## Cr. Appeal (S.J.) No. 22 of 2013

(Against the judgment of conviction dated 22.12.2012 and order of sentence dated 02.01.2023 passed by learned 3<sup>rd</sup> Addl. Sessions Judge, Hazaribag in S.T. No. 450 of 1997)

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1. Jageshwar Ravidas

2. Munna Ravidas ... Appellants

Versus

The State of Jharkhand ... Respondent

## PRESENT

## CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

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For the Appellants : Mr. V.P. Singh, Sr. Advocate For the State : Mr. Vishwanath Roy, APP

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## By Court:

Heard the parties

- 1. The judgment of conviction and order of sentence under Section 304 Part II read with Section 34 of Indian Penal Code is under challenge in the instant appeal.
- 2. Fardbeyan of PW 2 Bichhuwa Devi was recorded on 03.07.1996 who happened to be the wife of the deceased. As per the case of the prosecution, on 02.07.1996 at 9 O'clock at night husband of the informant Mohan Ravidas and her son Prem Ravidas were lying in Verandah of the house. In the meantime, brother of the informant namely Jageshwar Ravidas (appellant no. 1) came there and hurled vulgar abuses against her husband and said that he will finish him off. Her husband said that the dispute will be resolved in Panchayat, but her brother dragged him (deceased husband) outside and her sister-in-law (Bhoujai) handed over a pillar of cot, to Munna Ravidas by which he gave a blow to her husband while other two caught hold of him. Her husband sustained fatal injuries on his head and died instantly at the place of occurrence.
- 3. On the basis of written report, FIR being Barkatta P.S. Case No. 32 of 1996 was registered against Jageshwar Ravidas, Munna Ravidas, Chhotni Devi, Nirmala Devi and Mangra Ravidas. Police on investigation submitted the charge sheet against Jageshwar Ravidas, Munna Ravidas and Mangra Ravidas under Sections 302/34 of Indian Penal Code who were put on trial after framing of charge on 30.06.2003. Mangra Ravidas died during trial and his name was expunged by order dated 02.05.2008.
- 4. Altogether five witnesses were examined on behalf of the prosecution and thereafter the statements of the accused were recorded under Section 313 Cr.P.C. The defence is of innocence. The trial court convicted the accused persons under

- Section 304 Part II/34 of Indian Penal Code and awarded the sentence for rigorous imprisonment for seven years and fine of Rs.5000/-.
- 5. Judgment of conviction and order of sentence has been assailed on the ground that the trial court has proceeded only on conjecture and surmises, as the postmortem report has been proved to establish that the death of the deceased being homicidal. Investigating Officer has not been examined in this case and even the fardbeyan i.e. FIR has not been proved.
- 6. The trial court has recorded the judgment of conviction only on oral testimony of witnesses.
- 7. It is submitted in this regard that it is a case where the accused had not gone prepared with any arm to commit the offence. As per the prosecution version, one pillar of cot lying there was picked up instantaneously, and by it one single blow was given which resulted in death. Even if this evidence is accepted charge of committing culpable homicide will not be proved. Prosecution has thus, failed to prove the charge that the accused persons were actuated by the requisite intention or knowledge to cause death of the deceased. In absence of proof of the postmortem report, even if oral account is accepted, the judgment of conviction under Section 323 of Indian Penal Code can be made, and not under Section 304 Part II of Indian Penal Code.
- 8. Learned counsel for the State has defended the impugned judgment of conviction and order of sentence and submitted that the homicidal death of the deceased has been proved by oral account. At no point during trial, the defence while giving suggestion to the witnesses, or in the statement made under Section 313 Cr.P.C. has taken the plea that it was not homicidal death, but it was a natural or accidental death. Medical evidence is not a substantive piece of evidence, and it is used only for the purpose of corroboration. Such evidence becomes necessary in cases where there is a cloud on the cause of death. In absence of any such reasonable doubt over the cause of death, where the case is otherwise proved by direct witnesses, who were present at the place of occurrence, the case cannot fail, due to any fault on the part of investigation or prosecution, as has been held by the Hon'ble Supreme Court in the catena of judgment.
- 9. After having considered the submissions advanced on behalf of both sides and the materials on record, I find force in the argument advanced on behalf of the appellants that in absence of proof of postmortem examination report, when the nature of ante-mortem injury has not been proved, it is difficult to ascertain the

intention or knowledge of the assailant to cause death. Nature of injury discloses the intention of any assailant and in the absence of its proof, it becomes difficult to hold that assailant had the requisite intention to cause death. Furthermore, it is the consistent case of the prosecution that only one single blow was inflicted by appellant no. 2 and that too, by one pillar of a cot which was lying there. Considering the fact that it was a case of single blow, and the nature of instruments used in the assault, this Court is of the view that the prosecution has failed to prove that the accused persons had the requisite intention or knowledge that his act will cause death of the deceased.

- 10. The background fact also drives one to the same conclusions. They were closely related, as accused no. 2 was the full brother of the informant, and there was some trivial dispute regarding which there was also a proposal for Panchayat to be held on the very next day.
- 11. The judgment of conviction and order of sentence under Section 304 Part II of Indian Penal Code is set aside. However, in view of the oral evidence of the direct witnesses, who were present at the place of occurrence, which has stood the test of cross-examination and does not suffer from any material contradiction, both the appellants/accused are held guilty for the offence under Sections 324/34 of Indian Penal Code.

On the point of sentence, considering the age, antecedent of the appellants and also the genesis of the offence, a sentence of imprisonment for the period already undergone shall serve the ends of justice.

With the modification of finding and sentence, this Appeal is partly allowed.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi Dated, the 23<sup>rd</sup> February, 2024 NAFR/ AKT/Satayendra

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