
(2011) 08 JH CK 0051

In the Jharkhand High Court

Case No : Criminal (Jail) Appeal (DB) No. 298 of 2011

Lakhindra Sabar @ Kekra

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2011) 08 JH CK 0051

Hon'ble Judges : R.K. Merathia, J;P.P. Bhatt, J

Bench : Division Bench

Judgement

1. Heard the parties finally on merits.
2. This appeal arises out of the judgment of conviction dated 04/02/2011 and order of sentence dated 09/02/2011], passed by the Additional Sessions Judge, Ghatsila in Sessions Trial No. 77 of 2008 convicting the appellant u/s 302 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for life. The appellant was also sentenced to pay fine of Rs. 5,000/- and in default of payment, he was directed to undergo simple imprisonment for six months.
3. The prosecution case in short is that on 25.09.2007 the informant, Deepak Sabar (P.W. 7) informed at about 8 P.M. that his grand mother Mugoli Sabar (mother of the appellant) was malting preparation for cooking food. In the meantime, the appellant came to the house from outside and started demanding money from her for visiting "Indira Mela", which was refused by the deceased. Thereafter, the appellant started quarreling with the deceased. The deceased came out of the room. The appellant dragged her by holding her hand from the verandah of the nouse. The appellant took the axe, which was kept at the verandah and assaulted the deceased on the right side of her head near the ear from the back side of the axe, as a result of which, she fell down and became unconscious.
4. The Prosecution examined eight witnesses. P.Ws. 1 to 6 are hostile witnesses.

P.W. 7 is the informant, aged about 12 years, who happens to be the nephew of the appellant. He supported the prosecution case. He, inter alia, said that the appellant asked for money from the deceased for drinking liquor. When she refused, the appellant assaulted her by the back portion of "Tangi" on her head, due to which she died and then the appellant fled away. In the cross-examination, he said that earlier also, there used to be quarrel between the deceased and the appellant almost daily.

5. P.W. 8 is the Doctor He opined that the injuries were caused by hard blunt substance. In his opinion, the death was due to head and facial injuries.

6. Mrs. Sinha, learned Amicus Curiae, appearing on behalf of the appellant submitted that at best, the appellant could be convicted u/s 304 Part II, I.P.C and not u/s 302 I.P.C.

7. On the other hand, Mr. Mahata, learned A.P.P. appearing for the State supported the impugned judgment.

8. We find force in the submission of Mrs. Sinha that the case falls under exception 4 to Section 300 I.P.C. Admittedly, the occurrence took place during quarrel between the deceased (mother) and the appellant (son), when she refused to give money to the appellant for drinking liquor/visiting "Indira Mela". There is no pre-meditation. The appellant during quarrel, assaulted the deceased by back portion of "Tangi" lying at the verandah of the house. The informant (P.W. 7) in the F.I.R. and in his evidence said that the appellant gave single blow. The trial court also held that the other injuries may be due to fall. In the F.I.R. it was said that the appellant dragged the deceased to the verandah. All this explains the injuries.

9. It may also be noted that I.O. has not been examined in this case.

10. In the circumstances, the conviction is altered u/s 304 Part II, I.P.C. So far as the sentence is concerned, Mrs. Sinha submitted that the appellant has remained in jail for about 3 years and 11 months by now. In the circumstances, the appellant is sentenced to undergo R.I. for four years. In other words, after completion of four years, he will be released.

11. With this modification in the conviction and sentence, this appeal stands disposed of.