

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (D.B.) No.53 of 2016

[Arising out of judgment of conviction dated 21.11.2015 and order of sentence dated 24.11.2015, passed by learned Additional Judicial Commissioner - VI, Ranchi, in Sessions Trial No.318 of 2011 arising out of Bariyatu P.S. Case No.427 of 2010 corresponding to G.R. Case No.5722 of 2010.]

Manoj Toppo, S/o Late Julius Toppo, Resident of Village Kanijadi, P.S. Mander, P.O. Mahuajadi, District Ranchi. **Appellant**

Versus

The State of Jharkhand. **Respondent**

PRESENT : SRI ANANDA SEN, J.

: SRI GAUTAM KUMAR CHOWDHARY, J.

For the Appellant : Mr. Sanjeet Nayak, Advocate.

For the State : Mr. Suraj Deo Munda, A.P.P.

JUDGMENT

By Court :

This Criminal Appeal is preferred on behalf of the appellant being aggrieved by the judgment of conviction dated 21.11.2015 and order of sentence dated 24.11.2015, passed by learned Additional Judicial Commissioner - VI, Ranchi, in Sessions Trial No.318 of 2011 arising out of Bariyatu P.S. Case No.427 of 2010 corresponding to G.R. Case No.5722 of 2010, whereby and wherein the appellant has been convicted for offence under Section 302 of the IPC, for which he was sentenced to undergo rigorous imprisonment for life with a fine of Rs.2,000/- and in default of payment of fine amount, further to undergo simple imprisonment for 6 months.

2. Heard learned counsel for the appellant and learned A.P.P. for the State and perused the materials available on

record.

3. Learned counsel representing the appellant submitted that the appellant has been erroneously convicted in this case as the finding of the Trial Court convicting this appellant is without taking into consideration of the fact that except P.W.-7 who is a 9 years old boy, there are no eye-witness to the incident. Learned counsel stated that there are major contradiction in the evidence of the witness and the place from where the appellant was arrested. He further submitted that the alleged *tangi* used in commission of offence was neither produced before the learned Trial Court nor it was shown to the Doctor to ascertain as to whether the injuries sustained by the deceased can be caused by that *tangi*. He further submitted that the blood stained soil was not sent for FSL examination. On these grounds, he implored this Court to acquit this appellant.

4. Per contra, learned A.P.P. representing the State submitted that the appellant has been rightly convicted in this case. He stated that the appellant was angry on his wife for not picking up his call, resulting in scuffle. Thereafter the appellant in anger, took the *tangi* and gave a blow on the head of sister of the informant, resulting in her death on the way to hospital. He further submitted that P.W.-7 who is the eye-witness has witnessed the incident of murder of his mother by his father with *tangi*. Learned A.P.P. submitted that the fact that appellant has assaulted his deceased wife with *tangi* on her head cannot be brushed aside as there was blood around the body of the deceased and the appellant fled away after assaulting his wife.

5. The case of the prosecution is that on 26.12.2010, the informant Shankar Lohra gave his fardbeyan at RIMS Ranchi, Emergency ward at 19:45 P.M. that his sister Binita Toppo (deceased) was living with Manoj Toppo (appellant), with whom she was married three years ago and she had a son namely Shiva Toppo aged about 9 years from her earlier marriage, who was living with her. She was living in the house of Tribhuwan Nath Pandey and was working as maid in the vicinity. Manoj Toppo was working in a Private School. On the date of

occurrence when informant came to meet his sister and nephew, his sister and brother-in-law were not in the house. In the evening at 07:00 P.M., his brother-in-law came to the house and thereafter his sister also came there and an altercation started between them and then his brother-in-law Manoj Toppo assaulted his sister Binita Toppo with axe on her head and she fell on the ground and blood oozed from her head. Thereafter Manoj Toppo fled away from there after seeing the blood. The informant with the help of Landlord took his sister to RIMS hospital, but she died on the way. The F.I.R. was registered on basis of the aforesaid statement.

6. The prosecution has altogether adduced 07 witnesses, after framing of charge, to prove its case.

7. P.W.-1 is Binod Thakur, who was declared hostile by the prosecution.

8. P.W.-2 is Rita Devi. She was also a tenant in the same house, like the appellant. She deposed that after hearing quarrel between the husband and wife, she with her landlady went inside the house of appellant and saw the wife of the appellant is lying on the ground and blood was oozing. She was taken to the hospital but she died on the way.

