

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.597 of 2004

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Rajendra Mahto, s/o Sibal Mahto, resident of Kaligarhi, P.S.-Katoriya,
District-Banka

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ajay Mukherjee, Advocate
	:	Mr.Vikash Kumar Nigam, Advocate
For the Respondent/s	:	Mr.Anand Mohan Prasad Mehta, APP

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 17-09-2025

1. This appeal is arising out of the judgment of conviction dated 27.08.2004 on the file of Additional District & Sessions Judge, Fast Track Court, Banka in Sessions Trial No. 257/1984 (Arising out of GR No. 68/84) whereby and whereunder the appellant was convicted for the offence punishable under Section 304 of the Indian Penal Code ie. culpable homicide not amounting to murder and was sentenced to undergo rigorous imprisonment for a period of seven years. Further, the accused Mr.Shiv Lal Mahto was found guilty for the offence punishable under Section 323 of the Indian Penal



Code. However, Shiv Lal Mahto was released on admonition.

2. Heard Shri Vikash Kumar Nigam, Learned counsel for the appellant and Shri Anand Mohan Mehta, Learned Additional Public Prosecutor for the State. Perused the records.

3. The case of the prosecution as culled out from the fardbeyan is that the buffaloes of the informant and Bhaglu Mahto strayed in the *Bahiyar* of the accused persons on 14.01.1984. It is alleged that after coming to know about missing buffaloes, the informant/PW-3, the deceased and Naresh Mahto/PW-1 went in search of the buffaloes on 15.01.1984 and reached the place of occurrence at 6.00 A.M. and they found the buffaloes in the fields of the appellant. While they were about to bring back their buffaloes the accused Shiv Lal Mahto ordered his sons to kill the PW-1, PW-3 and the deceased on that Sukhdeo Mahto and Rajendra Mahto armed with axe and lathi started giving blows as a result the brother of the informant namely Dhathul Mahto fell down and died on the spot. It is further alleged that



Bhaglu Mahto/PW-2 came to rescue Dhathul Mahto (deceased) and he was also beaten by Shiv Lal Mahto with a lathi. On witnessing the said incident, the informant made hue and cry rushed to his village, came back along with Baiju Mahto and Naresh Mahto. The informant/PW-3 went to the Police Station and took the police to the place of incident and later gave his statement i.e. the fardbeyan. Later, the injured/PW-2/Bhaglu Matho was taken to his house and deceased was sent to government hospital at Banka. Basing on the fardbeyan of the informant/PW-3, a case was registered against the appellant and others for the offence punishable under Sections 302, 323 r/w section 34 of the Indian Penal Code. The Police investigated the case and chargesheet was laid against the appellant and Shiv Lal Mahto for the offences punishable under Sections 302 r/w 34 and Section 323 of the Indian Penal Code. The Sub-Divisional Judicial Magistrate, Banka took cognizance against the accused for the offences punishable under Sections 302, 325, 323 r/w section



34 of the Indian Penal Code on 06.04.1984 and later committed it, to the Court of Sessions.

4. The trial Court framed charges against the the appellant and other accused Shiv Lal Mahto and Sukhdeo Mahto for the offence punishable under Section 302 r/w 34 and section 323 of the Indian Penal Code. The charges were read over and explained to the accused for which they pleaded not guilty and claimed to be tried. During the course of trial, the prosecution has examined three witnesses i.e. PWs-1, 2 and 3. No documents were marked through these witnesses. The details are as follows:-

PW-1	Naresh Mahto	Eye-witness
PW-2	Bhaglu Mahto	Injured/brother of the deceased
PW-3	Gokul Mahto	Informant

5. It is pertinent to mention the list of witnesses appended along with the chargesheet are six in number including PWs-1 to 3. Baiju Mahto who is arrayed as List of witness No. 4, the Doctor who is alleged to have conducted postmortem of deceased Dhathul Mahto and the investigating officer were not examined before the Court.



6. It is relevant to mention that original fardbeyan is not before the Court and however, the contents of the fardbeyan formed the later part of the FIR. The Signature of the informant on the FIR was marked as Exhibit-1. However, the evidence of PW-3 do not disclose that Exhibit-1 was marked through him.

