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CHAITU & ORS.

v.

STATE OF UTTAR PRADESH
(Criminal Appeal No.1323 of 2012)

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APRIL 25, 2014

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

Penal Code, 1860 – ss. 147, 323/149 and 304/149 (Part II) – Prosecution for murder – Of 7 accused – 3 eye-witnesses to the incident including injured eye-witness – Conviction of all the accused by trial court – Conviction and sentence confirmed in respect of 3 accused by High Court – Appeal in respect of other accused abated due to their death – Held: Homicidal death of the deceased is established by the evidence of eye-witnesses and medical evidence – Delay in lodging FIR has also been properly explained by prosecution – However, in the facts of the case, it was a case of grave and sudden provocation, hence would fall under First Exception to s.300 IPC – Therefore, the accused liable to be convicted u/s. 304 (Part II) instead of s.302 – Sentenced altered to five years RI.

The three appellants-accused (accused Nos. 2, 4 and 7) alongwith 4 others were prosecuted u/ss. 147, 323/149 and 302/149 IPC for causing death of one person and for causing injuries to PW1 (complainant).

Prosecution case was that 6 of the accused belonged to the same family and one accused was from the same village. The deceased and PW1 were related. Both the parties were having their agricultural fields nearby. The dispute between the parties arose over sharing of water for irrigation of their fields. The accused persons caused injuries to the deceased and PW-1. The accused went to their house after intervention by PWs 1,

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2 and 3. The victim (deceased) was taken to the hospital next morning. While on way to hospital, he succumbed to the injuries. Trial court convicted all the accused and awarded life sentence. High Court confirmed the conviction and sentence of the appellants-accused. Appeal as regards other accused abated due to their death. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: 1. PW 1 (eye-witness) sustained simple injuries during the occurrence as evident from Ex.Ka-3 injury report. PW2 and PW3 (eye-witnesses) in their testimonies corroborated the version of PW1. Their testimonies are cogent and trustworthy. Accepting the testimonies of PWs 1 to 3, it is clear that accused Nos.1 to 7 caused injuries to the deceased as well as to PW1 (the injured eye-witness). In fact, the occurrence has been admitted by accused No.1 who also lodged the complaint alleging that while he attempted to divert the water to his field for irrigation, it was obstructed by PW1 and the deceased and they also attacked him and he also wielded blows with lathi. [Para 7] [665-H; 666-A]

1.2. The delay in lodging the First Information Report is properly explained. The occurrence place is situated at a distance of 8 miles from Police Station as shown in Ex.Ka-5 Chick report and according to PWs 1 to 3 the injured (since deceased) could not be taken to the Police Station or Hospital on the occurrence night itself due to distance factor and fear of accused and in the next day morning when they took him to the Police Station, he succumbed to the injuries on the way. [Para 8] [666-B-C]

1.3. The deceased died of homicidal violence is established by the medical evidence adduced by the prosecution. PW5 who conducted the autopsy, expressed opinion that the death has occurred on

A account of shock and hemorrhage mainly due to injury No.1 found on the head. [Para 9] [666-D-E]

B 2.1. In the facts of the case, it is evident that the assault was in the heat of passion on a sudden quarrel in which the accused cannot be said to have acted in an unduly cruel manner. Evidence shows that the accused/ appellants gave blows with lathi, legs and fists mainly on the limbs of the deceased except injury No.1, which was on the head. The death was not instantaneous, rather he died on the next day of the occurrence. Considering the entire attending circumstances, it was a case of grave and sudden provocation and would fall under the First Exception to Section 300 IPC and the offence would come within the second part of Section 304 IPC and the appellants would be liable to be convicted for the said offence. [Para 11] [667-E-F]

E 2.2. Imposition of five years rigorous imprisonment on each of the appellants for the conviction under Section 304 (Part II) IPC would meet the ends of justice. The conviction of the appellants for the offence under Section 302 read with Section 149 IPC and the sentence of life imprisonment each imposed on them are set aside and instead they are convicted for the offence under Section 304 Part II read with Section 149 IPC and sentenced to undergo five years rigorous imprisonment each. [Paras 12 and 13] [667-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1323 of 2012.

