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Court : Patna

Decided On : Feb-18-2000

Judge : D.P.S. Choudhary, J.

Appeal No. : Cr. Appl. No. 240 of 1996 (SJ)

Appellant : Arjun Rai

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

D.P.S. Choudhary, J.

1. This appeal has been preferred by the sole appellant Arjun Rai against the judgment and order dated 17th of July, 1996 passed by the 1st Additional Sessions Judge, Nawadah in Sessions Trial No. 271 of 1994/33 of 1994 convicting the appellant under Section 304 (Part II) of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentenced him to undergo RI for 10 years.

2. The prosecution case in brief is that in his fardbeyan (Ext. 4), the informant Etwari Rai (PW-5) recorded by SI Binod Kumar (PW-6) on 22.2.1994 at Primary Health Centre, Kawakol, district Nawadah stated that on this day at about 4.00 p.m. accused Arjun Rai was quarrelling with his father for the sake of getting

wages of Kahari in the marriage ceremony of Basudeo Rai. In the meantime, the uncle of accused Arjun Rai intervened and asked him not to quarrel with his father. Thereupon, Arjun Rai gave a Tangi blow on the head of Mahadeo Rai causing serious injuries. The injured was removed to Primary Health Centre, from where he was referred to Sadar Hospital, Nawadah but he succumbed to the injuries. On the basis of the fardbeyan (Ext. 4) FIR (Ext. 6) was drawn up. After commitment the trial proceeded in the Court below. The case was charged under Section 302, I.P.C. but the trial Court convicted him for the offence under Section 304 (Part II), I.P.C. and sentenced him accordingly.

3. The case of the defence is that he has been falsely implicated in this case because of family dispute.

4. The prosecution in order to prove its case, has examined six witnesses, including two Doctors, namely, PW-4 (Dr. Jai Shankar Prasad) and PW-3 (Dr. M.N. Singh). PW-4 has attended the injured and after examining him gave the injury report (Ext. 3). According to this Doctor, he examined the injured Mahadeo Rai on 22.2.1994 at 11.30 p.m. and found lacerated wound over central vertex of head in the mid-line measuring 2' x 1' x scalp deep. In the opinion of the Doctor, the injuries were grievous in nature caused by hard blunt substance, such as blunt portion to Tangi. The age of injury was within six hours. After examination by this Doctor the injured was referred to Nawadah Hospital for further treatment where he died. PW-3 (Dr. M.N. Singh) conducted the autopsy on deceased Mahadeo Rai and found the following external injuries:

(i) One lacerated wound on the right mid parietal region of scalp measuring 2.1/2' x 1/2' x bone and brain matter deep.

(ii) Multiple bruise and haematoma on the frontal region of scalp varying from 1' x 3' and 2' to 2.1/2'.

(iii) Abrasion on the back of both elbow joints.

On dissection of skull doctor further found, big blood clot between skull and scalp extending from frontal to anterior half of the occipital region. There was widening of

the front parietal suture (bony joint) with oblique, triangular fracture of the right mid parietal region of the parietal bone. Blood clot on the surface and interior of the frontal and parietal lobe (brain part) of the brain. Other vesra of the body was found intact and pale. Stomach contained four ons fluid. Bladder was full.

In the opinion of the Doctor, the cause of death was haemorrhage and shock due to above, mentioned injuries caused by hard blunt substance, such as Tangi. Time elapsed since death 6 to 30 hours. His report is Ext. 2.

6. On the basis of the injury report and the post-mortem report (Exts. 2 and 3) and the evidence of the above-referred two Doctors (PWs. 3 and 4) it is clear that deceased had lacerated wound on his head which could have been caused by Tangi blow as opined by both the Doctors. The case of the prosecution is that appellatant has inflicted one Tangi Blow on the head of the deceased. In the opinion of the Doctor (PW-3), this injury was caused of his death.

