

Criminal Appeal (D.B.) No. 76 of 2003

[Against the Judgment of conviction dated 28.11.2002 and Order of sentence dated 29.11.2002 passed by learned Additional Sessions Judge-XIII, Dhanbad, in Sessions Trial No. 252 of 2000]

Kailash Hari, Son of Tulshi Hari, resident of Hill Colony,
Hirapur, P.S. – Dhanbad, District - Dhanbad.

... .. **Appellant**

Versus

The State of Jharkhand **Respondent**

WITH

Criminal Appeal (D.B.) No. 122 of 2003

Bablu Hari, Son of Late Nakul Hari, resident of Vistipara,
Hirapur, P.S. – Dhanbad, District - Dhanbad.

... .. **Appellant**

Versus

The State of Jharkhand **Respondent**

P R E S E N T

SRI ANANDA SEN, J.

SRI PRADEEP KUMAR SRIVASTAVA, J.

.....

For the Appellant(s) : Mr. Naveen Kr. Jaiswal, Advocate.

[In Cr.A. (DB) No. 76/2003]

Mr. Binod Kumar Jha, Advocate.

[In Cr.A. (DB) No. 122/2003]

For the Respondent : Ms. Nehala Sharmin, Spl. P.P.

[In both cases].

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JUDGMENT

Dated : 17.12.2024

By Court:-

Cr.A. (DB) No. 122/2003

- 1.** Mr. Binod Kumar Jha, learned counsel appearing for the appellant submits that the sole appellant, Bablu Hari is dead. He has produced the photocopy of the death certificate.
- 2.** The photocopy of death certificate be kept on record.
- 3.** There is no substitution petition on behalf of the sole appellant.

4. Accordingly, this criminal appeal quo the sole appellant namely, Bablu Hari stands abated.

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5. The present criminal appeal has been preferred by the appellant assailing his Judgment of conviction dated 28.11.2002 and Order of sentence dated 29.11.2002 passed by learned Additional Sessions Judge-XIII, Dhanbad, in Sessions Trial No. 252 of 2000, whereby and whereunder the appellant was held guilty for the offence under Section 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.
6. Learned counsel for the appellant has submitted that this appellant has admittedly demanded Rs. 10/- for consuming liquor from the informant, which cannot be paid. Hence, the appellant has committed murder of informant's husband by assaulting through dagger, as a result of which, the informant's husband fell down under pool of blood and died in course of treatment.
7. It is further submitted that initially on the basis of fardbeyan of informant, FIR was registered for the offence under Sections 307, 326, 34 of the I.P.C. and during course of investigation, offence under Section 302 of the I.P.C. was added.
8. It is further submitted that the occurrence took place in a sudden manner without pre-meditation and any

intention to cause death of the deceased. The Post-mortem report of the deceased was also not proved by any competent witness. There was single blow given by accused which unfortunately caused injury on abdomen, but the deceased died due to surgical operation.

- 9.** It is further submitted that in given set of circumstances, as proved by prosecution, the offence committed by appellant comes under Section 304 Part-II of the I.P.C., which has not been considered by the learned trial court.
- 10.** It is further submitted that in the course of trial and post-trial, appellant has remained in custody since more than 10 years and has sufficiently been punished for the offence committed by him. Therefore, the appellant deserves reduction of sentence to the extent of imprisonment already undergone and this appeal may be disposed of.
- 11.** On the other hand, learned APP opposed the aforesaid contentions raised on behalf of the appellant and has submitted that the injuries caused by dagger on the vital part of the body which is abdomen and brutally damaging the internal organs, resulting in death of the deceased on the same day of the occurrence during course of treatment. Therefore, the injury caused by the appellant falls under clause thirdly to the Section 300 of

the I.P.C., as such, he has rightly been held guilty and sentenced for the offence under Section 302 of the I.P.C. There is no merit in this appeal, which is fit to be dismissed.

- 12.** I have gone through the record of the case along with impugned judgment of conviction and order of sentence in the light of contentions raised on behalf of both side.
- 13.** The factual matrix giving rise to this appeal in a nut shell is that on 07.02.1999 at about 4:00 PM, the present appellant along with one Bablu Hari (deceased appellant) came to the house of the informant Chinta Hari situated near the railway quarters, Dhanbad and asked to open the door. It is further alleged that Kailash Hari (present appellant) requested the informant to go to Jharia in connection with his marriage negotiation, but due to visit of daughter of informant at her house, she suggested to go on next day. Thereafter, Kailash Hari asked Rs. 10/- from the informant for consuming wine, but she expressed her inability to oblige him. It is alleged that informant's husband was picking clothes at that time and said that since he does not drink liquor, hence, he will not give money. Upon this, Kailash Hari drew the dagger from his waist and stabbed Sanichar Hari (husband of the informant), due to which, he fell down and accused fled away. The injured was brought on a rickshaw at Railway Hospital for treatment, where

he died. The FIR was instituted for the offence under Sections 307 & 326 read with Section 34 of the I.P.C., but due to death of injured, Section 302 of the I.P.C. was added. The Investigating Officer submitted charge sheet for the offence under Section 302 / 34 of the I.P.C. against the appellant. The case was committed to the court of Sessions, where trial proceeded. The appellant denied the charges leveled against him and claimed to be tried. After conclusion of trial, impugned judgment and order has been passed.