7. This Court is unable to understand as to how the signature of the informant was got incorporated on the FIR which is unknown to law. Even in the absence of the incriminating evidence, the Court has examined the accused under Section 313 of the Cr.P.C. The appellant along with the other accused have denied the evidence of the prosecution witnesses and pleaded innocence.

8. The points for determination in this appeal are that:-

(i) Whether the trial Court has properly appreciated the evidence on record and convicted the appellant and whether there is no any irregularity in the judgment passed by the trial Court?



(ii) Whether the prosecution is able to prove the guilt of the appellant for the offence punishable under Section 304 of the Indian Penal Code beyond reasonable doubt?

9. It is necessary to reappreciate the entire evidence (oral and documentary) on record to come to a conclusion, to determine the points framed in the appeal.

10. In precise, the case of the prosecution is that the buffaloes of the informant were found missing on 14.01.1984 and informant along with PWs-1 and 2 went in search of the buffaloes to the forest area which lies in between Kaligarhi and Kolhasar villages. It is evident from the evidence of PW-2 that the place of occurrence is about 02 Kms. away from his house. During the course of search, they found the buffaloes in the field of Shiv Lal Mahto and when the informant, PW-1 and PW-2 took their buffaloes towards village, Shiv Lal Mahto ordered Sukhdeo Mahto and Rajendra Mahto to assault them, on that Sukhdeo Mahto hit Dhathul Mahto on his head and hand with tangi (Axe). Further, Shiv Lal



Mahto hit him with lathi. PW-2/Bhaglu Mahto who is the brother of Dhathul Mahto tried to save him, Sukhdeo Mahto, Shiv Lal Mahto and the appellant hit him at his hands and legs with lathi.

11. It is the specific evidence of PWs-1 and 2 that the deceased initially sustained injuries, on his forehead, temple and hand from the blunt portion of the Tangi (Axe) which resulted the death of the deceased on the spot. It is also testified by PWs-1 to 3 that they have witnessed the incident and in the said incident, PW-2 also sustained injuries.

12. It is urged by the Learned counsel for the appellant that these witnesses have never witnessed the incident, though they are alleged as eye-witnesses of the incident and their evidence is inconsistent and contradicting with each other.

13. On the other hand, the Learned Additional Public Prosecutor for the State contended that the evidence of PWs-1 and 3 (the eye-witness) inspires the confidence of the Court and therefore, there is no error or irregularity in the judgment of the



trial Court and prayed to confirm the judgment of the trial Court.

14. On perusal of the entire evidence, it is evident that the incident took place on 14.01.1984 at 6.00 am that too in the winter season, in the State of Bihar. It is the specific evidence of witnesses PWs-1 to 3 that they reached the scene of offence which is 02 Kms, away from their house at 6.00 A.M. and found the buffaloes grazing in the field of one Shiv Lal Mahto.

15. Section 304 of the Indian Penal Code reads as follows:-

“304. Punishment for culpable homicide not amounting to murder.—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.”

The abovesaid section deals with punishment for culpable homicide not amounting to murder.

16. It is relevant to discuss section 299 of the Indian Penal Code which deals with the culpable homicide which reads as follows:-

“299. Culpable homicide.—

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such



act to cause death, commits the offence of culpable homicide.

Explanation 1.—A person who causes bodily injury, to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though



the child may not have breathed or been completely born.”

In a case of culpable homicide it is for the prosecution to prove that there is a homicide.

17. Homicide is unlawful killing of a person and compassing acts ranging from premeditated murder to unintentional killings like man slaughter. The term is broad including intentional acts with or without a plan, and accidental deaths, resulting from negligence or recklessness. While “homicide” is a general act of one person causing another’s death, the specific legal classification (example murder, man slaughter) depends on the intent and circumstances of the fact.

18. The key aspect of homicide should be deliberate act of causing death, though the level of planning can vary. It can also be a result of unintentional killing where the intention is missing.

19. The cardinal principles of criminal law are that :-

(i) Prosecution has to prove the guilt of the accused beyond reasonable doubt.



(ii) The accused shall be presumed innocent until the guilt is proven.

(iii) It is for the prosecution to connect the crime with that of the accused.

