

Cr. Appeal (D.B.) No. 251 of 2002

.....

(Against the judgment of conviction dated 27.05.2002 and order of sentence dated 28.05.2002 passed by learned Sessions Judge, West Singhbhum at Chaibasa, in Sessions Trial No.280 of 2000).

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Durga Charan Sundi, S/o Late Abhiswar Sundi, R/o Village- Anbrai,
P.O. Sarda, P.S. Muffasil, Chaibasa, Singhbhum (West)

..... Appellant

Versus

The State of Jharkhand

.... Respondent

.....

For the Appellant : Mr. Rajendra Kumar Gupta, Advocate

For the State : Mr. Azeemuddin, Addl. Public Prosecutor

PRESENT

Sri Ananda Sen, J.

Sri Gautam Kumar Choudhary, J.

J U D G M E N T

09/21.10.2024

By Court:

Heard, learned counsel for the appellant, Mr. Rajendra Kumar Gupta and learned counsel for the State, Mr. Azeemuddin, Additional Public Prosecutor.

2. The instant criminal appeal is directed against the conviction of the sole appellant under Section 302/34 of the Indian Penal Code vide judgment of conviction dated 27.05.2002 and order of sentence dated 28.05.2002, passed by learned Sessions Judge, West Singhbhum at Chaibasa, in Sessions Trial No.280 of 2000 whereby he has been sentenced to undergo imprisonment for life.

3. Learned counsel for the appellant submits that there is no material to convict the appellant under Section 302 of IPC. He further submits that there is no eye witness of the offence, the only circumstance which is against the appellant is that he was seen fleeing along with others from the house of the informant, which cannot be said to be cogent and strong circumstance to convict the appellant. The child witness, P.W.-6 and P.W.-7 are the tutored witness thus, conviction cannot be sustained on their testimony. He further submits that there is only one injury on the body of the

deceased which would suggest that the appellant has been falsely implicated in this case. On these grounds, counsel for the appellant prays for acquittal.

4. Learned counsel for the State submits that the child witness i.e. P.W.-6 and P.W.-7 are natural witness as they were present in the house and they have stated that it is this appellant, who had committed the murder and they had seen the same. The evidence of one corroborates with others, medical evidence also corroborates, the ocular evidence, thus, this appellant cannot be acquitted.

5. The F.I.R. was registered on 20.12.1999 on the basis of the *farbeyan* of informant (Mani Purty), P.W.-5, who had stated that she was in the *Khaliyan* and her aged mother was boiling paddy in her house. Sukmati Purty and Somai Purty were also present with her mother. When she heard cry of her mother from the house, she saw four persons fleeing from there. Out of them she identified Durga Charan Sundi (appellant) and Ramay Purty. Ramay Purty is the step brother. She could not identify the other two persons. She further stated that there was dispute between them. She further stated that this appellant has committed murder of the deceased. The *fardbeyan* was exhibited as Exhibit-3 and the signature of the informant was exhibited as Exhibited-1/1.

6. On the aforesaid *fardbeyan*, Sadar Chaibasa (M) P.S. Case No.100 of 1999 was registered under Section 302/34 of the Indian Penal Code. The police after investigation filed chargesheet against the appellant under Section 302/34 of the Indian Penal Code and Sections 4, 5 and 6 of Prevention of With (Daain) Practices Act.

7. Thereafter the Court took cognizance and committed the case to the Court of Sessions. As the appellant pleaded not guilty, charge was framed under Section 302/34 of IPC and he was put on trial. Nine witnesses have been examined in this case, who are as follows:-

P.W.-1 Tribhuwan Purty
P.W.-2 Dinbandhu Purty
P.W.-3 Yadunandan Pan
P.W.-4 Somnath Purty

P.W.-5 Mani Purty, informant of this case
P.W.-6 Somay Purty
P.W.-7 Sukmati Purty
P.W.-8 Dr. Lalit Minz
P.W.-9 Suryadeo Ram, Investigating Officer of this case.

