

(2016) 01 JH CK 0108
In the Jharkhand High Court
Case No : Cr. Appeal (DB) No. 166 of 2013

Lamba Bandare @ Lomba Bodra

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2016) 2 ECRC 99

Hon'ble Judges : R.R. Prasad;Ravi Nath Verma, JJ.

Bench : Division Bench

Advocate : Shekhar Sinha Addl. P.P, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant was put on trial in Sessions Trial No. 156 of 2002 on the accusation of committing murder of his wife Bergi Bandare and also for causing disappearance of the evidence of murder. The trial court having found the appellant guilty for both the charges, convicted him for the offence punishable under section 302 and 201 of the Indian Penal Code vide its judgment dated 22.12.2003 and sentenced him to undergo rigorous imprisonment for life under section 302 IPC and for three years under section 201 IPC vide its order dated 23.12.2003. Both the sentences were ordered to run concurrently.

2. The case of the prosecution as has been made out in the fard beyan (Ext.4), is that on 15.4.2002 while the informant Lal Babu Munda (PW11) was in his house along with his wife and were taking refreshment at 5.30 p.m. they heard shouting of the appellant and his wife Bergi who were altercating with each other. The wife of the appellant was raising alarm asking the informant to save her. On seeing this, when the informant and his wife went to the house of the appellant, they saw the appellant shouting at his wife. When they asked the appellant not to assault his wife, the appellant by taking the bow and arrow rushed towards the informant and his wife as a result of which, both the informant and his wife came back home. After some time, they left home and came to the place of Hari

Munda PW1 and informed him that the appellant has been assaulting his wife. On the next morning, they came to know that Bergi has died. On 16.4.2002, the appellant who had left home the other day came back home at about 3/4 O'clock and took the dead body to the graveyard where it was buried.

3. When the officer in charge of Kuchai PS Dipal Kumar, ASI (PW13) was informed about the incident, he came to the village of the informant on 18.4.2002 and recorded the fard beyan (Ext. 4) at about 10.30 a.m on the basis of which a formal FIR was drawn and the case was registered as Kuchai PS case no. 15 of 2002 against this appellant.

4. The investigating officer (PW13) took up the investigation during which it was informed to him that the dead body has been buried. Thereupon, he made a request to BDO, Kuchai to come to the place of occurrence. On his coming, the dead body was taken out and then the investigating officer held inquest on the dead body of the deceased and accordingly prepared an inquest report (Ext.3). Thereafter, the dead body was sent for postmortem examination which was conducted by Dr. P.K.Patti (PW12) who upon holding autopsy on the dead body of the deceased, did find haematoma about 100 mm underneath the scalp over the right temporo parietal region (no external injury could be seen because of decomposition). There was extramural haematoma also at right temporal parietal region.

The doctor preserved the viscera for its examination. According to the doctor (PW12) injuries were ante mortem, but the cause of death could not be ascertained and, therefore, opinion was kept reserved till the availability of the report of viscera examination. It be said here that the viscera report has never been placed on the record.

5. On completion of the investigation, the investigating officer submitted charge sheet against the appellant upon which cognizance of the offence was taken against the appellant.

6. In due course, when the case was committed to the court of sessions, the appellant was put on trial during which the prosecution in order to prove its case, examined altogether 13 witnesses. Of them, PW1 Harideo Singh Munda did testify that while he was in his house, the informant and his wife came to his house in the night and informed him that the appellant has been assaulting his wife. On knowing this, he came to the place of the appellant on the next day and found the dead body there. He has also deposed that on the next day of occurrence at about 4 pm when the appellant came back home, he took the dead body to the graveyard and got it buried. PWs 2 to 10 have been declared hostile. PW11 is the informant who has testified, though with some variations, in the same manner as his statement is there in the fard beyan. This witness did testify that while he and his wife were taking their refreshment, he through the window saw the appellant assaulting his wife with a bamboo piece. When he forbade the appellant from doing so, the appellant took arrow and blow and held out threats

of dire consequences. Thereafter, he confined himself in the room and after a while, he came to the house of Harideo Munda PW1, a village Munda and informed him about the incident. Further, it has been testified that when the investigating officer arrested the appellant, the appellant disclosed that he has buried the dead body and then the investigating officer at the instance of the appellant recovered the dead body of the deceased.

