

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No.58 of 2003

(Against the judgment of conviction and the order of sentence, both dated 25.11.2002 passed by the learned Additional District and Sessions Judge, Fast Track Court III, Giridih in Sessions Trial No. 190 of 2001)

Bhola Mahto, son of Meghu Mahto, resident of village Bishunpur, PS Birni, District Giridih ... Appellant(s).

Versus

The State of Jharkhand ... Respondent(s).

PRESENT
SRI ANANDA SEN, J.
SRI PRADEEP KUMAR SRIVASTAVA, J.

For the Appellant(s) : Mr. Rohit Ranjan Sinha, *Amicus Curiae*
For the Respondent(s) : Ms. Nehala Sharmin, Spl. PP

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J U D G M E N T

2nd December 2024

By Court:

We have heard the learned *Amicus Curiae* appearing for the appellant and the learned counsel for the State at length.

2. This Criminal Appeal arises out of the judgment of conviction and the order of sentence, both dated 25.11.2002 passed in Sessions Trial No. 190 of 2001 whereby and whereunder learned Additional District and Sessions Judge, Fast Track Court-III, Giridih convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

3. The learned *Amicus Curiae* appearing on behalf of the appellant argues that this case cannot come within the purview of section 302 of the Indian Penal Code. There is contradictory statement of PW2, PW3 and PW4 so far as the murder weapon is concerned. PW2 had stated that the deceased was assaulted by *lathi*. Whereas PW3 and PW4 have stated that the deceased was assaulted by iron rod. It is his contention that the entire incident

occurred in the heat of passion when a sudden quarrel had taken place due to watering of the field, thus Exception 4 of section 300 of the Indian Penal Code will be applicable in this case.

4. The learned counsel for the State opposes the prayer and submits that four blows were given on the head of the deceased and one on the leg which would suggest that there was intention to commit murder. As per the learned counsel for the State, the discrepancy so far as it relates to the murder weapon concerned is immaterial and it cannot be a ground to acquit the appellant. As per the statement of the doctor PW1, the cause of death is due to shock and hemorrhage caused by hard and blunt substance such as iron rod which substantiates and corroborates the statement of PW3 and PW4.

5. The FIR is at the instance of Nanku Mahto (PW4). It has been stated in the *fardbeyan* that due to watering of field, some altercation had taken place between this appellant and the deceased. This appellant with an iron rod had assaulted the deceased resulting in his death. Based on the aforesaid *fardbeyan*, FIR being Birni PS Case No. 74 of 2000 was instituted under section 302/34 IPC. The *fardbeyan* was marked as Ext.3.

6. After investigation, the Investigating Officer submitted chargesheet against the appellant for the offence punishable under Section 302/32 of the Indian Penal Code and the appellant was put on trial.

7. On the basis of chargesheet and materials available on record, cognizance was taken and the case was committed to Court of Sessions where charge was framed under Section 302/34 of the Indian Penal Code and trial proceeded.

8. To prove the prosecution case, altogether 5 witnesses were examined by the prosecution, who are as under:-

i. PW1 :- Dr. Suresh Bramhchari

- ii. PW2 :- Nathu Mahto
- iii. PW3 :- Jagarnath Mahto
- iv. PW4 :- Nanku Mahto (informant)
- v. PW5 :- Ramrup Paswan, I.O.

9. Following documents have been exhibited :

- i. Ext.1 – Postmortem Report
- ii. Ext. 2– Signature of Nathu Mahto on inquest
- iii. Ext.3 – Signature and writing of FIR by Ramrup Paswan
- iv. Ext.4 – Entire inquest report.

10. PW1 is the doctor who conducted the postmortem on the dead body of the deceased and found the following injuries:

- “i. A stitched wound over the right parietal area of head 2 ½” in length.*
- ii. A stitched wound 1 ½” in length over right parietal scalp.*
- iii. A lacerated wound 2 ½” x ½” deep to the bone over right side of occipital bone.*
- iv. A stitched wound 2” over right posterior parietal area of skull.*
- v. An abrasion ¼” x ¼” over right leg above ankle.*

On Dissection:

Hematoma present over right parietal occipital area with fracture of right parietal bone. Cranial cavity full of blood clots. Larynx and tracea – NAD. Thoracic cage NAD. Lungs pale. Heart-both sides empty. Liver, spleen and kidney all pale. Stomach empty. Mucosa – NAD, no smell, urinary bladder full. ”

The postmortem report had been marked as Exhibit-1. He opined that cause of death is due to ante mortem injuries which were multiple in nature. He also stated that the death was caused by head injury which is caused by hard and blunt substance such as iron rod. Thus from the postmortem report and his evidence it is clear that the death is a homicidal death.

11. Section 300 of the Indian Penal Code defines murder:-

“300. Murder.

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or –

2ndly. – If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or –

3rdly. – If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or –

4thly. – If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

There are some Exceptions to Section 300 of the Indian Penal Code. Exception 4 of section 300 IPC reads as follows:-

“When culpable homicide is not murder.

Exception 1. –

Exception 2. –

Exception 3. –

Exception 4. – Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation. – It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5. –”

12. Thus from the aforesaid Exception if in a sudden heat of passion and in an altercation without premeditation, assault takes place and death occurred because of the said assault, the case would fall under Exception 4 of Section 300 of the Indian Penal Code.

13. In this case the eye witnesses PW2, PW3 and PW4 stated that there was an altercation between this appellant and the deceased due to watering of the field. There was a quarrel as to who would pour water in their field before other. Because of the said altercation in a sudden fight, this appellant with the rod assaulted the deceased on his head which resulted in his death. This is a consistent evidence of the all the witnesses. This clearly suggests that this case will fall under Exception 4 of Section 300 of the Indian Penal Code.

14. Since we have held that this case will fall under Exception 4 of Section 300 of the Indian Penal Code, we set aside the conviction of the appellant under section 302 of the Indian Penal Code.

15. Considering the nature of the assault and the evidence of the eye witnesses this case will fall under section 304 Part-II of the Indian Penal Code. Thus, we convict the this appellant for committing offence under section 304 Part-II of the Indian Penal Code and sentence him to undergo RI for five years considering the long pendency of the trial and this appeal and also considering the age of the appellant now as he would be of more than 52 years, as he was of only 30 years at the time of occurrence.

16. Thus this appeal stands dismissed with the aforesaid modification in the judgment of conviction and the order of sentence passed in Sessions Trial No. 190 of 2001.

17. The appellant is on bail. His bail is cancelled and he is directed to surrender before the Trial Court concerned forthwith to serve the rest of the sentence, if he has not already served.

18. Considering the proper assistance given by Rohit Ranjan Sinha, learned *Amicus Curiae*, we direct the Secretary, Jharkhand High Court Legal Services Committee, Ranchi to pay remuneration of Rs. 7,500/- to him at the earliest.

19. Let a copy of the judgment along with the Trial Court Records be sent back to the Court concerned forthwith.

(ANANDA SEN, J.)

(PRADEEP KUMAR SRIVASTAVA, J.)

High Court of Jharkhand, Ranchi

Dated : 02/12/2024

Tanuj/

N.A.F.R.