

**Cr. Appeal (D.B.) No. 129 of 2016**

.....

**(Against the judgment of conviction and order of sentence both dated 05.08.2015 passed by learned District & Additional Sessions Judge-IX, Dhanbad in Session Trial No.455 of 2013).**

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1.Vimal Chakravorty , S/o Kokan Chakravorty

2.Raju Rawani, S/o Mantu Rawani

Both R/o Mouza Belgaria,

P.O. & P.S. Baliapur, District- Dhanbad

..... Appellants

Versus

The State of Jharkhand

.... Respondent

.....

For the Appellants : Mrs. Bakshi Vibha, Advocate

For the State : Mr. Rajneesh Vardhan, Addl. Public Prosecutor

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**PRESENT**

**Sri Ananda Sen, J.**

**Sri Gautam Kumar Choudhary, J.**

**J U D G M E N T**

**07/11.09.2024**

*Per Ananda Sen, J.:*

The instant criminal appeal is directed against the conviction of the appellants under Sections 304 Part II of the Indian Penal Code vide judgment of conviction and order of sentence both dated 05.08.2015, whereby they have been sentenced to undergo rigorous imprisonment for ten years.

2. Learned counsel for the appellants submit that there was no intention to commit the offence. Only on the basis of testimony of sole eye witness i.e. P.W.-4, the appellants have been convicted in this case. She further submits that P.W.-4 is not a reliable witness. She lastly submits that so far as appellant No.1 (Raju Rawani) is concerned, there is no overt act against him and there is no evidence to suggest that he shared any common intention with Vimal Chakravorty to commit the murder of the deceased, thus, his conviction is bad.

3. Learned counsel for the State submits that there is no material to disbelieve P.W.-4. The medical evidence also corroborates the ocular

evidence of P.W.-4. The weapon used is knife, thus infact prosecution has been able to prove the guilt against these appellants beyond reasonable doubt. So far as appellant No.1 (Raju Rawani) is concerned, he was seen admittedly along with Vimal Chakravorty thus, Section 34 of the Indian Penal Code is attracted.

4. The prosecution case is based on the *fardbeyan* of Dropadi Devi, who stated that on 18.03.2012 at 19.45 P.M. in the evening, when she was in her house along with her husband (Suresh Nonia), Awdhesh Nonia and Manma Devi, these two appellants came and started abusing her. The appellant No.1- Vimal Chakravorty @ Phuchka threatened to commit murder with knife and pistol. The informant opposed their aggressive behaviour. Her husband came down and confronted these appellants, when the appellant- Vimal Chakravorty @ Phuchka stabbed him with knife.

5. On the aforesaid *fardbeyan*, Baliapur P.S. Case No.21 of 2012 was registered under Sections 302/34 of the Indian Penal Code. The police after investigation, filed chargesheet against these appellants under Sections 302/34 of the Indian Penal Code.

6. The Court took cognizance and committed the case to the Court of Sessions. As the appellants pleaded not guilty, charge was framed and they were put on trial. Eight witnesses have been examined in this case, who are as follows:-

- (i) P.W.-1 Smt. Manwa Devi
- (ii) P.W.-2 Awdhesh Nonia
- (iii) P.W.-3 Dr. Swapna Kumar Sarak
- (iv) P.W.-4 Smt. Dropadi Devi informant in this case
- (v) P.W.-5 Prem Kumar Nonia
- (vi) P.W.-6 Haridwar Nonia
- (vii) P.W.-7 Avinash Kumar Singh, Investigating Officer in this case.
- (viii) P.W.-8 Mahesh Bhuiya

7. The following documentary evidence were exhibited by the prosecution:-

*Exhibit-1- Postmortem report.*

*Exhibit-2 signature of Dropadi Devi on fardbeyan.*

*Exhibit-2/1 Registration of the case.*

*Exhibit- 2/2 forwarding of the case.*

*Exhibit- 3 and 3/1 signature of Prem Kumar Nonia and his father Hariduar Nonia on inquest report.*

*Exhibit-4 Formal FIR.*

*Exhibit-5 Inquest report.*

*Exhibit-6 Memo of arrest.*

8. The Trial Court after completion of the prosecution evidence examined these appellants under Section 313 of Cr.P.C. and after hearing the parties, convicted these appellants under section 304 Part II of IPC and sentenced them as aforesaid.