9. P.W.-3 is Dr. Sanjeev Kumar. He is the Doctor posted as Tutor in the Department of F.M.T. RIMS, Ranchi. He had conducted the post-mortem of the dead body of the deceased Binita Toppo on 27.12.2010 at 13.30 P.M. and found the following injury:-

Lacerated wound

- i. 8 cm x 1 cm x soft Tissue front of left forehead
- ii. 5 x 1 cm x soft Tissue over right occipital region of head.
- iii. 4 cm x ½ cm x soft Tissue back of right index finger.

Internal Injury

- (i) There is contusion of brain and presence of subdural blood and blood clots over both sides of Brain.

He opined that the above noted injuries are antimortem, caused by hard and blunt substance. Death is due to head injuries. Time since death is 12 hrs to 24 hrs from the time of Post-mortem examination. He has proved the post-mortem report i.e. marked as Ext.2.

P.W.4 is Rajendra Pandey. He is the Landlord of the

house where the appellant and deceased lived in a servant's quarter. He was informed about the occurrence by his daughter over telephone. He deposed that when he visited the quarter he found Binita Toppo lying unconscious and blood was oozing from her head and Manoj Toppo fled away. He had proved his signature on the fardbeyan given by Shankar Toppo (Lohra) which was marked as Ext.3. He has also proved his signature on the seizure list of blood stained soil i.e. marked as Ext.1/1. He has proved his signature on the Inquest Report i.e. marked as Ext.4.

P.W.-5 is Shankar Lohra. He is the informant of this case and is the brother of deceased Binita Toppo. He deposed that he came to the house of his sister on the date of occurrence and saw his sister lying in blood and his nephew was making a hue and cry that his mother is killed by his father Manoj Toppo by axe. He has proved his signature in the fardbeyan i.e. marked as Ext.5 and has also proved his signature in the inquest report i.e. marked as Ext.4/1. In para-6 of his deposition i.e. in cross-examination he deposed that marriage of his deceased sister was not solemnised with Manoj Toppo.

P.W.-6 is Kapildev Singh. He is the Investigating Officer of this case. He has written the fardbeyan of informant Shankar Lohra and has proved the fardbeyan i.e. marked as Ext.6. He has also proved the seizure list of axe which was seized from the place of occurrence i.e. marked as Ext.7. He has proved the First Information Report which is in the writing of Munshi Dinesh Chourasia, of Police Station; which was marked as Ext.8. He has also proved the inquest report in writing and signature of Ram Mahesh Pandey, marked as Ext.9.

P.W.-7 is Shiva Toppo. He is the minor son of the deceased Binita Toppo. He is the eye witness of the occurrence. He deposed that on the date of occurrence, his mother was lighting the stove for preparing food. His father Manoj Toppo came there and slapped her mother and when she fell on the ground, he took out the axe and assaulted on the head of his mother and blood oozed from her head and on raising alarm, the

Landlord came and he called his uncle. Thereafter his uncle and landlord took his mother to hospital but on the way she died. In cross-examination, he stated that his parents used to quarrel regularly and on the date of incident also they were quarrelling.

10. After closure of the evidence of the prosecution, the appellant was examined under Section 313 Cr.P.C. and after considering the evidence and arguments of both the parties, the Trial Court convicted the appellant for the aforesaid offences.

11. As per the prosecution case, the incident of assault upon the deceased was occurred on 26.12.2010 and the deceased died on the same day. The cause of death has been narrated by the Doctor (P.W.-3) who had conducted the post-mortem upon the deceased. As per him, there were three lacerated wound but two of them were on the left forehead and head, the other was on the index finger. The death was due to head injury. The post-mortem report was duly exhibited and marked as Ext.2.

