
(2006) 04 JH CK 0029
In the Jharkhand High Court
Case No : Criminal Appeal No. 65 of 1997

Chandravan Yadav

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

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

Citation : (2006) 04 JH CK 0029

Hon'ble Judges : N. Dhinakar, C.J; R.R. Prasad, J

Bench : Division Bench

Advocate : Anil Kumar, for the Appellant; R. Mukhopadhaya, APP, for the Respondent

Judgement

1. The accused appeals.
2. Chandravan Yadav, the appellant in the above appeal was charged and tried u/s 302 of the Indian Penal Code, on the allegation that he caused stab injury on Dwarika Rajbhat, leading to his death. The trial court, finding him guilty, as charged, sentenced him to imprisonment for life. Hence, the present appeal.
3. The case of the prosecution can be briefly summarized as follows : PW-6, Parbati Devi, is the wife of the deceased Dwarika Rajbhat. The deceased was working as a driver under one Awadhesh Yadav, one of the owners of Kiln at Azamgarh. He left his house for duty on 23.11.1993 and returned home and later, left the house at 7.15 p.m. and did not return home. It is the further case of the prosecution that the deceased was friendly towards the appellant and they used to call each other as brother-in-law. The deceased went to the house of the appellant and was seen quarreling with him. There was exchange of words between them. At that time, the deceased kicked the appellant and came out of the house. This angered the appellant. He lost his temper, followed the deceased with a knife and stabbed him. The deceased fell down. It was witnessed by PW-1, Parwati Devi, wife of Sarjan Manjhi, and PW-3, Etwari Manjhi. In the meantime,

PW-6 gave a complaint, mentioning that her husband did not return home, expressing her suspicion against Awadhesh Yadav, as there was some ill feelings between the deceased and Awadhesh Yadav. Investigation in the crime was taken up. After the completion of inquest, the officer sent the dead body to the hospital for the purpose of autopsy.

4. On receipt of the requisition, PW-10, Dr. Shailendra Kumar, conducted autopsy on the dead body and he found the following Injuries:

(1) Incised wound 3 1/2 " x 3/4 " x trachea deep on the front of the neck at the level laryngeal cartilage.

(2) A stab wound, each measuring 1" x 1/4 " x cavity deep on the right side of neck extending from the nipple to the right lumbar region in an area of 9"x 6", one of which were on the chest region and one was on the right lumbar region.

(3) Two stab wounds "1/4" apart measuring 1" x "1/4" and 3/4 " x 1/2 ", both cavity deep were found on the body of the sternum at the level of 3rd rib.

(4) Stab wound - 2 1/2 " x 3/4 " cavity deep on the upper front of chest on left side "in 2nd inter costals space just lateral to sterum.

(5) Stab wound - 1" x 1/3 " x cavity deep on the left side of chest in front of I" below to medial at left nipple.

(6) Incised wound - 1"x 1/4 "x muscle deep on the left angle of mouth.

(7) Incised wound - "1/2" x 1/4" x bone deep on the palmer surface of left middle finger on the top phalanx.

(8) Stab wound - 1" x 1/2 " x cavity deep on the front of abdomen in middle 1 1/2 " below xyphi sternum.

The doctor issued Ext.5, post mortem certificate, with his opinion that death is on account of the injuries on external vital organs.

5. In the meantime, the investigation continued and during the course of investigation, PW-1, Parbati Devi, and PW-3, Etwari Manjhi, were , examined and their statements were recorded. The complicity of the appellant came to the knowledge of the officer after their statements were recorded. He continued his investigation, questioned other witnesses and filed the final report against the appellant. The appellant when questioned u/s 313 Cr.P.C., denied all the incriminating circumstances. He did not examine any witness on his side.

