

(1921) 01 PAT CK 0017
In the Patna High Court

Emperor		APPELLANT
	Vs	
Bhimlal Chamar		RESPONDENT

Date of Decision : 31-01-1921

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 417
Penal Code, 1860 (IPC) — Section 300, 302

Citation : AIR 1922 Patna 321 : 64 Ind. Cas. 671

Hon'ble Judges : Dawson Miller, C.J.;Adami, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—This is an appeal brought on behalf of the Crown u/s 417 of the Code of Criminal Procedure from a verdict of acquittal in a trial for murder held before the Sessions Judge of Patna and a Jury on the 2nd August 1920. The Jury unanimously found the accused not guilty of the charge of murder, and the learned Judge stated that in view of the unsatisfactory state of the evidence he was not prepared to disagree with the unanimous verdict of the Jury, and the accused Bhimlal Chamar was acquitted and set at liberty. The grounds of appeal, which have been put before us for our consideration, are that the learned Sessions Judge did not direct the attention of the Jury to the fact that even if an offense u/s 302 of the Indian Penal Code had not been made out, the facts established might have constituted a minor offence and that the non-direction amounted to a misdirection, and therefore, the verdict was liable to be set aside. It was further contended, but not pressed, that there was a misdirection on the part of the learned Sessions Judge in that he did not point out to the Jury that the deceased child, whose death the accused is alleged to have caused, was the last so sharer with him in the income arising from his business as Chamar and that he would be materially benefited by getting the child out of the way. I may say at once with regard to this last point that it is not a matter which ought to influence this Court in an appeal against an acquittal, because it is not a misdirection but a mere non-direction or a failure of the Judge to point out what the prosecution considered to have been a material part of the evidence, as

showing a motive on the part of the accused, and a mere failure on the part of the Sessions Judge to point out to the Jury all the matters which may be considered by them in evidence, that is, matters which have been established by the evidence, does not necessarily amount to a misdirection which in the case of an appeal against an acquittal would justify the Court either in deciding, the case itself or sending it back for a new trial.

2. With regard to the main ground of appeal the learned Government Advocate has stated what the ground of appeal is and pointed out to us very properly what he considers to be the law upon the subject, and speaking for myself I entirely agree with his view. He has not gone in detail into the evidence, but we have had an opportunity of considering the evidence and it would be extremely difficult in this case for the Court to arrive at the conclusion that there had been a non-direction which amounted to a misdirection, so that we ought to send the case back for a new trial. The point which has been stated, but not argued at any length because the learned Government Advocate feels, as I feel, the difficulty about it upon the evidence, is that the learned Sessions Judge failed in his duty in summing up to the Jury in pointing out that although the accused might not be guilty of the offence of murder u/s 302 of the Indian Penal Code, it was still open to the Jury to find that he might be guilty of culpable homicide not amounting to murder. It is not contended that any of the exceptions to Section 300 of the Indian Penal Code could possibly have any application in the present case, and, therefore, the only possible manner in which the Jury, if they should come to the conclusion of fact that murder had not been committed, might still find the accused guilty of culpable homicide not amounting to murder was that they considered that the accused did in fact bring about the death of the child, but that the circumstances were such that he did not know and could not know that what he was doing was likely to cause death. Now having read the evidence which it is unnecessary to refer to in detail but which may very shortly be stated, it seems to me that this is a case in which it was either murder or nothing. The facts, shortly stated, are that the accused, who since his brother's death a few months earlier was the sole surviving male member together with his brother's son of his family, had refused to maintain the son of his deceased brother, a small boy of some 1 1/2 or 2 years of age. There had been a panchayet of his castemen and they had come to the conclusion that the accused ought to share the family income with the child. The accused had refused to do so. He had thereupon been importuned both by his deceased brother's wife and by his mother to share the family income with the small boy or at least to provide for his maintenance. Matters had reached a climax on the night before the alleged murder and the accused's mother had apparently had a quarrel with him on the subject. On the following morning, according to some 6 or 7 witnesses, it is shown that the accused early in the morning, when the small boy was playing with his sister, a girl of some 6 years of age, seized the boy by the feet and dashed his head against a tree, with the result that the child died a few hours afterwards in hospital. It was very severely wounded about the head, most of the

bones had been broken and there can be no doubt that if the evidence was accepted, it was clearly a case of murder and nothing else. It is to my mind impossible to conceive in such circumstances that a person in the position of the accused, treating a child in that manner, could not have understood what the natural consequences of such an act would be and therefore, it seems to me that it was quite immaterial that the Sessions Judge did not direct the Jury that if in fact a murder were not committed, they might still come to the conclusion that a lesser offence of culpable homicide not amounting to murder had been committed. The learned Government Advocate felt the difficulty in pointing out any facts which might have justified such a verdict and, therefore, he did not go into the facts of the case. He also agrees that if the facts show that the case is one really of murder or nothing else, it is immaterial that the learned Sessions Judge did not direct the Jury, in the event of their failing to find a verdict of murder, to consider whether it did not amount to the lesser offence. The evidence upon the question of whether or not the accused did commit the act complained of seems to have been all one way. There were some slight discrepancies in details between the various eye-witnesses, but for some reason which it is impossible to explain now, the Jury appear to have rejected the evidence given by the witnesses. They were the judges of the question of fact. They were at liberty to reject the evidence if they did not think it worthy of credence, and, apparently that is the only ground upon which they arrived at their decision. It is not possible for this Court sitting in appeal to question that verdict and as the prosecution has failed to make out that there was any material non-direction in the case, I think that this appeal must be dismissed.

Adami, J.

3. I agree.