G From the Judgment and Order dated 03.02.2012 of the High Court of Judicature at Allahabad in Criminal Appeal No. 2986 of 1982.

Rohit Kumar Singh, Anuradha Mutatkar for the Appellants.

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Aarohi Bhalla. Ardhendumauli Kumar Prasad for the Respondent. A

The Judgment of the Court was delivered by

C. NAGAPPAN, J. 1. This appeal is preferred against the judgment of the High Court of Allahabad in Criminal Appeal No. 2986 of 1982. The appellants herein are accused Nos. 2, 4 and 7 respectively, in Sessions Trial No.106 of 1980 on the file of IIIrd Additional Sessions Judge, Mirzapur and they were tried along with 4 others and all of them were convicted for offences under Sections 147, 323/149 and 302/149 IPC and each of them was sentenced to undergo rigorous imprisonment for 1 year for the offence under Section 147 IPC, six months rigorous imprisonment for the offence under Section 323/149 IPC and life imprisonment for the offence under Section 302/149 IPC. Aggrieved by the conviction and sentence accused Nos. 1 to 7 preferred criminal appeal No.2986 of 1982 and the High Court by impugned judgment dated 3.2.2012 dismissed the appeal preferred by accused Nos. 2, 4 and 7. The appeals preferred by accused Nos. 1,3,5 and 6 stood abated as they were reported dead. Challenging the same accused Nos. 2,4 and 7 have preferred this appeal. B C D E

2. The prosecution case in brief is as follows:

Accused Jokhai, Nachakau and Sadhu are brothers being sons of Barakau and accused Chaitu, Kishana and Kinka are brothers being sons of Chhote. These six accused belong to the same family. The accused Dhorha was originally resident of a village in Bihar. Deceased Rajmani @ Bihari was the nephew of the complainant/PW1 Gomti. All of them were residents of village Layan and their agricultural lands were situated nearby each others. On 1.2.1980 at about 8.00 P.M. when PW1 Gomti and his nephew Rajmani @ Bihari were irrigating their lands with canal water, accused Jokhai went there and opened Mular of Nali and diverted the water of the canal to flow into his field. On this issue there was altercation F G H

- A between the parties and also scuffle between them which ended by the intervention of PW2 Vishwanath and PW3 Sikander. Accused Jokhai went to his house and came back again to the field along with other accused and assaulted PW1 Gomti and his nephew Rajmani @ Bihari with lathi-danda, legs and fists.
- B Accused Chaitu gave lathi blows to Rajmani as a result of which he fell down whereupon accused Kinka mounted upon his chest and beat him with fists while other accused gave blows with lathi, legs and fists. PW1 Gomti, PW2 Vishwanath and PW3 Sikander intervened along with Himchha Narain,
- C Jagannath and Surya Bali and due to their intervention accused persons went to their house. Rajmani became unconscious as a result of injuries and was taken to house along with injured PW1 Gomti. Due to distance and fear of the accused the injured could not be taken to the Police Station Halia or Hospital. In the early morning of 2.2.1980 while being taken to Police Station Rajmani succumbed to his injuries. PW1 Gomti with the help of PW3 Sikander prepared a written report and lodged the same with PW6 Sub-Inspector Surya Bali Singh at Police Station Halia. Ex Ka-1 is the complaint. Ex Ka-5 is the Chick report. Ex Ka-6 is the G.D. entry. PW6 Sub-Inspector took up the investigation prepared. Ex. Ka-9 Panchayatnama and sent the body for post-mortem.
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3. PW4 Dr. Mohd. Tauhid was Medical Officer at P.H.C. Lalganj on 2.2.1980 and he examined the complainant/PW1

F Gomti at 8.45 P.M. and found the following injuries:

