

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 349 OF 2007

BUDDHU SINGH ...APPELLANT

VERSUS

STATE OF BIHAR (NOW JHARKHAND) ...RESPONDENT

WITHCRIMINAL APPEAL NO. 1116 OF 2007

LEDWA SINGH & ANR. ...APPELLANTS

VERSUS

STATE OF BIHAR (NOW JHARKHAND) ...RESPONDENT

JUDGMENTSIRPURKAR, 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 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 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 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 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. 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 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.

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.

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.

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.

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 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.

.....J.
[V.S. SIRPURKAR]

.....J.

[T.S. THAKUR]

NEW DELHI
APRIL 28, 2011.