
(2016) 02 JH CK 0002

In the Jharkhand High Court

Case No : Criminal (Jail) Appeal (DB) No. 664 of 2008.

Budhuwa Gwala

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 2 JCR 353 : (2016) 4 JLJR 111

Hon'ble Judges : R.R. Prasad;Ravi Nath Verma, JJ.

Bench : Division Bench

Advocate : Sanjay Saxena, Amicus Curiae, for the Appellant; Vijay Kumar Gupta, A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J. - Appellant was put on trial on the accusation of committing murder of his elder brother Mangru Gwala. The trial court having found the appellant guilty for the said charge convicted him for the offence punishable under Section 302 of the Indian Penal Code vide its judgment dated 29.01.2005 and sentenced him to undergo imprisonment for life vide its order dated 29.01.2005 passed in Sessions Trial No.311 of 1993.

2. The case of the prosecution, as has been projected in the fardbeyan (Ext.2), is that while the informant Bimla Devi, the wife of the deceased, was in her house, the appellant, the younger brother of her husband, came in the evening on Friday i.e. on 30.04.1993 and made an attempt to outrage the modesty of the informant Bimla Devi. At that point of time, the appellant came as a result of which the appellant went away but before that, he extended threat to the appellant that he would kill him. On the next day i.e. on 01.05.1993, while the deceased was sleeping over the cot in the evening at about 4''O clock, the appellant came and gave Baluwa blow over the chest of the deceased causing injury in which Baluwa got stuck. The appellant made the deceased to fall on the ground. Meanwhile, the informant Bimla Devi (P.W.4) raised alarm upon which

Punia Gwala came, who made an attempt to caught hold of the appellant but appellant succeeded in fleeing away.

3. On the next day i.e. on 02.05.1993 S.I, Abdul Mozib posted at Simdega Police Station when came to the house of the informant he recorded the fardbeyan (Ext.2) of Bimla Devi (P.W.4), who narrated about the incident as has been stated above. On the basis of said fardbeyan, a formal F.I.R. (Ext.1) was drawn and a case was registered against the appellant. The I.O. in course of investigation held inquest on the dead body and then sent the dead body for post-mortem examination, which was conducted by Dr. Arun Kumar Singh (P.W.9), who upon holding the autopsy did find the following injuries:-

(i) One incised wound situated on left side of thorax starting from mid portion of sternum laterally to mid portion of left anterior axillary fold passing deep to thoracic cavity size 18 c.m. X 6 c.m. X deep to thoracic cavity.

On opening thoracic cavity, cavity was found full of blood and there was incised wound on anterior surface of left lung corresponding to external injuries.

(ii) One incised wound on flexor surface of left thumb size 2.5 c.m. X 1 c.m. X 0.5 c.m.

(iii) Abrasion on left palm.

According to the doctor, injury nos.1 and 2 were caused by sharp cutting weapon whereas injury no.3 was caused by blunt weapon, which may be possible by fall. The doctor issued postmortem examination report (Ext.5) with an opinion that death was caused due to Syncope from excessing haemorrhage due to rupture of lung caused by injury No.1.

4. The I.O. after completing the investigation when submitted charge-sheet, the court below took cognizance of the offence against the appellant, who was put on trial, during which the prosecution did examine as many as nine witnesses. Of them, only P.W.4 Bimla Gwalin appears to be a material witness as other witnesses are either formal in nature or they are hearsay. P.W.4 has testified in the same manner as her statement is there in the fardbeyan.

5. The trial court having placed its implicit reliance on the testimony of P.W.4 getting corroboration from the medical evidence, did find the appellant guilty and accordingly recorded the order of conviction and sentence, which is under challenge.

6. Mr. Sanjay Saxena, learned counsel appointed as amicus curiae, submits that circumstances appearing in the case do suggest that occurrence has never taken place in the manner as has been projected by the prosecution rather the possibility appears to be there that it was P.W.4, who herself committed murder of her husband, as P.W.4 was having affairs with the appellant but the trial court did not take into account this aspect of the matter and thereby committed illegality in recording the order of conviction and sentence.

7. Heard learned counsel for the State.

8. Having heard learned counsel appearing for the parties and on perusal of the record, we do find the case of the prosecution as has been testified by informant Bimla Gwalin (P.W.4) is that while she was in her house, the appellant came and made an attempt to outrage her modesty but at that point of time, the deceased, the husband of the informant, reached home and therefore the appellant went away but while going away, he extended threat to the deceased. On the next day, while the deceased was sleeping over a cot in the evening at about 4''O clock, the appellant came and gave a Baluwa blow over the chest causing injury in which Baluwa got stuck. Thereupon, the appellant made the deceased to fall from the cot on the ground. When the other person reached at the place of occurrence upon alarm being raised by P.W.4, they tried to caught hold of the appellant but he succeeded in fleeing away. The witness has been cross-examined extensively by the defence but nothing could be elicited so as to have the slightest of doubt over the trustworthiness of the evidence of P.W.4 rather the testimony of P.W.4 gets corroboration from the medical evidence whereby the doctor did find injury over the chest and also injury over palm, which according to the doctor may have been caused by sharp cutting weapon and on account of fall. In that event, submission, which has been advanced on behalf of the defence, is never acceptable particularly when no such plea has been taken by the accused while he was being examined under Section 313 of the Code of Criminal Procedure and therefore the submission, which has been advanced, needs to be noticed only for its rejection. The submission was also advanced that I.O. has not been examined. It is true that the I.O. has not been examined but nothing could be shown regarding prejudice being caused to the appellant on account of non-examination of the I.O. and thereby non-examination of the I.O. never appears to be fatal to the case of the prosecution.

9. Under the circumstances, we do find that the trial court was absolutely justified in recording the order of conviction and sentence against the appellant which is, hereby, affirmed.

10. This appeal stands dismissed.