IN THE HIGH COURT OF JUDICATURE AT PATNA

Md. Aazam @ Azam

vs.

The State of Bihar

Criminal Appeal (DB) No. 132 of 2020

25 August 2023

(Hon'ble Mr. Justice Ashutosh Kumar &

Hon'ble Mr. Justice Alok Kumar Pandey)

Issue for Consideration

Whether the conviction of the appellant under Section 302 IPC was sustainable in law in light of the evidence on record?

Headnotes

Had the appellant intended to kill the deceased, he might have repeated the blow. The allegation which gets confirmed by the postmortem report is of giving one knife blow only. Thereafer, the knife was thrown by the appellant and he ran away. Appellant acted irresponsibly but, even in that fit of passion, knowing fully well the consequences of his act. Nonetheless, it would be too much to say that he intended to cause the death of the appellant. That nobody intervened or stopped the appellant further reflects that nobody had the idea that the fight would take such an ugly turn. Thus, it would not be too far off the line to presume that it was a general fight between two brothers over some issue which was not overtly known. (Page 9, 10, 11)

Appellant is not guilty of murder but of culpable homicide not amounting to murder, punishable under Section 304 of the I.P.C. (Page 12)

Case Law Cited

None cited in the judgment.

List of Acts

Indian Penal Code, 1860

List of Keywords

Culpable Homicide Not Amounting to Murder; Exception 4 to Section 300 IPC; Sudden Fight; Single Knife Blow; Contradictory Eyewitness Testimony; Provocation; Section 304 Part I; Sentence Reduction; Eyewitness Credibility; Close Relatives Dispute

Case Arising From

Judgment dated 11.12.2019 passed by the learned 1st Additional Sessions Judge, Araria in Sessions Trial No. 368 of 2017 / C.I.S. No. 368 of 2017

Appearances for Parties

For the Appellant: Mr. Anil Prasad Singh, Advocate

For the Respondent: Mr. Ajay Mishra, APP

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.132 of 2020
Arising Out of PS. Case No.-249 Year-2017 Thana- ARARIA District- Araria

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Md. Aazam @ Azam Son of Md. Rahman Resident of Village - Bochi, Ward No. 01 Ghurana Tola, Rampur Mohanpur East, P.S.- Araria (Bairgachhi), Distt - Araria.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Anil Prasad Singh, Adv.
For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 25-08-2023

Heard Mr. Anil Prasad Singh, the learned advocate for the appellant and Mr. Ajay Mishra for the State.

The appellant stands convicted under Section 302 of the Indian Penal Code vide judgment dated 11.12.2019 passed by the learned 1st Additional Sessions Judge, Araria in Sessions Trial No. 368 of 2017 / C.I.S. No. 368 of 2017 and by order dated 17.12.2019, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 50,000/- and in default of payment of fine,

to further suffer simple imprisonment for one year.

The appellant is alleged to have given a knife blow which hit the deceased in his chest leading to his death.

The appellant is the cousin of the deceased.

Bibi Nagina, the wife of the deceased, has lodged the F.I.R. on 17.04.2017 at her house at about 07:45 PM alleging that on the same day at about 4 o'clock in the evening, her husband (deceased) had left home for taking tea at the shop of co-accused Lazim (since acquitted). Shortly thereafter, a neighbour viz. Md. Nauman (PW-1) informed her that the appellant is fighting with her husband. On such information, she came running to the tea shop of Lazim where she found that her husband and the appellant were engaged in a scuffle. In her presence, the appellant is alleged to have taken out a knife from his pocket and hit her husband (deceased). This was witnesses by Md. Lazim and Md. Ishrail who did not do anything to stop the appellant from

committing the murder. After committing the aforenoted offence, the appellant along with Lazim and Ishrail ran away. Many persons of neighbourhood had arrived, who helped her in taking the deceased to the hospital but, the deceased died on the way. The reason ascribed for the appellant to kill the deceased was his opposition to the illegal acts of the appellant.

