

INDRASAN

v.

STATE OF U.P.

(Criminal Appeal No. 996 of 2004)

JULY 6, 2009

[DR. MUKUNDAKAM SHARMA AND DR. B.S.
CHAUHAN, JJ.]

Penal Code, 1860 – s. 304 (Part I) – Murder – By single lathi blow – Prosecution relying on version of eye-witnesses and motive for assault – FIR lodged within reasonable time – Conviction by courts below u/s. 302 – On appeal, held: Intention of accused to cause death proved – However, it is a case of culpable homicide not amounting to murder – Conviction altered to one u/s. 304(Part I) – Sentence of life imprisonment altered to custody of 10 years.

Appellant-accused was prosecuted for having caused death of one person by giving a lathi blow on his head. As per prosecution, PWs. 1, 2 and 3 were the eye-witnesses to the incident. Trial Court convicted the appellant u/s. 302 IPC. High Court confirmed the conviction. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: 1.1. The incident had taken place in broad day light in the presence of PW-1, PW-2 and PW-3. The defense has not raised any dispute with regard to the aforesaid fact nor any suggestion was given to the aforesaid eye-witnesses as against their statements that they were present at the time of incident and they had seen the entire incident. Their presence at the place of occurrence was quite natural. [Para 7] [1131-D-E; 1132-A]

A 1.2. There is no delay in the lodging of the FIR. There is also no possibility of any concoction of the incident as there was no scope of framing anybody unnecessarily and without reason within that short span of time. The motive for the murder has also been established. [Para B 7] [1131-G; 1132-A]

C 1.3. The lathi blow was so forceful that as a consequence of which the deceased died within an hour and before he could be taken to the hospital. There is a direct nexus between the blow of lathi and death of the deceased which is immediately caused after giving the blow. [Para 11] [1134-B-C]

D 1.4. Although it is a case of culpable homicide not amounting to murder, but considering the nature of the injuries which was caused on a vital part of the body, there was intention on the part of the accused-appellant to cause death of the deceased. Therefore, the conviction of the appellant is altered from Section 302 IPC to Section 304 (Part I) IPC. Sentence of life imprisonment altered to custody and sentence of 10 years. [Paras 12 and 13] E [1134-C-E]

F *State of Orissa v. Bhagaban Barik* AIR 1987 SC 1265; *State of U.P. v. Indrajeet* (2000) 7 SCC 249; *Joseph v. State of Kerala* AIR 1994 SC 34 and *Mohd. Shakeel v. State of A.P.* (2007) 3 SCC 119, distinguished.

Case Law Reference:

	AIR 1987 SC 1265	Distinguished.	Para 10
G	(2000) 7 SCC 249	Distinguished.	Para 10
	AIR 1994 SC 34	Distinguished.	Para 10
	(2007) 3 SCC 119	Distinguished.	Para 10

H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal

No. 996 of 2004.

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From the Judgment and Order dated 16.4.2003 of the High Court of Judicature at Allahabad in Criminal Appeal bearing number 1996 of 1981.

Vipin Singhania and Manjula Gupta for the Appellants.

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T.N. Singh, S.K. Dwivedi, Vandana Mishra, Shirish Kr. Mishra and Praveen Swarup for the Respondent.

The Judgment of the Court was delivered by

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DR. MUKUNDAKAM SHARMA, J. 1. This appeal has been preferred by the appellant who has been convicted by the Sessions Court as also by the High Court under Section 302 IPC and sentenced to undergo rigorous imprisonment for life.

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2. The deceased was one Jawahar who was murdered on 14.10.1979 at about 8.00 A.M. in Village Marrie, Police Station Nichloul, District Gorakhpur. The prosecution story in brief is that in the said village there was a Government Gausadan (a campus with pasture land where cattle are brought up and looked after) spreading over an area of about 562 acres. Within the said area is also located certain residential premises for the employees of the Gausadan. The grasses were also grown in Gausadan and contract of growing such grass in Gausadan was given by the Government through auction and one Harendra Singh who was a contractor was given the said contract. Goverpal Harijan was one of the employees in the Gausadan and on account of his illness, his son Jawahar (deceased) was performing his duties in the Gausadan.