12. From the evidence of the Doctor and the post-mortem report, the prosecution has been able to prove that the death is homicidal. If we analyse the evidence of the other witnesses, we find that P.W.2 - Rita Devi who is an independent witness and was also a tenant in the same premises where the deceased and the appellant was living, we find that she stated that she heard noise of quarrel between the husband and the wife i.e. appellant and the deceased. On hearing the noise when she went there and she saw that the deceased was lying in a pool of blood. Though, from the evidence of this witness, we find that this witness has not seen the appellant assaulting the deceased but this fact has been established that there was a quarrel between the husband and the wife.

13. P.W.-7 is none but the son of the deceased. From his evidence, we find that he is an eye witness and was at the place of occurrence. He stated that the father slapped the mother and she fell down and then he took out the axe which was kept beneath the bed and assaulted the deceased. His mother started writhing when the appellant fled from the place. The entire

incident occurred as because the deceased questioned the appellant as to why this appellant is troubling / annoying her, as the appellant is not doing any work. Thus, from his evidence, we find that he is an eye witness and he has seen the occurrence and the assault upon the deceased by this appellant. There is nothing to disbelieve him.

14. P.W.-5 who is the informant, is not an eye witness to the assault, which is apparent from his examination-in-chief wherein he stated that on hearing his nephew's (P.W.-7) scream that his father has killed his mother, he went there. He also stated that when he went there, he saw his sister i.e. the deceased lying in a pool of blood.

15. It is pertinent to mention here that if the F.I.R. is perused properly, one can understand that this P.W.-7, as per the F.I.R. is an eye witness but from his evidence, it is clear that he is not the eye witness to the assault. On the point that the dead body of the deceased was found in the house of this appellant lying in a pool of blood is substantiated from the evidence of P.W.-7 who immediately went to the place of occurrence. There is nothing in the evidence of P.W.-7 to disbelieve him.

16. Thus, from the evidence, it has been established that it is this appellant who has assaulted the deceased and committed the murder.

17. Learned counsel representing the appellant tries to impress this Court by referring to a judgment passed by a Coordinate Bench of this Court in the case of ***Chunda Murmu Vs. The State of Jharkhand (Criminal Appeal (DB) No.839 of 2017)***, stating that the case of the appellant will fall within the ambit of Section 304 Part-II of the IPC. Section 304 Part-II of the IPC provides for punishment for culpable homicide not amounting to murder and the case will not fall within the definition of 'murder' rather it will come in Exception 4 of Section 300 of the I.P.C.

18. It is important to quote Section 304 Part-II of the I.P.C., which reads as hereunder:-

"304. Punishment for culpable homicide not amounting to murder.—....

....

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

19. We don't agree with the submission of learned counsel representing the appellant for the reason that Section 300 of the IPC defines murder. Except the exceptions carved out in Section 300 of the IPC, culpable homicide is murder. If we see these exceptions, those are 5 in number. Exception-4 of Section 300 of the IPC reads as follows:-

"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."

20. So, to come within the ambit of Exception 4, the act has to be without premeditation, in a sudden fight in the heat of passion on a sudden quarrel AND without the offender having taken undue advantage or acted in a cruel OR unusual manner. Applying the aforesaid provision with the facts of this case which transpired in evidence, though it can be said that there was a sudden fight in heat of passion, upon sudden quarrel between the husband and the wife but it cannot be said that the offender has not acted in a cruel or unusual manner, nor it can be said that the offender has not taken undue advantage. We come to the said conclusion because the eye witness P.W.-7 stated that the appellant has thrashed the deceased on the floor and when she fell down, he took out the axe which was kept beneath the cot and thereafter assaulted her on the head. This act of the

appellant unequivocally suggests that he had acted in a cruel manner and had taken undue advantage of his position as after being thrashed, the deceased fell on the floor and was at a disadvantageous position. Thus, the case of this appellant from the evidence cannot come within the Exception 4 of Section 300 of the IPC, rather within none of exceptions. When none of the exceptions can be applied on the facts of the case, the act definitely will be a murder, punishable under Section 302 of the IPC.

21. We thus, conclude that the appellant has been rightly convicted under Section 302 IPC and the prosecution has proved its case beyond all reasonable doubt.

22. Accordingly, this Criminal Appeal is thus, **dismissed**.

23. The judgment of the Trial Court is hereby affirmed.

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

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

HIGH COURT OF JHARKHAND, RANCHI

Dated:- 05/09/2024

NAFR / Prashant