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RANJIT SARKAR

v.

STATE OF TRIPURA

(Criminal Appeal No. 1247 of 2015)

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SEPTEMBER 23, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Penal Code, 1860: s. 302 – Fatal injury on head – Conviction u/s.302 by courts below – On appeal, held: Evidence showed that the accused-appellant gave single blow on the head of the victim-deceased with full force which resulted in his death – The act on part of the appellant is covered by Part I of s.304 – Therefore, conviction of appellant u/s.302 is set aside and he is convicted u/s.304 Part I and sentenced to rigorous imprisonment for a period of 10 years.

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Disposing of the appeal, the Court

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HELD: 1. As per PW-15, the doctor, who conducted post mortem examination on the dead body of the victim-deceased, first four ante mortem injuries related to single injury. The first one is stitched wound. The second is haematoma on the deeper layer of scalp over right parietal region. The third injury also relates to the same as it discloses fracture on the depressed bone of the head on anterior part of right parietal bone. The fourth ante mortem injury also relates to above three injuries, which discloses subdural haemorrhage present over cerebral hemispheres. The only ante mortem injury No. 5 is actually the second injury which is an abrasion measuring 3cm x 2cm over the dorsum of left wrist joint. [Para 10] [796-E-G]

2. PW-2 did not state about more than one blow

given by the appellant on the head of the deceased with wooden file. As such, in substance the evidence on record suggests only one blow given by the appellant on the head of the deceased which appeared to have been given with full force. In these facts and circumstances, having re-assessed the depositions of witnesses and other evidence on record, the act on the part of the appellant is covered by Part I of Section 304 IPC. Therefore, the conviction and sentence under Section 302 IPC, awarded by the trial court and affirmed by the High Court is modified. Instead, the appellant is convicted under Section 304 Part-I, and sentenced to rigorous imprisonment for a period of ten years. [Paras 11, 12] [796-H, 797-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1247 of 2015

From the Judgment and Order dated 19.10.2012 of the High Court of Gauhati at Agartala Bench in Criminal Appeal No. 115 of 2008

Ms. Sangeeta Kumar, Vijay Kumar, Advs, for the Appellant.

Ms. N.S. Nappnal, Gopal Singh, Advs., for the Respondent.

The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. Leave granted.

2. This appeal is directed against judgment and order dated 19.10.2012, passed by Gauhati High Court in Criminal Appeal No. 115 of 2008 whereby said Court has affirmed the conviction and sentence recorded against the appellant, by the Additional Sessions Judge, West Tripura Khowai, in ST.

A 42 (ST/K) of 2008 in respect of offence punishable under Section 302 of Indian Penal Code (IPC).

3. We have heard learned counsel for the parties and perused the papers on record.

B 4. Prosecution story, in brief, is that on 17.06.2007 at about 10.00 a.m. an altercation took place between appellant Ranjit Sarkar and Anil Das (deceased) over draining out of rain water through paddy field in Village Tuichindrai. PW-1 Sabitri Das, PW-6 Rina Das and PW-11 Sumitra Das
C intervened in the quarrel between the two, and subsided the matter. At about 9.00 p.m. on the same day (17.06.2007), Anil Das accompanied by PW-2 Ajit Das, was returning from Tuichindrai market, and when they reached near the house of
D Ranjit Sarkar, he (Ranjit Sarkar) came from his house armed with wooden file and gave a severe blow on the head of Anil Das, as a result he got injured and fell down. PW-2 Ajit Das raised alarm and neighbours reached at the spot. The injured was immediately taken to Teliamura Hospital from where he
E was shifted to G.B. Hospital, but finally succumbed to his injuries on the next day. A First Information Report was lodged by PW-1 Sabitri Das with Police Station Teliamura which was registered as PS case No. 45 of 2007 relating to offence punishable under Sections 341/302 IPC. PW-16 S.I. Akhter
F Hossen investigated the crime. After taking the dead body in his possession, he got prepared the inquest report, through PW-14 A.S.I. Siba Prasad Sur. The dead body was sent in sealed condition for post mortem examination. The autopsy was conducted by PW-15 Dr. Ranjit Kumar Das on 18.6.2007,
G who recorded ante mortem injuries in the report (Ext. 5), and opined that the deceased had died of coma resulting from head injury caused by an impact of blunt object, sufficient to cause death in ordinary course of nature. After interrogating witnesses and on completion of investigation, charge sheet
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was filed by the Investigating Officer against the appellant before the Magistrate concerned. The case was committed to the Court of Sessions.