1. Superficial injury in the form of abrasion 1.5 cm x 2 cm in the left upper arm, anteriorly, 8 cm away from the lateral end of the clavicle. Tenderness and signs of inflammation were present. Similar injury was present in the same upper arm in the middle measuring 2 cm x 3 cm laterally.
 2. There was blackening of the nail of left ring finger with mark of clotted blood at the margin of the nail. Tenderness and inflammation signs were present.
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3. Transverse linear skin deep injury of 2.5 cm x ½ cm with blood clot and all signs of inflammation on the dorsal surface of the junction of the first and middle phalanx of the right ring finger. Dried blood was noted by PW4 in the palm of PW1. A
4. Superficial abrasion of 1.5 cm x 2 cm, 5 cm above the hyloid (sic) process of ulna dorsally in the right forearm. B
5. Tenderness in the left thigh in the upper part at the bony protuberance posteriorly with sign of inflammation. C
6. Transverse linear skin deep injury of 4 cm x ½ cm with haircaught in the wound with dried blood clot in front of head, 6.5 cm above the right eye-brow. There was injury 1.5 cm x 2 cm superficial tender on the middle of the head 2 cm left to the mid line. Dried blood clot was also found over the injury by PW4. D
7. Pain and tenderness on the right side of the neck without signs of inflammation with two scratch mark was also present. E

Ex.Ka-3, is the injury report issued by him expressing opinion that the injuries were simple in nature. F

4. PW5 Dr. V.J. Khanna, Medical Officer in District Hospital Mirzapur conducted the autopsy on the dead body of Rajmani on 3.2.1980 at 11.00 A.M. and found the following ante mortem injuries on it: G

1. Contusion 10 cm x 6 cm on the right frontal region of scalp.
2. Traumatic swelling 10cm x 8 cm on the anterior aspect of left forearm on its upper part. H

- A 3. Traumatic swelling with abrasion 10cm x 8 cm on the lower part and back of left forearm.
4. Contusion in the area of 10cm x 6 cm on right chest.
- B 5. Traumatic swelling 9 cm x 6 cm on the upper part and back of right forearm.
6. Contusion and swelling 15 cm x 8 cm on the anterior and upper part of right leg
- C 7. Traumatic swelling 5 cm x 2 cm on the back of neck.
8. Contusion 3 cm x 2 cm on upper part and back of left leg.

D On internal examination of injury No.1 he found skull fractured and brain congested with clotted blood inside. He expressed opinion that the death has occurred on account of shock and hemorrhage due to injuries particularly due to injury No.1. Ex Ka-4 is the post-mortem report.

E 5. In order to prove its case the prosecution examined PW1 to 7 and marked Ex. Ka-1 to 21 besides material Exhs. 1 to 9. DW1 was examined on the side of the defence. The trial court found all the accused guilty of the charges framed and sentenced them as narrated above. On appeal preferred by all the accused the conviction and sentence imposed on accused F nos.2,4 and 7 were confirmed and the appeals preferred by the other accused stood abated. Challenging the same accused no.2 Chaitu, accused no.4 Kishana and accused no.7 Dhorha have preferred the present appeal.

G 6. We heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondent-state.

H 7. The prosecution case is that accused nos.1 to 7 attacked and caused the death of Rajmani @ Bihari during the

occurrence. Six of the accused belonged to the same family and the remaining one was a resident of the same village. PW1 Gomti is the uncle of deceased Rajmani @ Bihari and his agricultural land was situated nearby to the lands owned by accused no.1 Jokhai and their lands were being irrigated by a sub canal. PW2 Vishwanath and PW3 Sikander were also residing in the same village and their agricultural lands were situated at a little distance from the above lands and were being irrigated by another sub canal. PWs 1 to 3 were examined as having witnessed the occurrence. According to PW1 Gomti, on 1.2.1980 at about 8.00 pm he and his nephew Rajmani @ Bihari were irrigating their lands with sub canal water and accused no.1 Jokhai came there and opened Muhar of Nali and diverted the water flow into his field which led to altercation and scuffle between them and PW2 Vishwanath and PW3 Sikander intervened and accused no.1 Jokhai went to his house and after few minutes he came back again to the field along with other accused and accused Chaitu gave lathi blows to Rajmani and when he fell down accused Kinka mounted upon his chest and beat him with fists while other accused gave blows to him with lathi, legs and fists and they also beat PW1 Gomti and due to intervention of PW2 Vishwanath and PW3 Sikander and three other villagers the accused persons returned to their house and Rajmani became unconscious because of the injuries and was taken to his house along with PW1 Gomti and on the next day morning while being taken to Police Station Rajmani succumbed to the injuries. PW2 Vishwanath and PW3 Sikander in their testimonies corroborated the version of PW1 Gomti about the occurrence. The occurrence took place at about 8.00 pm in the night and PWs 2 and 3 were irrigating their lands in the moonlight and on seeing the occurrence they intervened and brought it to an end and their testimonies are cogent and trustworthy. PW1 Gomti sustained simple injuries during the occurrence as evident from Ex.Ka-3 injury report. Accepting the testimonies of PWs 1 to 3 it is clear that accused nos.1 to 7 caused injuries to Rajmani @ Bihari as well as PW1 Gomti. . In fact the occurrence has been admitted by accused

