

(2019) 08 JH CK 0139

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 28 Of 2002

Bajnath Mahto And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 300, 302, 304II, 342, 448

Citation : (2019) 08 JH CK 0139

Hon'ble Judges : Shree Chandrashekhar, J;Ratnaker Bhengra, J

Bench : Division Bench

Advocate : A.K. Kashyap, Anurag Kashyap, Sudhir Kumar, V.K. Tiwary

Final Decision : Partly Allowed

Judgement

1. Both the appellants were sent up for trial on the charge under section 302/34 I.P.C, section 448 I.P.C and section 342 I.P.C.

2. They have been convicted under section 302/34 I.P.C and sentenced to R.I for life under section 302/34 I.P.C. They have been found guilty on the other two counts also, but no separate sentence has been passed for the offence under section 448 I.P.C and section 342 I.P.C.

3. On the basis of the fardbeyan of Rampati Devi, wife of the deceased, namely, Gatauri Mahto recorded on 30.07.1998 at Garhwa hospital, Garhwa P.S. Case No.147 of 1998 was registered against Bajnath Mahto and Kabalpatia Devi. In her fardbeyan the informant has stated that in the morning her son Ashok and son of her sister-in-law, namely, Guddu started a quarrel on refilling of a lead pen. After sometime her brother-in-law, namely, Bajnath Mahto and sister-in-law, namely, Kabalpatia Devi came there and started quarrelling with her husband. The informant has stated that Bajnath Mahto was holding Lathi and Kabalpatia Devi was wielding Kudal (Hoe) and her husband was assaulted by both the accused persons. Kabalpatia Devi gave a Hoe blow to her husband and Bajnath Mahto also assaulted with Lathi to her husband. He was brought to Garhwa

hospital where he died at about 12:00 hrs in the noon.

4. Post-mortem examination over the dead-body of Gatauri Mahto was conducted by Dr. Ajeet Kumar Singh. He has found the following injuries on him:

(i) Abraison 2"x1/2" over right shoulder top and shoulder swollen.

(ii) Incised wound stiched with three plain sutures over right parital region of skull.

5. The doctor has observed that the brain matter was congested and the cranial cavity contained blood.

6. During the trial, the informant who was examined as P.W.1 has narrated a similar story about the incident which has happened in the morning of 30.07.1998. She has made specific allegation of assault on her husband by Kabalpatia Devi. There are other witnesses; son of the deceased, cousin of the deceased and the two relatives, namely, Fulpati Devi and Ramjit Mahto, who have also been examined by the prosecution in support of its case. Out of these witnesses, Shiv Nath Mahto-P.W.3 is the inquest witness, Fulpati Devi was not named by the informant in her fardbeyan and Ramjit Mahto-P.W.5 is a chance witness. The persons who are named in her fardbeyan by Rampatia Devi who according to her have seen the occurrence, namely, Bishwanath Mahto-P.W.6, Bhunweshwar Giri-P.W.7, Aliyar Mahto-P.W.8 and Budhdeo Mahto-P.W.9 have been declared hostile at the instance of the prosecution.

7. From the evidence of the prosecution witnesses, particularly, Rampatia Devi-P.W.1, we find that the incident has happened on a trivial issue. An altercation took place when the appellants went to the house of the informant and started a quarrel. According to the informant, Kabalpatia Devi has inflicted one Hoe blow on the head of Gatauri Mahto. There is no other injury found on the body of Gatauri Mahto which would establish that Kabalpatia Devi gave repeated Hoe blow to Gatauri Mahto. There are other injuries which according to the doctor can be caused by hard and blunt substance. These injuries may be attributed to the appellant, namely, Baijnath Mahto. At this juncture, when the appellants started assaulting Gatauri Mahto, we do not gather any evidence produced by the prosecution which would establish that both the appellants shared a common intention to cause death of Gatauri Mahto. All that the prosecution has been able to establish is that the appellants went to the house of the informant with an intention to start a quarrel. In the heat of the moment, suddenly Kabalpatia Devi gave one Hoe blow on the head of Gatauri Mahto which incidentally has proved fatal. But then, the doctor has not rendered a conclusive opinion that the injury no.(ii) was sufficient to cause death in ordinary course. According to the doctor, death of Gatauri Mahto has been caused due to shock and haemorrhage resulting from the injuries inflicted to him. And, the Hoe (Kudal) is not a weapon rather it is commonly found in every house in the villages.

8. In the above state of affairs, we are of the opinion that conviction of the

appellants under section 302/34 I.P.C is not sustainable and, accordingly, it is set-aside.

9. The assault by Kabalpatia Devi on Gatauri Mahto has caused grievous injury to him. The appellant, namely, Baijnath Mahto is said to have given Lathi blow on Gatauri Mahto which can be identified as swelling on his right shoulder, however, the doctor in his cross-examination has stated that such injury can be caused due to fall on hard substance. In these facts, we find that though the prosecution has succeeded in establishing the charge under section 448 I.P.C and section 342 I.P.C against the appellant, namely, Baijnath Mahto but the sentence inflicted upon him is excessive. Accordingly, his conviction by the Sessions Judge for these offences is affirmed but he is sentenced to undergo R.I for one year under section 448 I.P.C and R.I for one year under section 342 I.P.C.

10. Mr. V.K. Tiwary, the learned A.P.P states that the appellant, namely, Baijnath Mahto has remained in custody for more than one year and 8 months and, accordingly, he is discharged of liability of the bail-bonds furnished by him.

11. On the question of offence committed by Kabalpatia Devi, Mr. A.K. Kashyap, the learned Senior counsel for the appellants has contended that at best she can be held liable for punishment under section 304 Part-II I.P.C. The learned Senior counsel has relied on a judgment in "Bunnilal Choudhary vs State of Bihar." reported in (2006) 10 SCC 639. We find substance in the contention raised on behalf of the appellant, namely, Kabalpatia Devi. As noticed above, the incident has taken place on a trivial issue and in the heat of moment suddenly Kabalpatia Devi has inflicted one Hoe blow on the head of Gatauri Mahto. No injury corresponding to any repeated blow caused by a Hoe has been found on the person of Gatauri Mahto and, thus, it can be safely assumed that she has not acted with cruelty. These facts go on to establish that Kabalpatia Devi had no intention to cause death of Gatauri Mahto. Accordingly, she is found entitled for the benefit under Exception-4 to section 300 I.P.C and sentenced to R.I for five years under section 304 Part-II I.P.C.

12. Mr. A. K. Kashyap, the learned Senior counsel submits that this appellant has undergone imprisonment of more than five years and 10 months. She is on bail and, therefore, she is discharged of liability of the bail-bonds furnished by her.

13. In the result, Criminal Appeal (D.B.) No.28 of 2002 is partly allowed.

14. Let lower-court records be transmitted to the court concerned forthwith.