7. Upon the closure of the prosecution case when the incriminating evidences appearing against the appellant was put to him under section 313 IPC, he denied it. However, he admitted that he had buried the dead body.

8. The trial court by placing reliance on the testimony of the informant came to the finding that the appellant was the person who assaulted the deceased causing haematoma which resulted in to death of the deceased and then disposed of the dead body by burying it. The trial court having come to such conclusion, recorded the order of conviction and sentence which is under challenge in this appeal.

9. Learned counsel appearing on behalf of the appellant submits that the trial court has wrongly recorded that this appellant was responsible for causing death of the deceased as the doctor (PW12) failed to ascertain the cause of death and hence the prosecution cannot be said to have proved the case of homicidal death and thereby the trial court did commit an illegality in recording the order of conviction and sentence of the appellant under section 302 IPC. It was further submitted that so far as the offence punishable under section 201 IPC is concerned, none of the witness has deposed that they had seen this appellant burying the dead body in the graveyard. Even the investigation officer has not stated that the dead body was recovered at the instance of this appellant. Still, the trial court recorded the order of conviction and sentence under section 201 IPC on the basis of the admission of the appellant that he had buried the dead body, which cannot be taken to be an evidence. Under the circumstances it was submitted that trial court committed an illegality in recording the order of conviction and sentence against he appellant which is fit to be set aside.

10. As against this, learned counsel for the State submitted that there has been no opinion of the doctor to the effect that the injury caused by the appellant to the deceased was responsible for causing her death. But in the facts and circumstances appearing in this case, it is evident that on account of the injury being caused to the deceased by the appellant, the deceased died and thereby the trial Court has rightly recorded the order of conviction and sentence which needs no interference by this Court.

11. Having heard learned counsel for the appellant and the learned counsel for the State, we do find that the case of the prosecution as has been made out in the FIR is that while the informant (PW11) and his wife were in their house, they heard the deceased shouting when she was being assaulted by the appellant. On hearing this, when the informant PW. 11 and his wife went to the house of the

appellant, they saw the appellant assaulting the deceased with a piece of bamboo stick. PW11 in course of his evidence has slightly deviated from his earlier statement wherein he has testified that while he was in his house along with his wife, he saw the appellant through the window assaulting his wife with a bamboo stick and when he requested the appellant not to assault, the appellant took a bow and arrow and held out threats and then the PW1 confined himself in the room, but after sometime, he came to the place of PW1 and informed him about the incident. PW1 in his evidence has also testified that PW11 came and informed him that the appellant has been assaulting his wife. On the next day, when he came to the place of the appellant, he found the appellant absent, but did find the dead body of the deceased lying in the room. On the next day, dead body was not there. However, according to the case of the prosecution, it was the appellant who took away the dead body from the house and buried it in the graveyard. But none of the witness examined by the prosecution has come forward to say that they saw the appellant burying the dead body at the graveyard. Thus, the prosecution through ocular evidence has tried to make out the case that the deceased died on account of being assaulted by the appellant. But the evidence of the doctor (PW12) is otherwise, wherein he has failed to give opinion regarding the death of the deceased. In such circumstances, the prosecution can easily be said to have failed to make out a case of homicidal death and thereby the conviction of the appellant under section 302 IPC would be bad in law. Accordingly, the conviction of the appellant under section 302 is set aside. However, from the evidences appearing in the case, the prosecution has been able to prove convincingly that the appellant did assault over the head of the deceased causing haematoma. In that event, the appellant is convicted for the offence under section 307 IPC and is sentenced to the period already undergone. So far as the offence under section 201 IPC is concerned, it has already been stated that none of the witnesses has come forward to say that they had seen the appellant burying the deceased at the graveyard. In that event, the order of conviction and sentence for the offence punishable under section 201 IPC is also set aside.

12. For the reasons aforesaid, conviction of the appellant under sections 302 and 201 IPC is hereby set aside. However, the appellant is convicted under section 307 IPC and is sentenced to the period already undergone. Since the appellant is in custody since 12 years, he is directed to be released forthwith, if not wanted in connection with any other case.

Thus, with the modification in the judgment of conviction and order of sentence passed by the trial court in sessions Trial No. 156 of 2002, this appeal is hereby dismissed.