14. We have also gone through the evidence adduced in this case both oral and documentary.

15. P.W.-1 Dr. Sailendra Kumar has conducted autopsy on the dead body of the deceased and found following ante-mortem injuries:-

- (i) Stitched wound 6½” long with nine stiches on lower part right side of abdomen 4” away from the abdomen.
- (ii) Surgical drain on the right side flank of abdomen 1½” away from the injury no. 1.

Time elapsed since death was from 12 to 24 hours. Cause of death was opined due to hemorrhage and shock, as a result of aforementioned injuries on abdomen caused by sharp penetrating weapon. Post-mortem report is proved as Exhibit-1.

- 16.** P.W.-2 Smt. Anju Sarkar came out of her house on hearing hulla and saw the accused Kailash Hari fleeing away, then she went to the quarter of the informant, where she saw a bhujali was lying and Sanichar Hari was lying in injured condition under pool of blood.
- 17.** P.W.-3 Vijay Kumar has also seen the injured and two miscreants were fleeing away. The injured Sanichar Hari was brought to Hospital, where he died during course of treatment.
- 18.** P.W.-4 Smt. Bharti Kumari is the daughter of the deceased. She heard hulla of her mother and came out from her house and saw that both the accused persons were fleeing away and her mother told that Kailash Hari had assaulted her father by dagger.
- 19.** P.W.-5 Smt. Lakhi Devi is also hearsay witness and saw the injured and came to know that the deceased was assaulted by present appellant.
- 20.** P.W.-6 Chinta Hari is the informant-cum-wife of the deceased. She has corroborated the contents of her fardbeyan and specifically stated that the present appellant came to her house and requested to go to negotiate his marriage, then this witness requested him to go on next day. Upon this, the appellant demanded Rs. 10/- for consuming wine, which was not given and her husband also denied. Thereafter, the appellant

inflicted knife blow in abdomen of her husband. She raised alarm, then her daughter and neighbour were assembled and injured was brought to Hospital, but he cannot be saved and died. She has identified the accused present in the dock. No contradiction or infirmities crept in her lengthy cross-examination.

- 21.** P.W.-7 Jitu Hari and P.W.-8 Rajendra Hari are witnesses of Inquest Report.
- 22.** P.W.-9 ASI Chatradhari Singh is the Investigating Officer of this case, who has proved the fardbeyan of the informant, formal FIR, inquest report and also visited the place of occurrence, obtained Post-mortem report of the deceased and after investigation, finding sufficient evidence against the appellant, have submitted the charge-sheet.
- 23.** The case of defence is denial from occurrence and false implication. However, no oral or documentary evidence has been adduced by the defence.
- 24.** From the aforesaid discussion of oral as well as documentary evidence available on record, we find that homicidal death of the deceased was due to causing injury on abdomen by sharp cutting weapon like dagger / knife is well proved. The sole eye-witness of this case is the informant, who happens to be wife of the deceased, has categorically proved that the accused

Kailash Hari assaulted her husband by dagger once on his abdomen. The motive and reason behind the occurrence is also obvious that the appellant was asking for Rs. 10/- for consuming liquor, which was not given by the informant and her husband also told that since he does not take liquor, hence, he will not give any money for consuming.

25. It is quite clear that there was no pre-meditation or any plan in the mind of the accused to commit murder of the deceased. There was no motive behind occurrence. It has also surfaced that in a sudden manner present appellant takes out a knife / dagger and a single blow was caused in the abdomen of the deceased, which proved fatal. Therefore, the very genesis and manner of occurrence shows the knowledge of the accused that his act was likely to cause death. The degree of knowledge attributable to the appellant is of not of such extent as is required in clause secondly and thirdly of Section 300 of the I.P.C. In our considered view, offence falls under Section 304 Part-II of the I.P.C.

26. In view of the aforesaid discussion and reasons, the conviction of accused / appellant for the offence under Section 302 of the I.P.C. is altered and modified to Section 304 Part-II of the I.P.C. Since the appellant had already undergone imprisonment of 12 years and has sufficiently been punished for the offence committed by

him, we sentence the appellant to the imprisonment already undergone by him.

27. Accordingly, this appeal is dismissed with modification in findings of conviction and sentence passed by the learned trial court.

28. The appellant is on bail, as such, he is discharged from the liability of bail bond and sureties shall also be discharged.

29. Pending I.A., if any, stand disposed of.

30. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Ananda Sen, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated, the 17th December, 2024.

Sunil / **N.A.F.R.**