

IN THE HIGH COURT OF JHARKHAND AT RANCHI

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(Against the judgment of conviction dated 28.05.2002 and order of sentence dated 30.05.2002, passed by learned 5th Additional Sessions Judge, Giridih, in Sessions Trial No.293 of 1993).

Cr. Appeal (D.B.) No. 313 of 2002

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Balki Mahto, S/o Late Budhan Mahto, R/o Nai Tand,
Police Station- Hirodih, District- Giridih Appellant

Versus

The State of Jharkhand Respondent

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For the Appellant : Mr. S.K. Murthi, Advocate
For the State : Ms. Nehala Sharmin, Spl. Public Prosecutor

PRESENT

Sri Ananda Sen, J.

Sri Pradeep Kumar Srivastava, J.

J U D G M E N T

11.12.2024

By Court:

We have heard, Mr. S.K. Murthi, learned counsel appearing on behalf of the appellant and Ms. Nehala Sharmin, learned Spl. P.P. appearing on behalf of the State at length.

2. This criminal appeal is preferred against the judgment of conviction dated 28.05.2002 and order of sentence dated 30.05.2002, passed by learned 5th Additional Sessions Judge, Giridih, in Sessions Trial No.293 of 1993, whereby the sole appellant was convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

3. Prosecution story as per the *fardbeyan* of the informant- Mathura Mahto is that his sister-in-law- Gomia Devi was returning home at about 6.00 P.M. and when she reached near the house of the informant, the appellant- Bali Mahto caught hold of her and tried to take her with him. It is alleged that her family used to throw tooth brush stick (*datwan*) in the house of this appellant, thus this incident happened. When she raised alarm the informant's brother- Dwarika Mahto (deceased) and mother rushed to save her, thereupon, the appellant assaulted Dwarika Mahto by means of an iron rod causing

injuries on his hand, head, chest and waist. The appellant also wanted to assault the informant when he tried to intervene to save his brother, but on raising alarm as several persons gathered, he fled.

4. On the basis of the *fardbeyan*, Hirodih P.S Case No.32 of 1993 was registered under Section 302 of the Indian Penal Code.

5. After investigation police submitted chargesheet against the appellant and cognizance was taken for the offence under Section 302 of IPC. Thereafter the case was committed to the Court of Sessions where charge was read over and explained to the appellant to which he pleaded not guilty and claimed to be tried. Charge was framed against the appellant under Section 302/34 IPC and the trial proceeded.

6. Altogether eight witnesses have been examined in this case, who are as follows:-

- (i) P.W.-1 Gomia Devi
- (ii) P.W.-2 Most. Jamuni
- (iii) P.W.-3 Dr. K. Kumar
- (iv) P.W.-4 Sito Mahto
- (v) P.W.-5 Chandrika Mahto
- (vi) P.W.-6 Kandan Mahto
- (vii) P.W.-7 Lalchan Mahto
- (viii) P.W.-8 Mathura Mahto, informant

7. The following documentary evidences were exhibited by the prosecution:-

- Exhibit-1- P.M. report*
- Exhibit-2 Signature of P.W.-4 on fardbeyan*
- Exhibit- 2/1 Signature of P.W.-5 on fardbeyan*
- Exhibit- 2/2 Signature of P.W.-6 on fardbeyan*
- Exhibit-2/3 Signature of P.W.-7 on fardbeyan*
- Exhibit-2/4 Signature of P.W.-9 on fardbeyan*

8. The Trial Court after completion of the prosecution evidence examined this appellant under Section 313 of Cr.P.C. After hearing the parties, the Trial Court convicted this appellant under Sections 302 of IPC.

9. In order to prove and establish homicidal death, the prosecution has examined the Doctor, who is P.W.-3 and has also exhibited the

postmortem report as Exhibit- 1. On careful examination of the evidence of P.W.-3, we find that he found five injuries on the person of the deceased. Out of these five injuries, one (i.e. injury no.iv) is a puncture of pin head incised wound which according to the Doctor is an intravenous infusion. This injury cannot be said to be as a result of the assault, rather it might have been caused due to some intravenous infusion during treatment. The other four injuries are as follows:-

- (i) Abrasion over right shoulder 2" x 1".*
- (ii) Abrasion right forearm in middle 1/4" x 1/8".*
- (iii) Abrasion left forearm 1/4" x 1/8".*
- (iv) Lacerated wound on scalp was soon after removing the bandage size 2 1/2" x 1/4" x skin deep on further dissection, there was blood clot under neath the skin injury and the underline bone was fractured. There was subdural blood clot with decoration of brain and meninges.*

Out of these remaining four injuries, three are abrasions on shoulder and forearm. These abrasions cannot be said to have cause death of the deceased. The injury which caused the death is lacerated wound on the scalp.

The Doctor opined that the death is because of the head injury which was sufficient to cause death in ordinary course of nature. Doctor also opined that the injury was caused by hard and blunt substance.

From the aforesaid evidence, it is clear that the deceased died a homicidal death.

10. From the evidence of P.W.-1, who is sister-in-law of the informant, we find that she had supported the prosecution case that this appellant gave one blow on the head of the deceased. She stated that the appellant had caught hold of her when she reached near the house. She further stated that the appellant has alleged that she used to throw tooth brush stick (*datwan*) in his house because of which entire dispute occurred. She also stated that this appellant had assaulted on the head of the deceased with an iron rod.

The mother of the informant, P.W.-2 also stated in the similar manner that this appellant assaulted the deceased with iron rod on

the head and another assault was on the hand and other part of the body.

Similar is the statement of P.W.-8.

11. From the evidence of these witnesses and also from the medical evidence specially the Doctor, we find that only one blow was given on the head of the deceased that too, with the iron rod. From the evidence, it is also established that there was no premeditation on part of this appellant to commit murder of the deceased. In spur of the moment, as he was enraged because of the act of P.W.-1 and her family members of throwing used tooth brush stick (*datwan*) in his house, the said incident occurred.

12. Thus, based on the evidence, we are of the opinion that this case will not fall within the main definition of murder under Section 300 of the Indian penal Code and since, the assault had taken place, in the spur of moment and the death had occurred because of the said assault, exception 4 of Section 300 will be applicable. Thus, this case will be covered under Section 304 Part II of the Indian Penal Code. Thus, we convert the conviction of the appellant from under Section 302 of IPC to Section 304 Part II of the Indian Penal Code and sentence the appellant for the period, which he has already undergone in custody.

13. With the aforesaid modification in the findings and the sentence, the instant Criminal Appeal stands dismissed.

14. As this appellant is already on bail, he and his bailors are discharged from the liabilities of the bail bonds.

15. Interlocutory application(s), if any, also stands disposed of.

16. Let the Trial Court Record be transmitted to the Court concerned along with a copy of this judgment.

(Ananda Sen, J.)

(Pradeep Kumar Srivastava, J.)