On the basis of the aforenoted *fardbeyan* statement of Bibi Nagina (PW 6), Araria (Bairgachhi) P.S. Case No. 249 of 2017 dated 17.04.2017 was registered for investigation for offences under Sections 302, 120B and 34 of the Indian Penal Code against the appellant and two others.

The Police submitted charge-sheet against three accused persons including the appellant and the case was tried. The Trial court, after examining seven witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid but, acquitted the two other accused persons namely Md. Lazim and Md.

Ishrail, both of whom had been running their respective tea shops near the place of occurrence.

Bibi Nagina (P.W. 6) has supported the prosecution case at the trial and has claimed to be the eye witness to the appellant having thrust a knife in the body of the deceased. She has also alleged that Md. Lazim and Ishrail (since acquitted) kept watching the occurrence and never intervened. For the first time, she stated before the Trial court that because of the deceased having forbade the appellant from smoking *Ganja*, the appellant started fighting with him and hit him with the knife.

About the source of information which made her go to the place of occurrence and be a witness to the murder of her husband, she has disclosed that Nauman (PW 1) had come in person and had told her about the appellant fighting with the deceased. She had seen the earlier part of the fight also because in her presence, the knife blow was given to the deceased. The deceased was

hit in his chest. She tied the wound of the deceased with a towel. She never informed the police about the occurrence as she became busy in taking the deceased for treatment to the hospital. She did not even pick up the weapon of assault which the appellant had thrown at the place of occurrence. When on way, the deceased died, she brought the dead-body to her home. Thereafter, the police had arrived at her home. The police had taken the blood stained clothes of the deceased but not of hers.

Nauman (P.W. 1), however, has some what different story to narrate. Though he has supported the prosecution case of the appellant having killed the deceased but has not claimed himself to be related to P.W.6. In fact, at the trial, he claimed to have called P.W.6 on telephone and only then she arrived at the P.O. He has also disclosed in his cross-examination that when P.W. 6, the wife of the deceased, came to the P.O., by that time, the deceased had already fallen on the ground and several persons had assembled there. The police had

not asked anything from him when he had come to the P.O.

If the deposition of P.W.1 is scrutinized with some circumspection, it would appear that P.W.6 might not have actually seen the attack. She has claimed to have learnt from Nauman (P.W.1) about the occurrence but if Nauman would have gone in person to P.W.6, perhaps he would also not be an eye witness to the occurrence. He only claims to have informed the P.W.6 about the fight on telephone.

The other witnesses, namely, Ahwal Ahmad (P.W. 2), who is the uncle of the deceased, Md. Farukh (P.W.3) and Shamshad/brother of the deceased (P.W.4) are only hearsay witnesses, who later came to learn that the deceased was given a knife blow by the appellant.

Md. Quasim (P.W.5) was present when the police had seized the weapon of assault viz. the knife and had prepared the seizure list. He had put his signature on the seizure list (Ext. 1).

The dead-body was put to postmortem examination by Dr. Rajesh Kumar (P.W.7) who had found one incised wound over the left side of chest of the dimension of 1" x 1/2" x cavity deep. The injury was found to have been caused by a sharp cutting weapon and the time fixed for death was 12 hours from the time of postmortem examination. The death was, in the opinion of P.W. 7, due to hemorrhage and shock as a result of the aforenoted injury.

Rakesh Prasad/I.O. (P.W. 8) had arrested the appellant and had recorded his confession (Ext. 7). In his cross-examination, he has confirmed the fact that from the P.O., the knife used for committing the crime was seized but, he did not find any other incriminating article or circumstance at the P.O. Nothing was found to be destroyed at the tea shop to lend support to the fact that there was a full-fledged fight between the appellant and the deceased.

