A HARI YADAV

v.

STATE OF BIHAR

DECEMBER 14, 2007

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[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Penal Code, 1860—s. 302—Conviction under—Dispute between parties, leading to assaults on deceased resulting in his death—
C *Conviction by courts below, however, High Court altering 10 years rigorous imprisonment to rigorous imprisonment for life—Case of accused that deceased died 20 days after the incident, thus conviction not sustainable—On appeal, held: Accused came prepared at the place of incident—Repeated assaults were made and also other witnesses*
D *suffered injuries—Grievous injury suffered by deceased which was likely to be caused by sharp weapon was sufficient to cause death in ordinary course of nature—Mere possibility of injury being caused by hard and blunt substance cannot be a ground to disbelieve ocular evidence—Further, submission that deceased left hospital 5 days before*
E *his death without any information to the doctor cannot be accepted—Moreso submission was made on basis of paper which appeared in case diary on which reliance cannot be placed—Hence, order of High Court upheld.*

F **According to the prosecution case, there was land dispute between the parties. On 11.08.1981 quarrel arose between KY and CD. KY exhorted other accused to eliminate CD. Appellant inflicted a farsa blow on the head of CD and KY gave a blow on his hand by hard and blunt object. Other accused assaulted one KD. Accused also resorted to firing. CD became unconscious and was admitted**
G **to the hospital. FIR was lodged. PW 1, 3, 5 and 6 deposed in regard to the mode and manner in which the incident took place. PW 8-doctor conducted the post mortem. CD died on 01.09.1981. All the accused were held guilty of committing respective offences.**

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Appellant was sentenced to 10 years rigorous imprisonment under section 302 IPC. High Court dismissed the appeal, however, imposed rigorous imprisonment for life. Hence the present appeal. A

Dismissing the appeal, the Court

HELD: 1.1. It was not a case where there was a sudden fight. The accused came prepared at the place of occurrence. An altercation might have taken place but not only repeated assaults were made, other witnesses also suffered injuries. [Para 21] [787-A-B] B

Kailash v. *State of MP,* (2006) 9 SCALE 681, relied on. C

1.2. Presence of the appellant at the scene of the incident is beyond any dispute. The autopsy surgeon in his evidence while proving his report, identified three injuries appearing on the person of the deceased. Injury No. 1 was found to be grievous in nature and dangerous to life which was likely to be caused by sharp weapon such as *farsa* whereas other injuries which were simple in nature could have been caused by hard and blunt object (may be lathi). He was of the categorical opinion that the injury No.1, in ordinary course of nature, was sufficient to cause death. [Para 12] [785-B-C] D

Medical Jurisprudence & Toxicology by Modi 22nd Edition, referred to. E

1.3. The submission that such an injury can be caused by hard and blunt substance may be correct in view of the statements made by the autopsy surgeon but merely because there is a possibility in regard thereto, the same by itself cannot be a ground for holding that ocular evidence should be disbelieved. [Para 20] [786-G] F

1.4. The submission that the deceased left hospital on 27.8.1981 without any information to the doctor cannot be accepted. The fact that the deceased died in the District Hospital is not in dispute. The Doctor himself suggested that there was no provision for treatment of such patients at Sherghatti. Evidently, therefore, the relatives of the deceased took him to the District Hospital for better treatment. For the said purpose, the consent of the doctor might not have been G

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taken or brought to the personal knowledge of the doctor concerned. [Paras 16 and 17] [786-A-B]

1.5. It is, however, significant that the quotation that the deceased has developed unomiplagia and had left the hospital on 27.8.1981 without the knowledge of undersigned, was made from the purported note made by somebody which formed part of the case diary. The said document was not proved. Attention of the investigating officer was not drawn thereto. No such question appears to have been raised before the High Court. It cannot be understood as to how reliance was placed thereupon on the basis of a piece of paper which appeared in the case diary. Such a practice is deprecated. The doctor used the word "unomiplagia". It is not been found as to what it means in the medical dictionary.

[Para 18] [786-C-E]

1.6. Deposition of the doctor who was examined before the Sessions Judge was not brought on record by the appellants. The reason therefor appears as obvious. Several unsustainable pleas were raised before the Trial Court on behalf of the appellant.

[Para 19] [786-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1721 of 2007.

From the final Judgment and Order dated 21.1.2004 of the High Court of Judicature at Patna in Crl. Appeal No. 341/1991.

Sushil Kumar, Vijay Kumar and Vishwajit Singh for the Appellant.