6. The learned Counsel appearing for the appellant submits that there is contradiction as regards the evidence of PW-1 and 3 as to the words uttered by the deceased, while he was stabbed by the appellant and according to the counsel, PW-1 and 3 having been examined only on 25.11.1993, it is not safe to accept their evidence and that the appellant is entitled for acquittal. The learned Counsel as an alternative argument also submits that even if the facts are taken to be true, the offence committed by the appellant will not attract the penal

provision of Section 302 I.P.C.

7. On the above contention, we have heard Mr. R. Mukhopadhyay, appearing for the State.

8. The prosecution by examining PW-10, the Doctor, who conducted autopsy and by marking Ext.5, the post mortem certificate, issued by him, conclusively proved the case of death of the deceased Dwarika Rajbhat and that he died on account of homicidal violence. PW-1, Parbati Devi, wife of Sarjan Manjhi, and PW-3, Etwari Manjhi, were examined as witnesses to the occurrence. Their evidence shows that on 23.11.1993 the deceased went to the house of the appellant, picked up quarrel with him and thereafter, abused him. In turn, -the appellant also abused the deceased. After the parties abused each other, the deceased kicked the appellant upon which the appellant lost his temper and stabbed the deceased, when he went out of the house. On going through the evidence of PW-1 and 3, we find no reason to reject their evidence. They are not related to the deceased. They are only residents of the locality, where the appellant was residing. It is, no doubt, true that their statements were recorded by the police officer only on 25.11.1993 but this delay of two days in recording the statements will not, by itself, be a reason for rejecting their evidence. It is to be remembered that the complaint, given by PW-6, the wife of the deceased, was only to the effect that her husband is missing and she has suspicion against one Awadhesh Yadav. Therefore, the officer was searching for the deceased and during the course of investigation, questioned the witnesses in the locality and came across with PW-1 and 3 and, thereafter, their statements were recorded, upon which the complicity of the appellant in the crime came to the knowledge of the officer.

9. We, therefore, reject the contention of the counsel that since there is delay in recording the statements of the two witnesses, the prosecution case is to be rejected. We also find no substance in the argument of the counsel that there is a minor contraction between the evidence of PW-1 and 3 as regard the words, used by the deceased, while he was stabbed by the appellant. On going through the evidence of PW-1 and 3 we find that both the witnesses have only stated as to what transpired, though there is some minor contradiction as to the nature of the words, used by the deceased, when he was stabbed by the appellant.

10. On going through the evidence, we are of the opinion that a minor contradiction as regards the words uttered by the deceased will not be fatal to the prosecution. We, accordingly, accept the evidence of PW-1 " and 3 and hold that the appellant stabbed the deceased.

11. Now we have to decide as to the nature of offence committed by the appellant. We have already noticed from the evidence of PW-1 and 3, who are independent witnesses, that the deceased went to the house of the appellant, picked up quarrel and thereafter, abused the appellant. On being abused, the appellant also retaliated by abusing. During the wordy quarrel between the two,

it was the deceased, who kicked the appellant, as a result of which the appellant lost his cool and stabbed the deceased when he came out of the house. We are, therefore, of the view that the appellant is entitled to the benefit of Exception 4 of Section 300 I.P.C. as the occurrence had taken place during the quarrel. In the case of Surinder Kumar Vs. Union Territory, Chandigarh, , THE Supreme Court held that to invoke Exception 4 of Section 300, four requirements must be satisfied and that they are (i) It was a sudden fight; (ii) There was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The Supreme Court further observed that the cause of quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. It was further observed that where, on a sudden quarrel, a person in the heat of moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.

12. On the evidence, available on record, we are of the view that the above law, laid down by the Supreme Court, squarely applies to the facts of the present case. We, therefore, set aside the conviction of the appellant u/s 302 of the Indian Penal Code but find him guilty u/s 304 Part I of the Indian Penal Code, for which he is directed to suffer rigorous imprisonment for a period of seven years. If the appellant has already served the sentence of seven years, the said period will be given set off. The appeal is disposed of with the above modification in conviction and sentence.