5. The Additional Sessions Judge, West Tripura, Khowai, after hearing the parties, framed charge in respect of offence punishable under Section 302 IPC against accused Ranjit Sarkar, who pleaded not guilty and claimed to be tried. On this prosecution got examined PW-1 Sabitri Das, PW-2 Ajit Das (eye witness), PW-3 Bimal Das, PW-4 Satish Sarkar, PW-5 Nirmal Sarkar, PW-6 Rina Das, PW-7 Uttam Das (all neighbours), PW-8 Suklal Malakar, PW-9 Mani Kanchan Chowdhary, PW-10 Dilip Sarkar, PW-11 Sumitra Das, PW-12 Sankar Das (neighbor), PW-13 Constable Kalidas Ghosh (who took the dead body for post mortem examination), PW-14 A.S.I. Sibaprasad Sur (who prepared the inquest report), PW-15 Dr. Ranjit Kumar Das (who conducted autopsy) and PW-16 S.I. Akhter Hossen (who investigated the crime).

6. Oral and documentary evidence appears to have been put to the accused Ranjit Sarkar under Section 313 of Code of Criminal Procedure, 1973, in reply to which he pleaded that the evidence against him is false, but adduced no evidence in his defence. The trial court after hearing the parties found that the charge of offence punishable under Section 302 IPC is sufficiently proved against the accused Ranjit Sarkar. Accordingly, he was convicted, and after further hearing, sentenced the convict to imprisonment for life and directed to pay fine of Rs.5000/-, in default of payment of which he was further directed to undergo rigorous imprisonment for a period of six months.

7. Aggrieved by said judgment and order dated 19.11.2008, the convict preferred appeal before Gauhati High Court, and the same was dismissed vide impugned order challenged before us.

A 8. In the grounds of appeal before us, it is admitted in
ground (A) that an altercation did take place on 17.06.2007 at
about 10.00 a.m. between Anil Das and the appellant over
draining of rain water in the paddy field. In ground (C) it is
pleaded that since the appellant has already undergone seven
B years imprisonment, a compassionate view be taken and the
conviction be converted to one punishable under Section 304
Part-II IPC.

9. Learned counsel for the appellant submitted before
C us that in view of single blow given on the head of the deceased,
it is not a case covered under Section 302, but of culpable
homicide not amounting to murder punishable under Section
304 Part II IPC. On the other hand, learned counsel for the
State of Tripura argued that the post mortem report shows there
D are five ante mortem injuries, as such, the conviction does not
require any interference by this Court.

10. We have carefully gone through the statement of PW-
15 Dr. Ranjit Kumar Das, who conducted post mortem
E examination on the dead body of Anil Das on 18.6.2007. In
fact, first four ante mortem injuries mentioned by the Medical
Officer relate to single injury. The first one is stitched wound.
The second is haematoma on the deeper layer of scalp over
right parietal region. The third injury also relates to the same
F as it discloses fracture on the depressed bone of the head on
anterior part of right parietal bone. The fourth ante mortem
injury also relates to above three injuries, which discloses
subdural haemorrhage present over cerebral hemispheres. The
only ante mortem injury No. 5 is actually the second injury which
G is an abrasion measuring 3cm x 2cm over the dorsum of left
wrist joint.

11. PW-2 Anil Das also does not state about more than
one blow given by the appellant on the head of the deceased
H with wooden file. The injury on the dorsum of left wrist joint

could have been caused when the injured fell down on the ground. As such, in substance the evidence on record suggests only one blow given by the appellant on the head of the deceased which appears to have been given with full force. A

12. In the above facts and circumstances, having re-assessed the depositions of witnesses and other evidence on record, we are of considered opinion that the act on the part of the appellant is covered by Part I of Section 304 IPC. Therefore, we set aside the conviction and sentence under Section 302 IPC, awarded by the trial court and affirmed by the High Court. Instead, the appellant Ranjit Sarkar is convicted under Section 304 Part I, and sentenced to rigorous imprisonment for a period of ten years. With this modification in the conviction and sentence, the appeal stands disposed of. B
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Devika Gujral

Appeal disposed of.