region of skull of the dimension of 7' X 2½'. It was bone deep. On dissection, blood vessels of the brain, brain matter and meninges were found to be lacerated. There was contusion all around. The injuries were reported to be ante-mortem in nature, caused by hard and blunt substance. In the opinion of the Doctor (P.W. 9), death was due to head injury which had caused hemorrhage and shock due to laceration of brain. The time fixed for death was placed between 36 to 48 hours.

17. This is in complete sync with the time of the death of the deceased. The occurrence had taken place on 10.06.2002, sometimes in the evening at about 06:00 P.M. Later, the deceased, while he was still surviving, was brought back home where he died.

18. The FIR was lodged on the next day at 08:15 P.M.

19. On the next day of lodging of the FIR,



i.e., on 12.06.2002, post-mortem examination was conducted at 07:00 A.M. Thus, the assessment of the Doctor with respect to the time of the occurrence is absolutely correct. The post-mortem report and the deposition of P.W. 9 further confirm that the death was homicidal and caused by attack on the head of the deceased.

20. This attack is attributed to the appellant and his brother. In fact, the first attack was made by the appellant only, on the orders of co-convict/Lallu Rai, who died during the pendency of the appeal.

21. Thus, the injury on the fronto-parietal region of the deceased is directly attributable to the appellant.

22. The two defence witnesses have stated before the Trial Court that while cleaning the silt of the village well, the deceased fell down, as a result of which



he received injuries. Those statements do not appear to be correct.

23. What appears from the deposition of the witnesses is that the appellant and his brother did not want the silt of the well to be removed by the villagers. What could have been the intention of the appellant and his brother, remains unknown.

24. Since the appellant also resided in the same village, he too would have needed potable water for which desilting exercise was being carried out by the villagers. Nonetheless, as the prosecution story goes, because of the protest of the appellant and his brother, the villagers stopped removing the silt. The matter did not rest there. The appellant and his brother again tried to fill up the taken out silt in the well and when that was objected to by the deceased, he was attacked.

25. The question now is whether the appellant could be attributed with the intention of



causing the death of the deceased or of causing such bodily injury on him which would have, in ordinary course of nature, caused his death.

26. From the narration of events, two things appear to be very clear. There was no personal enmity between the appellant and the deceased. The attack was made only when the deceased tried to reason out with the appellant for not filling up the village well. There does not appear to be any pre-meditation or preparation for attacking the deceased. The deceased was around eighty years of age.

27. But the appellant ought to have known that at that age, a person is fragile enough, not to withstand any such assault on him.

28. Nonetheless, so far as intention is concerned, we do not find from the surrounding circumstances that there had been any intention of causing the death of the deceased. There was no



repetition of blows.

29. Had the appellant along with his brother intended to kill somebody, the target was P.W. 2 (informant) or other villagers who had taken part in removing the silt from the village-well. The appellant and his brother got flared up when the deceased wanted to reason out with them. However, he cannot escape the liability of having the knowledge that such assault might lead to the death of the deceased.

30. Assaulting on head pre-supposes that there is a knowledge that there could be injury which might prove fatal.

31. We have also taken notice of the fact that all the witnesses have spoken about their having learnt from the villagers who had seen the occurrence. All the witnesses reached the place of occurrence after the assault was over. The first one to reach was the informant, who himself had not seen the actual part of



the assault.

32. That apart, we have also found that the Investigating Officer has not been examined nor any explanation has been offered for his non-examination. This has prejudiced the case of the appellant in so far as there is nothing on record to assess the embellishments made by the witnesses during Trial.

33. Be that as it may, since the disclosure to P.W. 9 and others by the villagers who had seen the occurrence was contemporaneous with the assault, the same is admissible in evidence. The Trial Court has rightly accepted such evidence for convicting the appellant. But we find that since the attack was without an intention of causing death but surely with the knowledge that it would have caused such injury which might result in death, the appellant cannot escape the liability under Section 304 Part-II of the IPC for manslaughter and not murder.



34. Considering the afore-noted aspect of the matter and also taking into account that the occurrence is of the year 2002, we convert the conviction of the appellant under Section 302 to one under Section 304 Part-II of the IPC.

35. It appears from the records that the appellant was released on bail after having remained in jail for about five and a half years. Under such circumstances, we find that if the sentence of the appellant is reduced to the period of custody which he has already undergone, it would sufficiently meet the ends of justice.

36. We order accordingly.

37. The conviction of the appellant/Ram Dular Singh is converted into one under Section 304 Part-II of the IPC and the sentence is modified to the period of custody that he has already served.

38. The appeal stands partially allowed.



39. Since the appellant has already served the sentence, his liabilities under the bail bonds are cancelled.

40. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

41. The records of this case be returned to the Trial Court forthwith.

42. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Khatim Reza, J)

Sauravkrsinha/
Praveen-II-

AFR/NAFR	NAFR
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