
(2007) 02 JH CK 0031

In the Jharkhand High Court

Case No : Criminal Appeal No's. 502 of 1994 (P) and 296 of 1995 (P)

Gurdhu Soren

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:

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

Citation : (2007) 02 JH CK 0031

Hon'ble Judges : Dhananjay Prasad Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : Ranjan Kumar, for the Appellant; Chandra Prabha, A.P.P, for the Respondent

Judgement

1. Since sole appellant Gurdhu Soren has preferred these two appeals, Criminal Appeal No. 296 of 1995 (P) from jail, they have been heard together and are being disposed of by this common judgment. The appellant stands convicted for the offence punishable u/s 302 of the Indian Penal Code and sentenced to serve rigorous imprisonment for life, by the Additional Sessions Judge, Pakur in Sessions Case No. 422 of 1992 [16 of 1993.]

2. Brief facts leading to these appeals are that on 8th of March 1992 at about 5.00 P.M., deceased Sukul Hembrom and the appellant were standing on village road in Mauza- Deliyadanga, Police Station- Pakur, when the appellant asked the deceased to provide him with drinks. Further stated, when the deceased refused to oblige the appellant with drinks, he stabbed the deceased twice on his chest and back resulting in his death on the spot. This incident was seen by the informant, P.W.10, who raised alarms on which P.W.6, P.W. 7 and P.W. 8 arrived, to see the appellant standing with dagger in his hand. Further stated, when the appellant was chased, he ran towards east of the village throwing dagger. However, the appellant was overpowered by villagers and brought to police station.

3. The statement of P.W. 10 was recorded by Pakur Police Station, on the basis of

which, Pakur Police Station Case No. 47 dated 83.1992 u/s 302 of the Indian Penal Code was registered. The police prepared inquest report and sent the dead body for post-mortem examination and finally submitted charge sheet against the appellant u/s 302 of the Indian Penal Code. The case of the appellant was committed to the Court of Sessions for trial where he was charged on 1.5.1993 for offence u/s 302 of the Indian Penal Code to which the appellant pleaded not guilty. However, the learned trial court after examining witnesses found and held him guilty for the offence and sentenced him as stated above.

4. The present appeals have been preferred on the grounds that the learned trial court has committed mistake by placing reliance upon the interested witnesses. It is also asserted that the prosecution has failed to prove any motive for the offence. The memo of appeal further challenges the injuries found on the deceased suggesting that such injuries are possible with iron rod. Learned Counsel for the appellant further submitted that due to non-examination of the Investigating Officer, prejudice has been caused to the defence. Learned Counsel further drew our attention towards some minor contradictions in the statements of eyewitnesses of the occurrence. According to learned Counsel, the occurrence took place while the deceased was demanding drinks from the appellant and not as per the prosecution version.

5. We have anxiously considered the submissions along with the materials on record. The prosecution has been examined altogether ten witnesses, out of which, P.W. 1 Subodh Kuamr Banerjee, formally proved the fardbeyan and first information report as Ext. 1 and 2. P.W. 2 Ran Tudu and P.W. 3 Munshi Tudu are the witnesses on the inquest report Ext. 3. P.W. 4 Dr. Bindu Bhushan, who conducted the post-mortem examination on the dead body of deceased Sukul Hembrom, he found two penetrating injuries caused by sharp cutting weapon, cavity deep on chest and back. According to P.W. 4, the weapon has cut through the pericardium and heart as well as kidney, resulting in death.

6. P.W. 5 Palku Hembrom, P.W. 6 Sarkar Hembrom, P.W. 8 Mirku Hembrom and P.W. 10 Suggi Hembrom, are sister, son, daughter and wife of the deceased. They have consistently supported the prosecution case. According to P.W. 10, when she was going to fetch water she saw the appellant and her husband standing on the village road. She further asserted that the appellant asked her husband to provide drinks, which ensued in exchange of hot words between them. She has asserted that the appellant stabbed her husband twice on which, she raised alarms and her sons came out of the house. She has further asserted that the appellant was chased by P.W.6, P.W.7, P.W.9, but the appellant managed to throw away the dagger. Her statements have been supported by P.W. 5, P.W. 6, P.W. 8 in details. Learned Counsel for the appellant has criticized their evidence on the grounds that they were interested and related. P.W. 9 Lakhi Ram Hembrom is cousin brother of the deceased and Pradhan of the village, he has supported the prosecution case, though not claiming as eyewitness of the occurrence. The fardbeyan has been recorded at the police station immediately

afterwards at 7.00 P.M. and the appellant was produced by the villagers before the Investigating Officer at 8.30 P.M. where he confessed his guilt. These witnesses have been cross-examined at length in which some contradictions has occurred, which is natural and does not affect the testimony of eyewitnesses. Learned Counsel for the appellant has suggested that in absence of any independent witnesses, the prosecution case should be disbelieved. He has also asserted that in absence of any explanation regarding injuries found on the appellant at that time, the prosecution case becomes doubtful.

7. Learned Counsel further pointed out that D.W.1 has proved the statement of the appellant recorded by the Investigating Officer in the case diary with injury report, which has not been considered by the trial court. According to learned Counsel, in such circumstances prosecution version does not deserve to be relied upon. Learned Counsel, however, could not explain under what circumstances, the appellant has stabbed the deceased. The injuries found on the appellant in the aftermath of his chase and arrest by the villagers is quite natural. The evidence of eyewitnesses, P.W.5, P.W.6, P.W.8 and P.W. 10 consistently shows that the appellant was involved in assaulting the deceased with sharp cutting weapon resulting in his death on the spot. The genesis of the occurrence is scuffle during drinking sessions. Therefore, we find that the prosecution has been able to prove beyond doubts that Sukul Hembrom was stabbed by the appellant in the evening of 8.3.1992 resulting in his death.

8. Learned Counsel further submitted that stabbing took place while there was scuffle between the appellant and the deceased on the point of further drinking. It is also submitted that the appellant has committed offence in drunken condition. Therefore, charge u/s 302 of the Indian Penal Code, in absence of any intention and knowledge to cause death, may be modified to offence u/s 304 Part-II of the Indian Penal Code.

9. Having considered the facts and circumstances mentioned above, we are of the view that the offence was committed by the appellant in abbreviated condition. In the result, we are of the view that the conviction of the appellant u/s 302 of the Indian Penal Code and sentence to serve rigorous imprisonment for life is hereby set aside and the appellant is found and hold guilty for offence u/s 304 Part-II of the Indian Penal Code. He is sentenced to serve rigorous imprisonment for seven years. In this manner, this appeal is allowed in part modifying the conviction and sentence as mentioned above. The bail bonds of the appellant are cancelled with direction to surrender forthwith before the court below to serve out the remaining period of sentence.