

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 23rd February, 2024
NAFR/ AKT/Satayendra

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