Gopal Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

1. Appellant is before us aggrieved by and dissatisfied with a judgment dated 21st January, 2004 passed by a Division Bench of the Patna High Court in Criminal Appeal No. 341 of 1991 arising out of the judgment of conviction and sentence dated 2nd September, 1991 passed by Additional District and Sessions Judge XIth, Gaya, in Sessions Trial No. 12 of 1991.

2. A land dispute arose between the accused and the prosecution witnesses in relation to a piece of land bearing plot No. 1/555 of village Gamahariya. While measurement of the said land was going on, both the parties, viz., Kameshwar Yadav and Chander Dusadh, claimed their right thereupon, on the basis of purchases made by them under their respective registered deeds of sale.

3. A quarrel ensued between both the parties. Kameshwar Yadav exhorted others to eliminate Chander Dusadh. It was followed by an assault on Kali Dusadh by a hard and blunt object by him. Jaldhari Yadav assaulted Kali Dusadh on his right arm. Parmeshwar Yadav assaulted him on his back. Appellant herein inflicted a *farsa* blow on the head of Chander Dusadh, the deceased. Kameshwar Yadav gave another blow on his hand by a hard and blunt object. As alarm was raised by Kali Dusadh, whereupon assailants fled from the field. They allegedly resorted to firing also.

4. Thereafter, injured Chander Dusadh was taken to the Police Station in an unconscious state.

5. A First Information Report in regard to the said incident was lodged at 10 pm on 11th August, 1981. Appellant amongst others was named therein. The prosecution during trial examined a number of witnesses in support of its case. PW 1, Bisu Bhuiya categorically stated about infliction of *garassa* blow by Hari Yadav and lathi blow by Kameshwar Yadav on the deceased. Role played by Kameshwar Yadav, Kishun Yadav, Hari Yadav, Parmeshwar Yadav, Bhuja Yadav, Rohan Yadav and Gopal Yadav in inflicting injuries on Kali Dusadh were also categorically stated by him in his deposition.

6. Similarly, Barat Dusadh (P.W 3) deposed about the role played by the Appellant in inflicting a *farsa* blow on the head of Chander Dusadh, having been exhorted to do so by his father. He not only stated in details in regard to the mode and manner in which the incident took place but also the cause thereof. Similar is the evidence of Aminullah Khan (PW 5) and Gazi Khijer Heyat (P.W 6).

7. P.W. 8 Dr. M.K. Sinha, who conducted the post mortem examination on the dead body of the deceased, in his report noticed three

A ante mortem injuries which are as under:

"(i) Recently healed liner wound of length 4" over top of head. On dissection underlined tissues were found infiltrated with blackish blood clot. There was fracture of both parietal bones. On removal of skull cap, there was presence of extradural and subdural
B haemotoma over superior surface of both cerebral hemisphere. Brain and meninges were found grossly congested.

(ii) Healed abrasion over front of lower on part of the right knee with presence of dry, black scale over the area, size 1-1/4' x ½'.

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(iii) Swelling over antero lateral aspect of right arm upper part size 2-1/2" circumference."

8. On analyzing the materials brought on records, the Learned Sessions Judge found the appellant guilty of commission of offence under
D Section 302 of the Indian Penal Code. The Learned Judge, however, while considering the facts and circumstances of each of the accused at the time of occurrence imposed a sentence of ten years' rigorous imprisonment under Section 302 of the Indian Penal Code to accused Kameshwar Yadav and Hari Yadav and one year's rigorous imprisonment to Jaldhari
E Yadav and Parmeshwar Yadav and Kameshwar Yadav under Section 323 of the Indian Penal Code.

9. Three Criminal Appeals were preferred by the accused persons. The High Court dismissed the said appeals, but keeping in view the fact that the Learned Sessions Judge committed a serious error in imposing
F the punishment of 10 years' rigorous imprisonment for commission of an offence under Section 302 of the Indian Penal Code, imposed the sentence of rigorous imprisonment for life. Appellant is, thus, before us.