7. The prosecution examined PW-1 (Mani Rai) and P.W-2 (Mathura Rai) as eye-witnesses of the occurrence, besides PW-5 (Etwari Rai) who is informant as well as eye-witness. PWs 1 and 2 deposed that on the date of occurrence at about 4.00 p.m. they had seen the accused quarrelling with his father Binod Rai. Deceased Mahadeo Rai who happens to be the uncle of the accused intervened. Thereupon accused-appellatant Arjun Rai gave Tangi blow on the head of the deceased who got injuries and thereafter removed to the local Doctor and thereafter to Nawadah Sadar Hospital, where he died. Both the witnesses stated that accused gave Tangi Blow from the blunt portion in the left side of the head of the deceased and he had given only one blow.

8. PW-5 (Etwari Rai), the informant supported the prosecution case and his fardbeyan and stated that when the accused was quarrelling with his father, deceased Mahadeo Rai intervened, thereupon the accused has given a Tangi blow from the blunt portion on the head of deceased Mahadeo Rai, who fell down and thereafter he removed to the hospital but thereafter he succumbed to the injuries. He categorically stated that the accused assaulted the deceased by the blunt portion of the Tangi and he gave only one blow.

9. PW-6 (the IO) visited the place of occurrence and stated that it is an open place in the village. He found nothing incriminating article like blunt or any other weapon at the place of occurrence. The IO has prepared the inquest report, in which it is mentioned that deceased was wearing Dhoti and Baniyan which was full of blood. The IO also searched the house of the accused but did not find any lethal weapon but he found the accused absconding. On the basis of the evidence discussed above the trial Court has come to the finding that prosecution has been able to prove that accused-appellant inflicted a Tangi blow from its blunt portion on the head of the deceased who fell down and subsequently died in the hospital. The trial Court after discussing the evidence has come to the finding that appellant, has given only one blow of Tangi on the head of the deceased who was his uncle. There is no repetition of blow. As such, he has no intention to kill his uncle. The Court has also come to the conclusion that the occurrence took place without any malice and intention to commit the murder of the deceased. The offence took place as per the spur of the moment when the deceased intervened while the accused was quarrelling with his father. On the basis of these findings the trial Court instead of convicting the accused under Section 302, I.P.C. found him guilty under Section 304 (Part II), I.P.C. and convicted him accordingly.

10. The learned appellant's lawyer submitted that the IO (PW-6) when visited the place of occurrence did not find any blood mark nor he could recover the Tangi either from the place of occurrence or from the house of the accused. PWs 1 and 2 have stated that blood had fallen down on the ground. This finding of the IO creates a doubt whether the occurrence took place at the place alleged by the prosecution and whether the weapon used was Tangi belonging to the accused.

11. In reply the learned APP submitted that only one blow of Tangi was inflicted on the head of the deceased. The IO has found his clothes full of blood. Therefore, the major part of the blood was soaked with the clothes of the deceased and it is possible that only few drops of blood might have fallen down on the ground but by the time the IO visited the place of occurrence, they must have disappeared with the movement of the local people. However, this is no ground to disbelieve the entire, prosecution case and the testimony of the witnesses as discussed above.

12. From perusal of the evidence and after going through the documents as discussed above, I find that prosecution has been able to prove [he charge levelled against the accused-appellant beyond all reasonable doubts and the trial Court has rightly convicted the appellant under Section 304 (Part II), I.P.C.

13. It was submitted on behalf of the appellant that accused is in jail custody since 17.3.1994. He is a young person and without any intention to kill he has inflicted the Tangi blow on the head of his uncle on the spur of moment when he was quarrelling with his father. The occurrence took, place in the hit of anger and the injuries were not inflicted with any malice or with any intention to commit murder, as such, a lenient view may be taken and the period of sentence may be reduced to the period already undergone in custody.

14. Since the appellant has remained in jail custody for about six years, in the facts and circumstances of the case as referred above and considering the manner of occurrence the period of sentence of the appellant is reduced to the period already undergone in custody. The jail authority is directed to release the appellant forthwith, if not required in any other case.

15. With this modification in the judgment and order of the Court below the appeal is dismissed.