
(2015) 09 JH CK 0057

In the Jharkhand High Court

Case No : Criminal (Jail) Appeal (D.B.) No. 1265 of 2004

Bhonda Hansda

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2015) 4 AJR 213

Hon'ble Judges : Rakesh Ranjan Prasad and Pramath Patnaik, JJ.

Bench : Division Bench

Advocate : Rajiv Anand, A.C., for the Appellant; Awanish Shankar, A.P.P., for the Respondent

Final Decision : Partly Allowed

Judgement

1. The appellant was put on trial on the accusation of committing murder of his father, Mistar Hansda. The Court having found the appellant guilty convicted him for the offence punishable under section 302 of The Indian Penal Code vide its judgment dated 24.11.2003 and sentenced him vide its order dated 25.11.2003 to undergo imprisonment for life. The case of the prosecution as initially made out in the fardbeyan is that on 12.04.2002 while the informant Pansuri Hembram-P.W. 6 was there in her house at 3-4 p.m. along with her husband Mistar Hansda (deceased), the appellant, step-son of the informant, came and after putting paddy in a bag started taking it away. The appellant was prevented both by the informant-P.W. 6-Pansuri Hembram and her husband (deceased) from taking paddy. That led to altercation in between the appellant and the deceased during which the appellant made his father to fall on the ground and then kicked him. When the informant tried to save her husband she was also assaulted by the appellant. Thereupon, the appellant left home and his father Mistar Hansda remained lying on the ground. In the night, the informant informed to her relatives but on that day Mistar Hansda could not be removed to hospital. On the next day at about 12 o'clock there was severe pain in the stomach and then the

deceased vomited blood and died.

2. On the next day i.e. on 13.04.2002 Amar Nath Surin, officer in charge of Shikaripara police station, came to the place of occurrence, he recorded fardbeyan (Ext. 4) of the informant Pansuri Hansda-P.W. 6 at about 6 p.m.

3. On the basis of said fardbeyan a formal FIR (Ext. 5) was drawn. The said Amar Nath Surin himself took up the investigation during which he held inquest on the dead body and prepared an inquest report (Ext. 6). Thereafter, the dead body was sent for postmortem examination, which was conducted by Dr. Dewashish Rakshit-P.W. 8, who upon holding autopsy on the dead body did find following injuries:

(i) Abrasion over right elbow 1/2" x 1/2".

(ii) Abrasion over left elbow 1/2" x 1/2".

(iii) Abrasions over right side of chest 3 in number each of the size 2" x 1/2".

(iv) Abrasions over left side of chest 3 in number each of the size 2" x 1/2".

(v) Lacerated wound over right temporomandibular region of the size 1/2" x 1/4" x bone deep.

On dissection fracture of bone of that region was found with blood clot. On further dissection cranial cavity was found filled with blood. Brain and meninges were found lacerated.

(vi) Abrasion size 1" x 1/2" over belly.

On dissection peritoneal cavity was found filled with blood, stomach was found torn and haematoma was found present over the small intestine surface.

The doctor issued post-mortem examination report (Ext. 3) with an opinion that the death was caused due to injury Nos. (v) and (vi) caused by hard and blunt substance.

At the same time, the I.O. got the informant-Pansuri Hansda-P.W. 6 examined by Dr. Om Prakash-P.W. 7, who upon examining her did find following injuries:

(i) Lacerated wound over head 2 1/2" in length x 1/2" at right parietal region.

(ii) Swelling over right wrist joint.

(iii) Abrasion 3" x 1/2" x skin deep of right arm.

Doctor issued injury report (Ext. 2) without giving any opinion regarding nature of injury. However, on receipt of X-Ray report, he issued again an injury report (Ext. 2/1) with an opinion that all the injuries were simple in nature.

4. Meanwhile, the I.O. recorded the statements of the witnesses. On completion of the investigation, when the charge-sheet was submitted against the appellant, the Court took cognizance of the offence and committed the case to the Court of

Session where the appellant was put on trial during which the prosecution examined altogether 9 witnesses. Of them, P.W. 1-Shivdhar Hansda, P.W. 2-Bale Hansda, P.W. 3-Nunuku Lal Marandi, P.W. 4-Churka Hansda, and P.W. 5-Jarman Soren did depose that they came to know either from the informant-Pansuri Hansda-P.W. 6 or from the informant as well as the deceased that during altercation in between the deceased, appellant and the informant, the appellant assaulted his father as a result of which he died on the next day. P.W. 6-informant Pansuri Hembram did testify that on the date of occurrence when the appellant was taking paddy from the house she forbade him from taking paddy on account of which altercation ensued in between the appellant and the deceased during which the appellant made his father to fall on the ground and then sat over the chest and assaulted him. On the next day the deceased died.

5. On closure of the prosecution case, when the incriminating material appearing against the appellant was put to him under section 313 of Cr.P.C., the appellant denied. Thereupon, the trial Court after having placed its implicit reliance on the testimony of P.W. 6-Pansuri Hembram finding corroboration from the other witnesses and also from the medical evidence did find the appellant guilty and accordingly recorded the order of conviction and sentence which is under challenge.

6. Mr. Rajiv Anand, appointed as Amicus Curiae appearing for the appellant submits that accepting the testimony of P.W. 6-Pansuri Hembram and also the other witnesses to be true no case is made out of culpable homicide rather, the case falls within the parameter of one of the exceptions of section 300 and thereby, the trial Court committed illegality in recording the order of conviction and sentence for the offence punishable under section 302 of The Indian Penal Code and thereby, the order of conviction and sentence is fit to be set aside.

7. As against this, Mr. Awanish Shankar, learned counsel appearing for the State submits that the prosecution has been able to establish that it was the appellant who did assault his father causing injury which were found to be sufficient to cause death and thereby, the trial Court did not commit illegality in recording the order of conviction and sentence against the appellant and hence, it needs no interference by this Court.

8. Having heard learned counsel for the appellant and learned counsel appearing for the State and on perusal of the record, we do find that it is the case of the prosecution as has been testified by the sole eye-witness P.W. 6-Pansuri Hembram-informant, the step mother of the appellant, that while the appellant was taking paddy out of the house the informant prevented him from taking it as a result of which altercation ensued in between the appellant and the deceased during which the appellant did assault his father by putting him on the ground causing injury resulting into his death not on the day when the deceased was assaulted but on the following day. All other witnesses P.Ws. 1, 2, 3, 4 and 5 who derived knowledge of the occurrence either from the informant or from the informant and deceased, have testified that they disclosed to them that during

altercation the appellant did assault his father causing injury resulting into his death. Under the circumstances, the case falls within one of the exceptions, exception 4 of section 300 which reads as under:

"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 and unusual manner."

The fact which has come out clearly indicates that this never happens to be a case of premeditation as we have already noted that the altercation took place when the appellant was prevented from taking paddy out of the house and then in that course appellant did assault causing injury resulting into death of the deceased.

Under the circumstances, the Court seems to have committed illegality in recording the order of conviction and sentence under section 302 of The Indian Penal Code. In that event, the appellant is convicted for the offence punishable under section 304 (Part II) of The Indian Penal Code instead of section 302 of The Indian Penal Code and thereby, the appellant who has been in custody since last 13 years is sentenced for the period already undergone. Consequently, the appellant is directed to be released forthwith, if not wanted in any other case.

Accordingly, with the modification in the order of conviction and sentence, this appeal stands partly allowed.