HARENDRA NATH MANDAL A

v.

STATE OF BIHAR

MARCH 2, 1993

[DR. A.S. ANAND AND N.P. SINGH, JJ.] B

Indian Penal Code, 1860:

Section 304, Part I—When can be invoked—Attack by accused—Victim surviving injuries inflicted by accused—Trial Court sentencing accused under section 307/34—High Court converting sentence to one under section 304, Part I—Whether justified. C

Sections 101 and 104—Occurrence of incident due to dispute regarding harvesting of crops—Accused suffering injuries along with the victims in the same incident—Non-disclosure of true version of occurrence by prosecution—Right of private defence of person and property—Whether available to the accused—Whether accused entitled to be acquitted. D

The prosecution alleged that when PW 9 and his brother, having learnt that the appellant and two other persons were harvesting paddy from their plot, went there and protested as to why their crops were being harvested, one person caught hold of the hands of PW 9's brother, and the appellant, assaulted him on his head with the back portion of a *Tangi,* and at that very time, another person assaulted PW 9, the informant, with a lathi on his right hand. The three persons were charged with attempt to commit murder of PW 9's brother, and also theft of the paddy crops from the plot of PW 9 and his brother. E F

On consideration of the evidence on record, the Sessions Judge convicted the appellant and another accused for offence under section 307 read with section 34 of the Penal Code. They were sentenced to undergo seven years' and five years' rigorous imprisonment respectively. The third accused was convicted under section 323 and sentenced to undergo rigorous imprisonment for six months. All of them were also convicted under section 379 of the Penal Code and sentenced to one year's rigorous imprisonment each. G H

A During the pendency of the appeal before the High Court, preferred by the three accused, one of them died and his appeal abated. The High Court set aside the conviction and sentence under section 323 of the Penal Code against the other accused and he was acquitted of the charges levelled against him. The High Court also set aside the conviction and sentence under section 307 read with section 34 passed against the appel-
B lant, but convicted him under section 304 Part I of the Penal Code and sentenced him to two years' rigorous imprisonment.

In the appeal before this Court on behalf of the appellant, it was urged that when PW 9 to whom the appellant was alleged to have given a
C blow by the back portion of a *Tangi,* survived the injury, there was no question of convicting the appellant under section 304 Part I of the Penal Code. It was also contended that the appellant had sustained injuries during the same occurrence including one at the scalp.

Allowing the appeal, this Court,

D

HELD : 1.1. Section 304 does not create an offence but provides the punishment for culpable homicide not amounting to murder. In view of section 300 of the Penal Code, except in cases covered by the five exceptions mentioned therein, culpable homicide is murder. If a death is caused and
E the case is covered by any one of the five exceptions of section 300, then such culpable homicide shall not amount to murder. Section 304 provides punishment for culpable homicide not amounting to murder and draws a distinction in the penalty to be inflicted in cases covered by one of the five exceptions where an intention to kill is present and where there is only knowledge that death will be a likely result, but intention to cause death
F or such bodily injury which is likely to cause death is absent. The first part of section 304 applies where there is guilty intention whereas the second part applies where there is guilty knowledge. But before an accused is held guilty and punished under first part or second part of section 304, a death must have been caused by him under any of the circumstances mentioned
G in the five exceptions to section 300, which include death caused while deprived of power of self-control under grave and sudden provocation, while exercising in good faith the right of private defence of person or property, and in a sudden fight in the heat of passion without permeditation. [141B-D,F]

H 1.2. In the instant case, when death itself had not been caused, there

was no occasion for convicting the appellant under section 304 of the Penal Code. [141G] A

1.3. The appellant, in his examination under section 313 of the Code of Criminal Procedure, stated that he had sustained injuries during the same occurrence while warding off the *Bhala* blow aimed at his chest by PW 9. The aforesaid injuries on the person of the appellant were examined by the Civil Assistant Surgeon, who had been examined as a witness at the trial. The other accused, who died during the pendency of the appeal had also been examined by the Jail Doctor and the Doctor was examined as a witness at the trial, who proved the injuries on the person of accused. The Judge himself on consideration of the materials on record has come to the conclusion that the manner of occurrence, as alleged by the appellants in which they sustained injuries, has been suppressed and the true version of the occurrence has not been given by the prosecution and in the circumstances, the right of private defence of person and property cannot be completely ruled out. [142B-C,G-H] B C D

1.4. In view of the finding of the High Court that the prosecution had not disclosed the true version of the occurrence, and the right of private defence of person and property was available to the appellant, the appellant was entitled to be acquitted. [143A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 462 of 1985. E

From the Judment and Order dated 21.12.84 of the Patna High Court in Crl. A. No. 146 of 1978 (R).

R.C. Kohli Advocate for the Appellant. F

Pramod Swarup Advocate for the Respondent.

The Judgment of the Court was delivered by

N.P. SINGH, J. This appeal is on behalf of the sole appellant who has beer convicted under section 304 Part I of the Indian Penal Code (hereinafter referred to as "the Penal Code") and has been sentenced to undergo rigorous imprisonment for two years by the High Court. G

The appellant along with Sitaram Mandal and Tribhanga Mandal H

A were charged for offence under section 307 read with section 34 for attempting to commit the murder of Gopal Chandra Ravidas, They had also been charged under section 379 of the Penal Code for committing the theft of the paddy crops from plot No. 2760 of village Amjhore, P.S. Baliapur, District Dhanbad.

