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BUDDHU SINGH

v.

STATE OF BIHAR (NOW JHARKHAND)

(Criminal Appeal No. 349 of 2007)

APRIL 28, 2011

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[V.S. SIRPURKAR AND T.S. THAKUR, JJ]

Penal Code, 1860: s.304 (part II) – Three accused – First two accused grappled and pinned down the victim – Third accused dealt a blow of axe which landed on the head of the victim – Victim was seriously injured and died in hospital – Courts below convicted accused u/s.302 and awarded life imprisonment – On appeal, held: There could not have been the intention to commit the murder of the victim though the common intention on the part of first two accused could be attributed since they did the overt act of grappling with and pinning down the deceased – Intention of third accused to not commit the murder was also justified by the fact that the accused who dealt a blow of axe did not repeat the assault – The blow could not be said to be intended towards the head of victim – It could have landed anywhere, however it landed on the head of the victim – Therefore, element of intention is ruled out – Conviction modified and converted into s.304 (part II) – Sentence reduced to period already undergone.

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The prosecution case was that there was some dispute between the accused persons and the victim-deceased. Accused 'L' was father of 'B' and 'BS'. On the fateful day, accused 'B' and accused 'L' grappled with the victim and pinned him down, while, accused 'BS' dealt an axe blow which landed on the head of the victim. The victim got seriously injured on account of that blow and died in the hospital. The trial court found all the accused guilty under section 302 IPC and awarded life sentence. The High Court affirmed the same. The instant appeals

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were filed by the accused challenging the order of conviction. A

Partly allowing the appeals, the Court

HELD: There was nothing on record which could be said against the accused 'L' and 'B' though the common intention on their part could be attributed since they had done the overt act of grappling with and pinning down the deceased. Seeing his father and brother grappling with the deceased, accused 'BS' dealt an axe blow. The blow could not be said to be intended towards the head. It could have landed anywhere. However, it landed on the head of the deceased. Therefore, the element of intention is ruled out. Again the defence raised on behalf of the accused that there could not have been the intention to commit the murder of the deceased is justified by the fact that the accused 'BS' did not repeat the assault. Under the circumstances, the prosecution was able to establish the guilt of the accused persons under Section 304 Part II I.P.C. The finding of the High Court is modified and the conviction of the accused is converted from Section 302 IPC to Section 304 Part II IPC and they are sentenced to the period already undergone. [Paras 9, 10] [965-E-H; 966-A-B] B
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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 349 of 2007 etc. F

From the Judgment & Order dated 18.05.2006 of the High Court of Jharkhand in Cr. App. No. 238 of 2000 R.

WITH

Crl. Appeal No. 1116 of 2007. G

Ajit Kumar Pande, S.B. Khan for the Appellant.

Manish Mohan, K.N. Sinha (for Anil Kumar Jha) for the Respondent. H

A The Judgment of the Court was delivered by

SIRPURKAR, J. 1. Criminal Appeal No. 349 of 2007 has been filed by accused Buddhu Singh while Criminal Appeal No. 1116 of 2007 has been filed by his father Ledwa Singh and brother Balchand Singh. The trial court found them guilty under
B Section 302 IPC and sentenced each one of them to imprisonment for life. The High Court also affirmed the conviction and sentenced awarded by the trial court.

2. The prosecution case is that the deceased Sugendra
C Singh was suspected to be practising witchcraft and he was aggrieved against the accused persons for not giving to him the feast which he was professionally supposed to be paid on account of getting cured of accused Balchand Singh from some serious illness. The incident seems to have taken suddenly
D without there being any previous history to it.

3. The allegation is that on 30.7.1995 at about 4 p.m. deceased Surendra Singh was standing in front of house of PW5 Nagru Kharia when accused Balchand Singh pushed him down and accused Buddhu Singh is said to have then dealt an
E axe blow which landed on the head of the deceased. Accused Ledwa Singh is, thereafter, said to have started kicking the deceased. It is reported that on account of that blow, Sugendra Singh was seriously injured and died in the hospital.

4. The prosecution pressed in service the evidence of three eye witnesses namely; PW 2 Feku Kharia, PW6 – Karia Singh and PW7 Tijo Devi. PWs 2 and 6 turned hostile and refused to support the prosecution. PW7, being the mother of the deceased, however, supported the prosecution case.
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G According to her, she saw the accused Balchand Singh and Ledwa Singh grappling with the deceased while accused Buddhu Singh giving an axe blow on the head of the deceased.

5. We have gone through the evidence of the witnesses
H very carefully.

6. Mr. Ajit Pandey, learned counsel appearing for the
accused persons contended that firstly this was a case of single
blow and the blow could not have been intended to be given
on the head though it did land on the head. Mr. Pandey further
argued that if the intention was to commit the murder, then the
accused persons, more particularly accused Buddhu Singh
would have repeated the assault which he actually and
admittedly did not repeat. A B

7. Mr. Pandey further contended that once the injury was
unintended, the offence could be converted into Section 304
Part II IPC from Section 302 IPC because the accused ought
to have the knowledge that a single assault by an axe could
result into the death of the deceased. C

8. Mr. Manish Mohan, learned counsel appearing for the
State supported the judgment and contended that the injury was
serious enough and was on a very vital part i.e. head and
resulted in the fracture of frontal bone and the death was almost
instantaneous, though in the hospital. D

9. Considering the overall material, we are of the view that
there is hardly anything on record which can be said against
the accused Ledwa Singh and Balchand Singh though the
common intention on their part could be attributed since they
had done the over act of grappling with and pinning down the
deceased. Now, seeing his father and brother had been
grappling with the deceased, the accused Buddhu Singh dealt
an axe blow which could not be said to be intended towards
the head. It could have landed anywhere. However, it landed
on the head of the deceased. Therefore, the element of intention
is ruled out. Again the defence raised on behalf of the accused
that there could not have been the intention to commit the
murder of the deceased is justified by the fact that the accused
Buddhu Singh did not repeat the assault. Under the
circumstances, we feel that the prosecution has been able to
establish the guilt of the accused persons under Section 304
Part II I.P.C. E F G H

- A 10. We, accordingly, modify the finding of the High Court and convert the conviction of the accused from Section 302 IPC to Section 304 Part II IPC and sentence each of them to the period already undergone. Accused Buddhu Singh is stated to be in jail for the last five years whereas other accused persons
B namely; Ledwa Sngh and Balchand Singh are stated to be in jail for the last ten years. They be released from the jail forthwith unless they are required in any other case.

11. The appeals are partially allowed.

C D.G.

Appeals partly allowed.