A conspectus of the entire evidence suggests

that the deceased was related to the appellant. The Trial court has rightly disbelieved the prosecution version of the other accused persons having conspired with the appellant to kill the deceased. The occurrence took place in evening hours in front of the tea shop of co-accused Lazim (since acquitted) who too was put on trial. There is no evidence whatsoever that the appellant was always insisting upon by the deceased not to smoke *Ganja*. For the first time and only through the mouth of P.W. 6 did this fact come to the fore that the reason for the fight between the appellant and the deceased was the deceased having forbade the appellant from smoking *Ganja*.

We have no idea whether the deceased was always being told by the appellant not to smoke *Ganja* or it was the solitary instance which irked the appellant so much that he started fighting with the deceased and also thrust a knife in his body. In fact, even the other witnesses including the brother of the deceased had no

clue about the reason for the fight before the deceased was hit by the knife. This, therefore, leads to the inference that it was perhaps the solitary instance when at a tea shop, the deceased, who is the cousin of the appellant, asked him not to smoke *Ganja*. This obviously cannot be called any provocation to commit a crime, much less sudden and grave provocation. The appellant cannot claim immunity on having committed the offence out of sudden and grave provocation.

We have also found from the evidence that several persons were taking tea at the shop of Md. Lazim. There was another tea shop situated near by. The fight appears to have continued for sometime or else P.W. 6 would not have got the time to come from her home to witness the fight or at best having seen the deceased having fallen down on the ground with knife injury.

That nobody intervened or stopped the appellant further reflects that nobody had the idea that

the fight would take such an ugly turn. Thus, it would not be too far off the line to presume that it was a general fight between two brothers over some issue which was not overtly known. The appellant was not carrying the knife in open. In fact, the allegation is that he took out the knife in a flash of tamper and used it for hitting the deceased. The onlookers thus cannot be said to have been frightened in coming forward to disengage the appellant and the deceased fighting with each other because of the fear of being hurt.

As noted above, the knife was concealed. This takes us to the manner of occurrence. In no time, the appellant took out the knife from his pocket and hit the deceased. We have noted that there was no intervention from any of the onlookers. Had the appellant intended to kill the deceased, he might have repeated the blow. The allegation which gets confirmed by the postmortem report is of giving one knife blow only. Thereafter, the knife was thrown by the appellant and he ran away, only to be

apprehended a short while thereafter.

Thus, the appellant acted irresponsibly but, even in that fit of passion, knowing fully well the consequences of his act. Nonetheless, it would be to much to say that he intended to cause the death of the appellant. The annoyance definitely was not so much as to kill the deceased. Any person would have the knowledge that a knife injury could be fatal. The part of the body where the deceased was hit was vital and such naivete cannot be attributed to the appellant that he did not know that such knife injury is likely to cause grievous bodily injury and perhaps death also.

Thus, we find that the appellant comes under Exception 4 to Section 300 of the IPC, which provides that culpable homicide is not murder if it is committed without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. There is one knife blow and the

appellant threw the knife on the ground and ran away.

We, therefore, find that the appellant is not guilty of murder but of culpable homicide not amounting to murder, punishable under Section 304 of the I.P.C.

However, we do reckon that the appellant may not have harboured the intention of causing death of the deceased but, surely of causing such bodily injury which is likely to cause death.

For these reasons, we find the conviction and sentence of the appellant under Section 302 IPC and the sentence of imprisonment of life to be bad in the eyes of law.

The same is, therefore, set aside.

The appellant is convicted for the offence under Section 304 IPC.

The appellant is the cousin of the deceased. There is no prior enmity. The act has been consummated without any depravity of cruelty.

We, therefore, are of the view that rigorous

imprisonment for ten year for the offence under section 304 (Part 1) of the IPC would be sufficient to meet the end of the justice.

We, therefore, modify the conviction of the appellant to Section 304 (Part 1) IPC and the sentence to be imposed upon him to be rigorous imprisonment for ten (10) years.

The fine of Rs. 50,000/- imposed by the Trial court is not required to be interfered with.

The appeal is thus partially allowed and the conviction and sentence are altered, as noted above.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	AFR
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