B

According to the prosecution case, on 26.10.75 at about 12.00 noon the informant Bishnu Ravidas (PW-9) and his brother Gopal Chandra Ravidas having learnt that the accused persons were harvesting their paddy from the plot aforesaid went there. When they protested as to why their crops were being harvested, accused Sitaram Mandal caught hold of the
C hands of Gopal Chandra Ravidas and Harendra Nath Mandal, the appellant, assaulted Gopal Chandra Ravidas on his head with the back portion of a *Tangi*. At that very time, accused Tribhanga Mandal assaulted informant with a *lathi* on his right hand.

D On a consideration of the evidence on record, the learned Sessions Judge convicted appellant Harendra Nath Mandal and Sitaram Mandal for offence under section 307 read with section 34 of the Penal Code and sentenced the appellant, Harendra Nath Mandal to undergo rigorous imprisonment for seven years and accused Sitaram Mandal to undergo
E rigorous imprisonment for five years. Accused Tribhanga Mandal was convicted under section 323 and sentenced to undergo rigorous imprisonment for six months. All of them were also convicted under section 379 of the Penal Code and sentenced to one year rigorous imprisonment each. The sentences were direced to run concurrently.

F

During the pendency of the appeal before the High Court, Sitaram Mandal died and his appeal abated. The learned Judge, however, set aside the conviction and sentence under section 307 read with section 34 passed against the appellant Harendra Nath Mandal but convicted him under section 304 Part I of the Penal Code and sentenced him to two years'
G rigorous imprisonment. The conviction and sentence under section 379 were also set aside. The conviction and sentence under section 323 of the Penal Code against Tribhanga Mandal were also set aside and he was acquitted of the charges levelled against him. It was rightly urged on behalf of the appellant that when Gopal Chandra Ravidas to whom this appellant
H is alleged to have given a blow by the back portion of a *Tangi*, has survived

the injury aforesaid, there was no question of covicting the appellant under section 304 Part I of the Penal Code.

Section 304 does not create an offence but provides the punishment for culpable homicide not amounting to murder. In view of section 299 of the Penal Code, whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. In view of section 300 of the Penal Code, except in cases covered by the five exceptions mentioned therein, culpable homicide is murder. It is well-known that if a death is caused and the case is covered by any one of the five exceptions of section 300 then such culpable homicide shall not amount to murder. Section 304 provides punishment for culpable homicide not amounting to murder and draws a distinction in the penalty to be inflicted in cases covered by one of the five exceptions, where an intention to kill is present and where there is only knowledge that death will be a likely result, but intention to cause death or such bodily injury which is likely to cause death is absent. To put it otherwise if the act of the accused falls within any of the clauses 1, 2 and 3 of section 300 but is covered by any of the five exceptions it will be punishable under the first part of section 304. If, however, the act comes under clause 4 of section 300 i.e. the person committing the act knows that it is so imminently dangerous that it must, in all probability cause death but without any intention to cause death and is covered by any of the exceptions, it will be punishable under the second part. The first part of section 304 applies where there is guilty intention whereas the second part applies where there is guilty knowledge. But before an accused is held guilty and punished under first part or second part of section 304, a death must have been caused by him under any of the circumstances mentioned in the five exceptions to section 300, which include death caused while deprived of power of self-control under grave and sudden provocation, while exercising in good faith the right of private defence of person or property, and in a sudden fight in the heat of passion without premeditation. So far the present case is concerned, when death itself had not been caused, there was no occasion for convicting the appellant under section 304 of the Penal Code.

Now the next question is as to whether the appellant should be convicted for causing injury on the head of aforesaid Gopal Chandra

A Ravidas with the back portion of a *Tangi*. It was pointed out that the appellant has sustained injuries dring the same occurrence including one at the scalp. The aforesaid injuries on the person of the appellant were examined by the Civil Assistant Surgeon, Sadar Hospital, Dhanbad, who has been examined as a witness at the trial. The appellant in his examination under section 313 of the Code of Criminal Procedure stated that he had sustained injuries aforesaid while warding off the *Bhala* blow aimed at his chest by the aforesaid Gopal Chandra Ravidas. The other accused Sitaram Mandal who died during the pendency of the appeal had also been examined by the jail Doctor in the Dhanbad jail and said Doctor was examined as a witness at the trial, who proved the injuries on the person of accused Sitaram Mandal.

The learned Judge himself on consideration of the materials on recored has come to the following conclusion :-

> "From the aforesaid discussion of the evidence, in the facts and circumstances of the case, it appears that since long before the occurrence both the parties were claiming title and possession over the disputed land and the occurrence took place regarding the harvesting of the paddy crop. In the same occurrence the informant (PW-9) and his brother Gopal Ravidas sustained injuries and the first and second appellants were also injured. According to the appellants Gopal Ravidas aimed a 'Bhala' blow on the chest of the first appellant but he warded it off and sustained injuries at his hand. The first and the second appellants were also assaulted by lathis. The injuries were examined and proved by the doctor (DW-8). Likewise, the injuries of the second appellant were examined by the jaid doctor, (DW-7), who proved the injury report. May be, that their injuries were not severe but it was a matter of luck that the first appellant could avoid and ward off the 'Bhala' blow aimed at his chest. The manner of occurrence as alleged by the appellants in which they sustained injuries has been suppressed and the true version of the occurrence has not been given by the prosecution. In the circumstances, the right of private defence of person and property cannot be completely ruled out."

Once the finding aforesaid was recorded that the prosecution has not disclosed the true version of the occurrence and the right of private defence of person and property was available to the appellant then the appellant was entitled to be acquitted. A

Accordingly, the appeal is allowed. The conviction and sentence passed against the appellant are set aside. B

N.P.V. Appeal allowed.