20. In the present case, except the oral evidence of PWs-1 to 3, there is no other evidence before the Court that a culpable homicide was committed by the appellant and other accused which resulted the death of the deceased i.e. Dhathul Mahto. There is no medical evidence before the Court as to the injuries sustained by the deceased/Dhathul Mahto. Further, the weapons which caused injuries to the deceased were not produced before the trial Court. The prosecution has miserably failed to bring on record the evidence of the doctor who opined that the death was not natural but was a homicide. Furthermore, there is no evidence on record as to the manner of investigation done in this case. The place of occurrence is not established. The motive for the offence or the intention or non-intention for doing an act, which resulted the death of the deceased, is also not a part



of the evidence. In the absence of any evidence of culpable homicide, punishment under Section 304 of the Indian Penal Code, does not arises.

21. It is also the evidence of PW-2 that he got injured, but neither the injury report of PW-2 nor the doctor who alleged to have treated PW-2 was also not examined before the Court. The oral evidence of PW-2 disclose that he took treatment at government hospital, Banka for a period of eight days. The prosecution has miserably failed to prove that death of the deceased is homicide or culpable homicide or of the assault which alleged to have taken place against PW-2 in the said incident. Even in absence of proper evidence, the trial Court has convicted the appellant. The cardinal principles of criminal trial were not adhered by the trial Court, while convicting the appellant. Therefore, it is a fit case to set aside the conviction and sentence imposed against the appellant herein.

22. At this juncture, it is relevant to cite judgment of the Apex Court passed in **Chunni Bai vs. State of Chhattisgarh** in **Special Leave**



Petition (Crl.) No. 13119 of 2024, wherein their Lordships have held at para 17 as follows:-

“Once homicide is proved being committed by the appellant, the next consideration will be whether such homicide was “culpable homicide” within the meaning of Section 299 IPC. If it is found to be “culpable homicide”, further consideration will be whether it is “culpable homicide not amounting to murder” which is punishable under Section 304 IPC or “murder” as defined under Section 300 IPC, punishable under Section 302 IPC, under which the appellant has been convicted and punished by the Trial Court which was upheld by the High Court.”

The judgment further discusses about the difference between “murder” and “culpable homicide not amounting to murder” along with the citations of the Apex Court. Their Lordships have also held that this is for the prosecution to prove the offence against the appellant beyond reasonable doubt. There is no material/evidence before the trial Court as to the cause of the death of the deceased or of the medical opinion or of the postmortem report. In



the absence of incriminating material/evidence against the appellant, the trial Court ought not to have convicted the appellant for the offence punishable under Section 304 IPC i.e. culpable homicide not amounting to murder.

23. It is the specific contention of the Learned counsel for the appellant that the alleged eye-witnesses and the injured have not witnessed the incident at all and a false case has been foisted against the appellant and others, due to rivalry and enmity between the parties.

24. This Court also finds the arguments of the Learned counsel for the appellant has force because in the winter season in the State of Bihar the temperature are very low and people do not even come out of the house, in the early morning. It might take minimum one hour to reach the place of occurrence from the house of the witnesses by walk which is 02 Kms. away. The evidence of PWs-1 to 3 clearly disclose that they have gone in search of buffaloes by walk, and they woke up at 5.00 A.M. It has to be borne in mind that in winter season, the



sunlight would not be there prior to 7.00 A.M. especially in the State of Bihar. Furthermore, the alleged incident took place at 6.00 A.M. in the morning however the FIR disclose that report was lodged at 3.30 P.M. The delay in lodging the report after 9^{1/2} hours is not at all explained by any of the witnesses. If at all, the alleged incident took place in the presence of PWs-1 to 3, they ought to have explained the delay in reaching the Police Station. Record reveals that the alleged incident took place on 14.01.1984 and the criminal trial was taken after 12^{1/2} years. The judgment was rendered on 27.08.2004 and after 21 long years the appeal was heard. Keeping in mind the mental trauma underwent by the appellant for having the justice denied for so long years, and also considering the fact that there is no sufficient material on record, this Court considers that the trial Court has committed illegality and error in convicting the appellants for the offence punishable under Section 304 IPC.



25. In result the appeal is allowed setting the judgment of conviction dated 27.08.2004 passed by the Additional District & Sessions Judge, Fast Track Court, Banka in Sessions Trial No. 257/1984 (arising out of GR No. 68/84).

26. The record reveals that the appellant was enlarged on bail on 30.06.2005, therefore, the bail bond of appellant shall stand cancelled.

(G. Anupama Chakravarthy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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