10. Mr. Sushil Kumar, learned Senior Counsel appearing on behalf
G of the appellant, *inter alia,* would submit that the occurrence having taken place on 11.8.1981 and the death of deceased having taken place on 1.9.1981, the appellant cannot be stated to have committed any offence under Section 302. It was pointed that according to the Doctor, the deceased left the hospital on 27.8.1981 without his permission and thus
H he might have died of some other disease in between the period 27.8.1981

and 1.9.1981. The Learned Counsel submitted that keeping in view the injuries suffered by the deceased, the same were possibly caused by a lathi. A

11. Mr. Gopal Singh, learned counsel appearing on behalf of the state on the other hand, supported the impugned judgment. B

12. Presence of the appellant at the scene of the incidence is beyond any dispute. The autopsy surgeon in his evidence while proving his report, identified three injuries appearing on the person of the deceased. Injury No. 1 was found to be grievous in nature and dangerous to life which was likely to be caused by sharp weapon such as *farsa* whereas other injuries which were simple in nature could have been caused by hard and blunt object (may be lathi). He was of the categorical opinion that the injury No.1, in ordinary course of nature, was sufficient to cause death. C

13. In cross examination his attention was drawn to the book "Modi's Medical Jurisprudence & Toxicology (22nd Edition). In answer to a question, he stated: D

> "Linier abrasion can be possible by lathi as well. Volunteers it can also be caused by sharp weapon. If the margin of the wound is sharp, it is inferred that it was caused by sharp weapon." E

14. We may notice that it was categorically stated by the said witness that there was no provision for treatment of such injury and such cases are ordinarily referred to neuro surgeon at Ranchi.

15. It appears that on 27.8.1981, a report was sent that deceased died in Gaya hospital on 1.9.1981. F

16. Our attention has been drawn to one slip attached to the said report wherein a prayer was made for insertion of Section 302 of Indian Penal Code in the said case, which reads as under:

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> "In continuation of Injury Report of Chandra Gorait of Singh Pokhar, Sherghati I have to inform you that he has developed unomiplagia and he left the hospital on 27.8.1981 without the knowledge of undersigned. He has not submitted x-ray of right hand till now. This is for information and necessary action." H

A 17. Submission of the learned senior counsel Sh. Sushil Kumar is that the deceased left hospital on 27.8.1981 without any information to the doctor therefore, cannot be accepted. The fact that the deceased died in the District Hospital is not in dispute. We have noticed hereinbefore that the Doctor himself suggested that there was no provision for treatment B of such patients at Sherghatti. Evidently, therefore, the relatives of the deceased took him to the District Hospital for better treatment. For the said purpose, the consent of the doctor might not have been taken or brought to the personal knowledge of the doctor concerned.

C 18. It is, however, significant that the aforementioned quotation was made from the purported note made by somebody which formed part of the case diary. The said document was not proved. Attention of the investigating officer was not drawn thereto. No such question appears to have been raised before the High court. We are really at a loss to understand as to how reliance has been placed thereupon on the basis of D a piece of paper which appeared in the case diary. We deprecate such a practice.

It may be of some interest to notice that Dr. S.P. Gupta has used the word "unomiplagia". We have not been able to find what it means in E the medical dictionary.

19. Deposition of Dr. S.P. Gupta who was examined before the Learned Sessions Judge as PW 10 has not been brought on record by the appellants. The reason therefor appears to us as obvious. Several unsustainable pleas have been raised before the Trial Court on behalf of F the appellant. It appears that at one point of time a plea of insanity has as also his having no relationship with the other accused, had also been taken. It appears from the records that he had also absconded for some time.

20. Submission of Mr. Sushil Kumar that such an injury can be G caused by hard and blunt substance may be correct in view of the statements made by the autopsy surgeon but merely because there is a possibility in regard thereto, the same by itself cannot be a ground for holding that ocular evidence should be disbelieved. There are a large number of authorities of this Court which clearly show that in certain H situations, the wound produced by a blunt instrument may similarly seem

to be an incised one. [See *Kailash* v. *State of MP,* (2006) 9 SCALE 681]. A

21. It was not a case where there was a sudden fight. The accused came prepared at the place of occurrence. An altercation might have taken place but not only repeated assaults were made, other witnesses also suffered injuries. B

22. Each case must be decided on its own facts as has been held in *Kailash* (Supra).

The law in this regard was laid down in *Kailash* (supra) in the following terms: C

> "In *Virsa Singh* v. *The State of Punjab* [1958] SCR 1495, wherein Vivian Bose, J. opined that infliction of one injury by accused may be sufficient to hold him guilty for commission of an offence under Section 302 of the Indian Penal Code stating: D
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> In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, E not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convict, for, if he does not know that there is a heart or F a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense; the kind of enquiry that "twelve good men and true" could readily appreciate and understand. G
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> To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300. First, it must establish, quite objectively, that a bodily injury is present;

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A Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

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Once these three elements are proved to present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

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23. For the reasons aforementioned, there is no merit in this appeal, D which accordingly is dismissed.

N.J. Appeal dismissed.