9. We have gone through the evidence led by the parties. P.W.-3 Doctor, who conducted the postmortem of the deceased. The report was marked as Exhibit-1, The report proves that the death of the deceased is homicidal. The Doctor found the following injuries:-

**"(1) Penetrating stab wound:-**

(i)  $1\frac{1}{2}$ " x  $\frac{1}{4}$ " cavity deep over left forth intercostal space  $1\frac{1}{2}$ " lateral to midline.

(ii)  $\frac{1}{2}$ " x  $\frac{1}{6}$ "x cavity deep over epigastrium on right side of midline.

(iii)  $1\frac{1}{2}$ " x  $\frac{1}{6}$ "x bone deep over left cheek. All above wound found spindle in shape with both edges sharp, margin clean cut, regular, inverted and sharp.

(2) Incised wound:-  $5$ " x  $\frac{1}{8}$ " x muscle to skin deep obliquely on flank of right lower chest with tailing upwards.

(3) Swelling with bruise  $2$ " x  $1$ " over left side of forehead

(4) Abrasion-  $\frac{3}{4}$ " x  $\frac{1}{2}$ " over front of right middle leg.

*On dissection:*

*On exploration of injury no.1 the weapon fracturing the upper of 5<sup>th</sup> rib and peeling the fourth intercostal space entered into the right ventricle of heart penetrating it and the wound of heart found clean and sharp. On exploration of injury no.(ii) (1) of the weapon punctured the muscles pretension and intestinal on exploration of injury no.(iii) of 1 (one) the weapon cutting the muscles fractured the ramus of mandible with clean cut.*

*Ecchymosis with blood clots found beneath subcutaneous tissue over left side of forehead. Skull and meninges found intact and brain found pale. Right side of thoracic cavity full of blood, left side partially full and abdominal cavity contained blood. Stomach contained 200 c.c. of partially digested rice and pasty food. Bladder partially full and all other internal organs pale."*

He opined that the cause of death was shock due to hemorrhage as a result of sharp cutting penetrating stab injuries caused by sharp cutting penetrating weapons with both edges sharp.

P.W.-1 and P.W.-2 have been declared hostile in this case.

P.W.-4 Dropadi Devi is the wife of the deceased and the informant of this case. She stated that on 18.03.2012 at 7.45 P.M. these appellants came and were abusing her, when she along with her husband and others were talking in their house. She has further deposed that when her husband, went and confronted these two appellants, then Vimal Chakravorty gave three stab blows on the stomach and chest of the deceased. The deceased was immediately taken to the hospital, where he was declared dead. She stated that she had given her statement, which was recorded and she had put her signature on it, which was marked as Exhibit-2. She withstood the test of cross-examination and testimony in chief could not be shaken.

From the evidence of P.W.-5, we find that he is not an eye witness to the said occurrence and on receiving the information, he and his father reached the hospital, where the Doctor declared Suresh Nonia dead. He is a witness to the inquest report, and has proved his signatures which were marked as Exhibits-3 and 3/1.

P.W.-6 is hearsay witness, who reached the hospital after being informed by his son where he and his son signed the inquest report.

P.W.-7 is the Investigating Officer, who conducted the investigation and recorded the statement of the witnesses and send the body for postmortem.

P.W.-8 is also hearsay witness.

**10.** Thus, the fact that it is this appellant No.1- Vimal Chakravorty, who had assaulted the deceased with knife has been established by the ocular evidence of P.W.-4, which is also corroborated by the medical evidence. Since the incidence took place at house, therefore she was a natural witness to the incidence.

**11.** So far as the other appellant- Raju Rawani is concerned, we find that he was only present with this appellant when the incident occurred. Prosecution has not brought any evidence to suggest that this appellant shared common intention with the appellant No.1- Vimal Chakravorty, who had assaulted the deceased. In absence of evidence of common intention and participation, appellant- Raju Rawani could not have been convicted under Section 304 Part II read with Section 34 of IPC.

**12.** Considering what has been held above, this appeal so far as it relates to appellant No.1- Vimal Chakraborty, is hereby dismissed.

**13.** So far as appellant No.2- Raju Rawani is concerned, this appeal is allowed and he is acquitted of the charges.

**14.** Accordingly, the instant Criminal Appeal is **partly allowed**.

**15.** As the appellant No.2 (Raju Rawani) is already on bail, he and his bailors are discharged from the liabilities of the bail bonds.

**16.** Let Trial Court Records along with a copy of this judgment be sent to the concerned trial court forthwith.

**17.** Interlocutory application(s), if any, also stands disposed of.

**(Ananda Sen, J.)**

**(Gautam Kumar Choudhary, J.)**

High Court of Jharkhand, Ranchi

Dated 11/09/2024

NAFR /R.S./ Cp 03.