

(2012) 01 JH CK 0096

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 105 of 2002

Ganesh Chik Baraik

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2012) 3 JCR 384

Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the impugned judgment of conviction and sentence passed on 12.02.2002 and 13.02.2002 respectively, by the Additional Sessions judge, Gumla in Sessions Case no. 26/1999, convicting the appellant for committing the offence u/s 302 of the Indian Penal Code and has been sentenced to undergo R.I. for life for causing death of Bhokha Chik Baraik and Budhani Devi. The prosecution case in short, is that Lahru Chik Baraik the informant (P.W. 7) gave a fardbeyan on 22.10.98 at about 10.30 in the day that when he woke up at about 3 a.m. in the morning for attending call of nature, his wife P.W. 6 Bimla Devi told him that at about 9 p.m. on 21.10.98 the appellant has killed his uncle Bhokha Chik Baraik and aunty Budhani Devi.

The informant went to the house of deceased, but they were not there. Then he found that the dead body of the two deceased were lying in the field with bleeding injuries. The informant informed the Sarpanch (P.W. 6), who asked the informant to contact; the Mukhiya, (P.W. 1). Both went to meet the Mukhiya and told him about, the occurrence.

The informant was informed by his cousin sister Sonmati Kumari (P.W. 3) that at about 8 p.m. the appellant came to house with a Tangi and started abusing his aunt, to which she protested, but the appellant; dragged her and assaulted on

her head. Her uncle tried to intervene, but the appellant killed him also by assaulting with Tangi. It; was alleged that about; two years back there was quarrel between P.W. 3-Sonmati Kumari and Saraswati Kumari- daughter of the appellant in which a Panchayati was held and the appellant was directed to give a she goat. From then the parties were not in talking terms. It; is, further, alleged that due to such enmity the appellant has killed the deceased persons.

2. Mr. Amitabh Tiwari, learned counsel appearing for the appellant assailed the impugned judgment on various grounds. He submitted that, it will not safe to uphold the conviction only on the evidence of a child witness-P.W. 3; and, that admittedly, there was quarrel between the appellant and the deceased, before the alleged occurrence, and therefore, the appellant can be convicted u/s 304 of the Indian Penal Code.

3. On the other hand, learned counsel for the State supported the impugned judgment.

4. It is true that P.W. 3-Sonmafi Kumari, is the only eyewitness, aged about 14 years at the time of deposition. She had categorically stated that the appellant came in the house of the deceased, persons with Tangi and started abusing Budhni Devi and on her protest dragged her out of the house and killed her by assaulting with Tangi on head repeatedly and when the other deceased Bhokha Chik Baraik, intervened the appellant killed him also by Tangi. She further stated that, she informed Sarpanch-P.W. 4 about the occurrence. She also said that about 2-3 months prior to the alleged occurrence, there was quarrel between the parties for which Panchayati was held and the appellant was directed to give a she goat and due to such dispute the appellant had killed the deceased persons. She identified appellant in Dock. There is nothing in to disbelieve or discredit her evidence as it fully support and corroborate with other evidence on records, including the evidence of P.W. 4. In the first; information report, it was said that, there was a dispute about, two years back but the P.W. 3 said that dispute was about 2-3 months back. Only on that basis the prosecution case cannot, be brushed aside.

5. P.W. 8, proved the post-mortem report of the Decease Bhokha Chik Baraik and P.W. 9, is the Doctor who conducted postmortem of Budhni Devi. On the dead body of the deceased several injuries were found including on their vital parts said to have been caused by hard and blunt substances.

6. In our opinion, section 304 of the Indian Penal Code is not attracted in this case. After carefully examining the case it appears that, the prosecution has been able to prove its case against the appellant, beyond all reasonable doubts. No grounds have been made out for interference by this Court with the impugned judgment of conviction and sentence, passed against the appellant. Accordingly, this appeal is dismissed.