8. The following documents were also exhibited by the prosecution:-

Exhibit-1 signature of P.W.-4 on F.I.R.
Exhibit-1/1 signature of P.W.-5 on F.I.R.
Exhibit-2 Postmortem report.
Exhibit-3 Entire F.I.R.

9. Defence has also examined two witnesses namely, Jagmohan Purti and Keresse Purti. Both stated that on hearing hue and cry, they reached the place of occurrence along with the appellant.

10. To prove the homicidal death, the prosecution has examined P.W.-8, who is the Doctor. He conducted the postmortem of the deceased, who was aged about 70 years. The post-mortem report was exhibited by him, which was marked as Exhibit-2. He found the following antemortem injuries:-

"Brain deep, Wound present in the occipital region. Size 4" x 2" X 1"
On dissection- Head smashed. Fracture of the occipital and parietal bone.
Brain matter lacerated."

The Doctor opined that hard and blunt object like rod was used and cause of death is due to head injury. He stated that the said injury is not possible from fall on rock surface. Thus, from the evidence of the Doctor, we find that the death is homicidal and is murder.

From the evidence, we find that out of all witnesses, the main witness is P.W.-6 and P.W.-7. Both are child witness, aged about 8 and 10 years, but the Court found them competent to depose. P.W.-6 stated that grand-mother has been murdered. At the time of occurrence, the grand-mother was boiling paddy and his sister (P.W.-7) was also present in the house. She stated that Durga (appellant) caught the deceased and Ramay assaulted on her head by a rod. He rushed to inform the informant, then the

informant ran towards the Munda. This witness identified the appellant, who was in the Court.

Similarly, P.W.-7 also stated that she and P.W.-6, her brother were in the house when the deceased was boiling paddy. Miscreants entered the room, Durga caught hold of the deceased and Ramay assaulted her on the head with rod, when her younger brother fled and informed their aunt, who is informant. Her aunt went to inform the Munda. In her cross-examination, it is stated that six persons were there and she only left the room after miscreants left. There is nothing in her cross-examination to shake her credibility.

P.W.-1, P.W.-2 and P.W.-3 have turned hostile.

P.W.-4 is the Munda. He came to the house and saw the dead body of the deceased and went to the police station along with the informant.

The informant is P.W.-5, who stated that she was relaxing in the evening and her mother was boiling paddy. Sukmati Purty (P.W.-7) and Somay Purty (P.W.-6) were with the deceased. When her mother started shouting *Bachao Bachao*. Her nephew came and informed about the incident when she rushed to the house of the Munda. In the meantime, she saw this appellant and Ramay fleeing from their house. When she went to her house, she saw the deceased dead. She further stated that she followed them. In her cross-examination, her statement in-chief could not be demolished.

11. Though the three witnesses are related to the deceased, but they are natural witness. There is nothing in their testimony to disbelieve them. The statement of P.W.-6 and P.W.-7 corroborates with each other and so with the statement of P.W.-5. The medical evidence also supports the ocular evidence. There is nothing to disbelieve the statement of these witnesses. We therefore, conclude that P.W.-6 and P.W.-7 are the eye witnesses. Thus, we find that the prosecution has able to prove the guilt of

the appellant beyond all reasonable doubts and the Trial Court has correctly appreciated all the evidence and the convicted the appellant and sentenced him for committing offence under Section 302 of IPC with the aid of Section 34 of IPC. We find no material to differ with the judgment of the Trial Court. Thus, we find no merit in this appeal, accordingly the same is dismissed.

12. The judgment of conviction dated 27.05.2002 and order of sentence dated 28.05.2002 passed by learned Sessions Judge, West Singhbhum at Chaibasa in Session Trial No.280 of 2000 needs no interference, thus, is affirmed.

13. The appellant is on bail, which was granted on 07.10.2002. Thus, the appellant is directed to surrender and served the rest of the sentence.

14. Let Trial Court Records along with a copy of this judgment be sent to the concerned trial court forthwith.

(Ananda Sen, J.)

(Gautam Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated 21/10/2024
NAFR /R.S./ Cp 03.