
(2008) 05 JH CK 0035
In the Jharkhand High Court

Jagdish Gope

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 13-05-2008

Acts Referred:

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

Citation : (2008) 3 JCR 181

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Sole appellant Jagdish Gope stands convicted for the offence punishable u/s 302 of the Indian Penal Code and sentenced to serve rigorous imprisonment for life and to pay a fine of Rs. 5000/- by the Additional Sessions Judge, Fast Track Court-V, Hazaribagh in Sessions Trial No. 384 of 2002.

2. Brief facts leading to this appeal are that informant Sunita Devi, wife of the appellant, was married with him nearly four years back. However, he used to ill-treat her and further assault her after taking wine. According to the informant, about eight months before this occurrence, she has been left at the house of the deceased (her father) by the appellant as she was in the family way where she delivered a son. On 10th of May 2002, the appellant came to his in-laws house and requested the deceased to send back the informant along with the child with him. However, the deceased did not accept his request and asked him to come with his father so that the informant and the children could go with him safely. This led to all altercation. The appellant returned without his wife and child. Further stated, on 13.5.2002, he again came in the evening and started quarreling with the deceased. However, when the deceased did not yield, the appellant went back and came again at about 8.00 p.m. to stab deceased sitting outside the house. The informant came out of the house to see that the appellant was stabbing her father. She raised alarms, on which neighbours arrived, in the meantime, the appellant fled away. Her father was brought to Hospital where he

was declared dead.

3. The matter was reported to Mandu Police situated at about 28 kilometers, which arrived in the morning and recorded the statement of PW 5 Sunita Devi to register Mandu Police Station Case No. 177 of 2002 u/s 302 of the Indian Penal Code on 14.5.2002. The police investigated the case and finally submitted charge-sheet. The appellant was put on trial after framing charge, to which he pleaded not guilty and claimed false prosecution. However, after examining the witnesses, the trial Court found and held the appellant guilty u/s 302 of the Indian Penal Code and sentenced him as stated above.

4. The present appeal has been preferred mainly on the grounds that there is no eye-witness of the occurrence. Mr. Laljee Sahay, learned Counsel appearing on behalf of the appellant, submitted that PW 2, PW 3, PW 4 and PW 6 are hearsay witnesses of the occurrence whereas the learned trial Court has relied upon the sole eye-witness, informant (PW 5) without any supporting corroboration from other witnesses. It was further pointed out that PW 2, the child witness has been relied upon, who might have been tutored. Learned counsel further raised the point of delay in lodging the first information report and concealing the first information received by the police at Mandu Police Station. The other points raised by the learned Counsel for the appellant was that the post-mortem report did not confirm the prosecution case. He further pointed out that the appellant being son-in-law of the deceased has no motive or intention to cause death while assaulting him with dagger. He stressed before us that out of frustration, as the deceased did not allow him to take back his wife and child, the assault has been made which unfortunately resulted in fatal injury. Non-examination of the neighbouring witnesses and non-production of the weapon of assault were also raised in support of this context.

5. We have gone through the materials on record carefully. Undisputedly, the informant is wife of the appellant, whose father has been killed by the appellant on his refusal to allow the appellant to take back his wife and child. PW 2 Sarita Kumari, is the sister of the informant and daughter of the deceased. She supported her sister. She has stated that she was in another house when alarms were raised and she went to find that his father was lying with grievous injury on his chest. She has not seen the actual assault. According to her admission vide paragraph 8, the appellant stayed for four days before this occurrence in the house. PWs 1 to 3 are hearsay witnesses of the occurrence. PW 3 is the son of the deceased. He has supported the prosecution version. He has admitted vide paragraph 8 that the appellant used to quarrel for taking back his wife. PW 4 is another hearsay witness of the occurrence. PW 6 is the son of the deceased, who learnt about the incident from witnesses including the informant. PW 8, is the S.I. of Mandu Police Station, who recorded the statement of the informant and proceeded for investigation after preparing inquest report. He has supported the prosecution case, collected the bloodstained soil vide Ext. 1 and submitted charge-sheet. PW 7 has conducted the post-mortem examination on the dead

body of Nageshwar Mahto and found incised wounds on the abdominal cavity and on left hand. The injury on his abdomen has caused death.

6. PW 5, the informant and wife of the appellant has supported her statements made before the police. However, she has admitted in cross-examination that she gave birth to a child after four years of the marriage just before this occurrence. She admitted in paragraph-15 that when her lather raised alarms, none of the neighbours came there and she was inside the house. She has admitted that the police was informed in the morning. However, from the statements, it is apparent that she is not lying because of the fact that she has deposed against her own husband. Had she any grudge against her husband to implicate falsely? She could have said that she saw the occurrence herself. She has claimed to come out of the house on alarms raised by her father to see him lying with the injuries and the appellant fleeing. In such circumstances, we do not find any material contradictions in the statement of PW 5 on the point of assault made by the appellant upon the deceased. PW 1, PW 3, PW 4 and PW 6 supported the prosecution case as hearsay witnesses of the occurrence. The medical report also support the prosecution case that death was due to incised wounds caused by sharp cutting weapon like Chhura" on abdomen, a vital portion of the body.

7. Mr. Laljee Saliay, learned Counsel for the appellant, pleaded that incident might have taken out of frustration and sudden provocation to the appellant because of refusal by the deceased to allow the wife to go with him. He further pointed out that the appellant naturally wanted and tried to have the company of his wife, which were being denied by the deceased repeatedly. This may have led to the quarrel, in which the deceased might have been assaulted with the dagger. Therefore, in the facts of the case, the conviction u/s 302 of the Indian Penal Code may be converted into the conviction u/s 304, Part II of the Indian Penal Code. Mr. Sahay, relied upon a decision reported in 2007 SAR (Criminal) 158. According to him, similarly situated accused was refused permission to take back his wife, on which quarrel stalled. During such quarrel and grappling, he assaulted the deceased with the scissors. We have gone through the decision wherein It has been held that during quarrel the accused having attacked the deceased with a scissors, the conviction u/s 302 of the Indian Penal Code is modified u/s 304, Part II of the Indian Penal Code.

8. Having considered the facts and circumstances discussed above, we are of the opinion that In the facts of the present case that the appellant may not have to intention to cause death of his father-in-law. In such circumstances, we are of the opinion that the conviction of the appellant u/s 302 of the Indian Penal Code cannot be sustained and deserves to be altered to conviction u/s 304, Part II of the Indian Penal Code.

9. In the result, the conviction of the appellant u/s 302 of the Indian Penal Code and sentence to serve rigorous imprisonment for life recorded by the learned Court below are hereby set aside and altered to u/s 304, Part II of the Indian

Penal Code.

10. In the facts of this case, the sentence be modified to imprisonment for the period already undergone by him respectively. With these modifications, the appeal is dismissed. Appellant Jagdish Gope, who is in jail right from May 2002, be released from custody forthwith, if not wanted in any other case?