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3. On 13.10.1979 at about 2.00 p.m. about 30-40 cattles including the buffaloes of Goverpal Harijan were grazing in the pasture land of Gausadan. Since they were eating the grasses for which there was a contract, a person on behalf of the contractor Harendra Singh came and collected all the cattles including buffaloes and took them to the contractor Harendra

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A Singh. Thereafter, Jawahar and other owners of the cattle went to Harendra Singh and requested him to release their cattle. Harendra Singh permitted Jawahar to take away his buffalo and also released the cattle of the other persons.

B 4. On 14.10.1979 i.e. the next day in the morning time, Ram Prahlad, Sahdeo, Pratap, the appellant Indrasan and 2-3 persons were sitting in the verandah of Gausadan. The appellant-Indrasan had lathi with him. While they were so sitting in the verandah of the Gausadan, Jawahar happened to arrive there. The appellant-Indrasan who was the employee of contractor Harendra Singh took up his lathi and suddenly rushed towards Jawahar and gave a lathi blow on his head as a result of which he sustained head injury and fell down. As a consequence of the said lathi blow on the head, deceased-Jawahar succumbed to his injuries immediately thereafter. Ram Prahlad went to the house of Goverpal and informed him about the fatal injuries caused to his son. Goverpal came to Gausadan and found his son lying there dead. He then went to the police station Nichlaul, where he lodged the written F.I.R. on the same day at 11.05 a.m. The distance of the police station from the place of occurrence was six miles. On information, a case was registered and investigation was entrusted to S.I. Vinod Kumar Yadav (PW-7). Post mortem examination was also carried on the body of the deceased-Jawahar. In the said post mortem examination, one injury was found by the doctor on the head of the deceased which was of the following nature :-

“Lacerated wound on left parietal region 5 cm x 1 cm x skull deep, 8 cm above left ear.”

G 5. In support of its case, the prosecution examined all seven witnesses. Ram Prahlad (PW-1), Sahdeo (PW-2) and Ram Pratap (PW-3) were the eye witnesses of the occurrence. Goverpal (PW-4), the father of the deceased was also examined. The defense raised on behalf of the accused was one of denial and also of false implication due to enmity. In

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examination under Section 313 of the Code of Criminal Procedure, 1973 (for short "the CrPC"), the accused-appellant stated that when Harendra Singh was Thekedar of grass of Gausadan, he used to look after the affairs of Gausadan on his behalf. Goverpal and other witnesses of the case and the villagers often used to graze their cattle in the grass of Gausadan and he used to hand over their cattle at the cattle pond. Thus, people started having grudge against him resulting in his false implication in this case. On completion of the trial, the learned Sessions Judge found the appellant guilty of the offence alleged against him and accordingly convicted him and passed an order of sentence of imprisonment for life.

6. On appeal, the High Court affirmed the order of conviction and sentence as against which the present appeal has been filed on which we have heard the learned counsel appearing for the parties.

7. The incident had taken place on 14.10.1979 at about 8 a.m. and there is no dispute with regard to the aforesaid fact that there was broad day light and the incident happened in the presence of PW-1, PW-2 and PW-3. The defense has not raised any dispute with regard to the aforesaid fact nor any suggestion was given to the aforesaid eye witnesses namely Ram Prahlaad (PW-1), Sahdeo (PW-2) and Ram Pratap (PW-3) as against their statements that they were present at the time of incident and they had seen the entire incident through their own eyes. The incident happened at about 8 a.m. when the deceased-Jawahar received the aforesaid fatal blow at the hand of the accused-appellant. The deceased-Jawahar died at about 9 a.m. due to excessive bleeding as is established from the post mortem report. The distance of the police station from the place of occurrence is six miles. The father of the deceased-Jawahar was informed whereupon he came to the place of occurrence and on seeing his son dead, went to lodge an FIR at the Police Station Nichloul which was registered at 11.05 a.m. There is, therefore, no delay in the lodging of the FIR.

