
(2006) 05 JH CK 0073

In the Jharkhand High Court

Case No : Criminal Appeal No. 71 of 1999R

Mansoor Alam and Badruddin

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 10-05-2006

Acts Referred:

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 302, 304, 323, 34

Citation : (2006) CriLJ 4485 : (2006) 3 JLJR 585 : (2006) 3 EastCriC 470 :
(2006) 3 AIRJharR 231

Hon'ble Judges : N. Dhinakar, C.J; Rakesh Ranjan Prasad, J

Bench : Division Bench

Advocate : Anil Kumar and Rishi Pallava, for the Appellant; A.B. Mahata, APP, for the Respondent

Final Decision : Dismissed

Judgement

1. By Court Mansoor Alam and Badruddin, the appellants in the above appeal, were arrayed as A1 and A2 in Sessions Trial No. 407/1997 on the file of 5th Addl. Sessions Judge, Hazaribagh. They were tried and convicted u/s 302 read with Section 34 I.P.C on the allegation that they, in furtherance of the common intention of each other, caused death of Rupesh Soren @ Sontu by slapping and stabbing with a pair of scissors. The Trial Judge, finding the appellants guilty as charged, sentenced each of them to imprisonment for life, which is being challenged in this appeal.

2. At 4.30 p.m. on 4..12.1996, the deceased, Rupesh Soren @ Sontu, along with his friend Albert Barla, P.W.4 and P.W.10 Sapan Kumar Bose was taking refreshment at a Tea Shop near College Mor. They saw the first appellant Mansoor Alam teasing some girls. The deceased objected to the conduct of the first appellant, P.W.4 Albert Barla slapped the first appellant and also asked him to close the shop. On being threatened by P.W.4 and the deceased, the first appellant closed the shop and the deceased and P.W.4 came later and they found

the shop kept open. The deceased and P.W.4 went to the shop and questioned the first appellant. P.W.4 once again slapped the first appellant and the deceased removed the table of the first appellant. At this juncture, the second appellant slapped the deceased, while the first appellant, who had a pair of scissors, caused injury on the deceased. Thereafter P.W.4 and the deceased left the shop. P.W.4 was taken to the police station by the Police Officer on account of the complaint given by the appellants. On hearing the complaint of the appellants that their shop was ransacked, P.W.4 was released after the bond was obtained by the police. In the meantime, the deceased went to his house and his mother, P.W.1, questioned him as to how he suffered injuries. The deceased informed them that he suffered injuries at the hands of the accused, when he was slapped and stabbed with scissors. The deceased was taken to the hospital but at the hospital he died. Fardbeyan, Ext. 1, was given by P.W.4 at 9.00 a.m. on 5.12.1996 and a crime was registered. After registration of the crime, investigation was taken up by P.W.11, Rameshwar Roy, who, after conducting inquest, sent the body to the hospital and gave a requisition to the hospital authorities to conduct autopsy on the dead body.

3. On receipt of the requisition and the dead body, Dr. Suresh Kumar Sinha, P.W.9, Civil Assistant Surgeon, conducted autopsy and he found the following injuries:

Abrasion 1" x 1" at right arm, abrasion 1" x 1" at forehead, incised wound 1" x 1/2" x deep to chest cavity at upper part of the left side of the back portion of chest wall.

The Doctor found blood in throsic cavity. He noticed blood clot on the right side of heart. The Doctor issued Ext. 3, the post mortem certificate, with his opinion that the injury found on the dead body would have been caused by a sharp weapon, such as a pair of scissor.

4. After the completion of investigation, final report was filed against the appellants, who denied all the incriminating circumstances.

5. There is no dispute that Rupesh Soren @ Sontu died on account of the injuries suffered by him. The said fact stands proved through the evidence of the Doctor, P.W.9, who conducted autopsy and who issued the post mortern certificate.

6. P.Ws. 4, 8, 9 and 10 were examined to show that the first appellant stabbed the deceased and the second appellant slapped and of them, P.W.8 Ajay Singh and P.W.10 Sapan Kumar Bose turned hostile. It is the evidence of P.W.4 that at about 4.30 p.m. on seeing the first appellant teasing the girls, he and the deceased raised objection and that the first appellant was asked to close his shop. P.W.4 admitted that he slapped the first appellant and that the shop was also closed on their direction. According to him, when they found the shop opened some time thereafter, he and the deceased went to the shop and questioned the appellants and he slapped the first appellant and the deceased pulled the table of the first appellant. At that juncture, according to P.W.4, the

deceased was slapped by the second appellant and the first appellant, who is a Tailor by profession, was having scissor in his hands, stabbed the deceased and slapped the deceased. The evidence of P.W.4 is trust-worthy and we see no reason to reject his evidence. His evidence is further strengthened by the evidence of P.W.1, the mother of the deceased, who, in her evidence, stated that the deceased, after returning home, informed that he was stabbed by the first appellant. The statement made by the deceased is relevant u/s 32 of the Evidence Act. We, therefore, accept the evidence of P.W.4 and hold that the deceased was stabbed by the first appellant, which led to his death.

7. The question that is to be decided by us is the nature of offence committed by the appellants. The facts we have narrated above, which are seen from the evidence of P.W.4, show that it was the deceased and P.W.4, who went to the shop of the first appellant and picked up quarrel with them. It was P.W.4, who slapped the first appellant and the deceased, who pulled the table of the first appellant. At this juncture, the second appellant slapped the deceased, while the first appellant, who is Tailor by profession and who was having a pair of scissors, inflicted one stab injury on him. It is, therefore, clear that: the occurrence took place without any premeditation on the part of the accused and the first appellant could not have had any intention of causing the death of the deceased, though he would have had knowledge that by stabbing with scissor the deceased is likely to suffer an injury and die. We, therefore, set aside the conviction of the first appellant, Mansoor Alam, u/s 302 read with Section 34 I.P.C and instead find him guilty u/s 304 Part II I.P.C, for which he is directed to suffer rigorous imprisonment for a period of five years. It is reported that the first appellant, Mansoor Alam, is in jail and if he has served the sentence of five years, the same will be given set off.

8. As regards the second appellant, Badruddin, the evidence is that he only slapped the deceased, as could be seen from the evidence of P.W.1, mother of the deceased. We, therefore, set aside the conviction of the second appellant, Badruddin, u/s 302 read with Section 34 I.P.C and instead find him guilty u/s 323 I.P.C, for which sentence of imprisonment is reduced to the period already undergone by him.

With the aforesaid observations and directions, this appeal is dismissed.