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A no.1Jokhai who also lodged the complaint at Police Station Halia alleging that while he attempted to divert the water to his field for irrigation, it was obstructed by PW1 Gomti and Rajmani and they also attacked him and he also wielded blows with lathi.

B 8. The occurrence place is situated at a distance of 8 miles from Halia Police Station as shown in Ex.Ka-5 Chick report and according to PWs 1 to 3 the injured Rajmani could not be taken to the Police Station or Hospital on the occurrence night itself due to distance factor and fear of accused and in the next day morning when they took him to the Police Station he succumbed to the injuries on the way. The delay in lodging the First Information Report is properly explained.

C 9. Rajmani died of homicidal violence is established by the medical evidence adduced by the prosecution. PW5 Dr. V.J. Khanna conducted the autopsy on 3.2.1980 at 11.00 a.m. in District Hospital Mirzapur and found eight ante mortem injuries. The first injury was a contusion on the right frontal region of scalp and on internal examination he found skull fractured and the brain congested with the clotted blood. He has expressed opinion that the death has occurred on account of shock and hemorrhage mainly due to injury no.1 found on the head. Ex.Ka4 is the post-mortem report.

D 10. The learned counsel for the appellants contended that the occurrence took place 34 years ago on account of sudden provocation and the act was committed by the accused without premeditation and four of the accused are already dead and the present appellants are also aged persons and the act committed by them would fall under First Exception to Section 300 IPC. However, according to the learned counsel appearing for the respondent-State the conviction imposed on the appellants is proper.

E 11. The lands owned by PW1 Gomti and accused no.1 Jokhai were situated nearby and they were irrigated by the water drawn from the same sub canal. PW1 Gomti was

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irrigating the wheat crop standing in his field when accused no.1 Jokhai came there and diverted the flow of water into his own field which was situated ahead of the field of PW1 and that was objected to, which led to scuffle and grappling between them and it came to an end on the intervention of PWs 2 and 3. Accused no.1 Jokhai thereafter went home. After about 15 minutes when the accused returned to the field, they found PW1 Gomti had continued to divert the flow of water into his field. This appears to have led to another altercation between the two sides, which escalated into a fight over the sharing of water. It was in the course of this fight that the deceased was injured that led to his death subsequently. It is evident that the assault was in the heat of passion on a sudden quarrel in which the accused cannot be said to have acted in an unduly cruel manner. Evidence shows that the accused/appellants gave blows with lathi, legs and fists mainly on the limbs of Rajmani except injury no.1, which was on the head. Death of Rajmani was not instantaneous, rather he died on the next day of the occurrence. Considering the entire attending circumstances it was a case of grave and sudden provocation and would fall under the First Exception to Section 300 IPC and the offence would come within the second part of Section 304 IPC and the appellants would be liable to be convicted for the said offence.

12. We are of the considered view that imposition of five years rigorous imprisonment on each of the appellants for the conviction under Section 304 Part II IPC would meet the ends of justice.

13. In the result the Criminal Appeal is partly allowed and the conviction of the appellants for the offence under Section 302 read with Section 149 IPC and the sentence of life imprisonment each imposed on them are set aside and instead they are convicted for the offence under Section 304 Part II read with Section 149 IPC and sentenced to undergo five years rigorous imprisonment each. All other convictions and sentences imposed on them by the High Court are maintained.