A There is also no possibility of any concoction of the incident as there was no scope of framing anybody unnecessarily and without reason within that short span of time. The incident happened in broad day light in front of eye witnesses whose presence at the place of occurrence was quite natural. There is also motive for the murder established in the case from the fact that a day before the occurrence i.e. on 13.10.1979, the cattles of some persons including the buffaloes of the father of the deceased-Jawahar were taken away from the grazing field of Gausadan by the accused-appellant and subsequently, buffaloes of the father of the deceased-Jawahar were released. C Since the buffaloes belonged to the father of the deceased-Jawahar which were impounded and taken to the contractor-Harendra but was released subsequently, therefore, there was some grudge of the accused-appellant being an employee of the contractor-Harendra against the deceased-Jawahar and when on the next day, early in the morning he saw the deceased he got infuriated and without any reason approached the deceased-Jawahar after picking up his lathi and gave blow on the head with the help of his lathi and thereafter the accused-appellant ran away from the scene of occurrence. So, the motive has also been established. E

8. Counsel appearing for the accused- appellant, however, submitted before us that there was no intention of causing death or causing any bodily injury to the deceased by the accused-appellant. It was also submitted before us that all the three eye witnesses namely Ram Prahlad (PW-1), Sahdeo (PW-2) and Ram Pratap (PW-3) are interested witnesses and that other witnesses although present at the scene of occurrence, they were not examined by the prosecution. Accordingly the conviction and sentence is required to be set aside. It was next submitted by the counsel appearing for the accused-appellant that the weapon of alleged attack was not a dangerous weapon and was only a lathi and allegedly only one blow was given by the accused-appellant on the deceased which clearly establishes that it is neither a case of murder nor could be a H

case of culpable homicide not amounting to murder. In support of aforesaid contention, he has relied upon few decisions of this Court namely *State of Orissa v. Bhagaban Barik* [AIR 1987 SC 1265], *State of U.P. v. Indrajeet* [(2000) 7 SCC 249], *Joseph v. State of Kerala* [AIR 1994 SC 34], *Mohd. Shakeel v. State of A.P.* [(2007) 3 SCC 119].

9. We have considered the aforesaid submissions as also the ratio of the aforesaid cases. After carefully going through the same we, however, find that none of the aforesaid decisions could be said to be directly applicable in the present case as the facts are quite distinguishable. So the same have no application in the facts and circumstances of the present case and we are required to consider the facts of the case independently.

10. In *Bhagaban Barik* case (supra), there was an appeal before this Court as against the order of acquittal. In that case one blow was given by the accused with a lathi on the apprehension that the deceased was a thief. In *Indrajeet* case (supra) also, there was an appeal against acquittal and therefore it has no similarity with the facts and circumstances of the present case. In *Joseph* case (supra) although the death was caused by one blow of lathi but there was clear evidence of quarrel between the parties preceding the incident. In *Mohd. Shakeel* case (supra) the accused also received injuries during the course of the incident and taking notice of the said fact, it was held to be a case of culpable homicide not amounting to murder. Clearly, all the decisions relied upon by the accused-appellant are quite distinguishable.

11. We are required to examine the facts of the present case as it stand before us. The submission that there was no motive in committing the offence is clearly belied from the fact that the motive has been established in the present case. The accused-appellant being an employee of the contractor definitely had a grudge against the deceased as the buffaloes belonging to the father of the deceased were impounded and

- A taken to the contractor by the accused-appellant on 13.10.1979 and the same were released on repeated requests by the deceased. Therefore, there was a clear grudge of the employee of the contractor, accused-appellant against the deceased. When on the very next day morning i.e. 14.10.1979, the
- B accused-appellant saw the face of the deceased he simply picked up his lathi and with that gave one blow on the head of the deceased. The said blow was so forceful that as a consequence of which the deceased died within an hour and before he could be taken to the hospital. There is a direct nexus
- C between the blow of lathi and death of the deceased which is immediately caused after giving the blow.

12. We, therefore, are of the considered opinion that although it is a case of culpable homicide not amounting to murder, but considering the nature of the injuries which was
- D caused on a vital part of the body, we are of the considered view that there was intention on the part of the accused-appellant to cause death of the deceased.

13. We, therefore, alter the conviction of the appellant from
- E Section 302, IPC to Section 304 Part I IPC. In our considered opinion, custody and sentence of 10 years would be appropriate and sufficient. The accused-appellant shall undergo imprisonment for a term of 10 years, if not already undergone, in terms of this order.

- F 14. With the above modification, the appeal is allowed to the aforesaid extent.

K.K.T.

Appeal partly allowed.