

(2024) 11 JH CK 0028

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1875 Of 2004

Panchu Marandi

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 27-11-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304II, 307, 323, 341, 448

Citation : (2024) 11 JH CK 0028

Hon'ble Judges : Ananda Sen, J;Gautam Kumar Choudhary, J

Bench : Division Bench

Advocate : Prabhat Singh, Amicus Curiae, Priya Shrestha

Final Decision : Dismissed

Judgement

Gautam Kumar Choudhary, J

1. Appellant No.1-Panchu Marandi is before this Court in appeal against the judgment of conviction and sentence under Section 302/34 of the IPC.

2. Appellant nos.2 and 3 have died, as per the report received from the concerned police station. Thus, the appeal on behalf of Appellant nos.2 and 3 stands abated.

3. Informant is the son of deceased. As per the FIR, in the intervening night of 16-17.10.2002, informant was sleeping at night on a cot, while his father was also sleeping on another cot. At around 12 O' clock in the night, his uncles-Panchu Marandi, Sanatan Marandi and Bhuchan Marandi (appellants) came inside the house and started abusing his father. When he protested, they started assaulting him with wooden clubs, as a result, the deceased sustained injuries over his head, face and leg. When the informant came to his rescue, he was threatened with life and consequently, he fled away. It is alleged that they had conjointly assaulted his father to cause his death. His father became unconscious and he was taken for treatment to the hospital.

4. On the basis of the fardbeyan, Ramgarh P.S. case No.85/2002 was registered under Sections 448, 341, 323, 307/34 of the IPC against these appellants. Further, Section 302 of the IPC was also added. Police on investigation, found the case true and submitted charge sheet and they were put on trial for the offence under Section 302/34 of the IPC.

5. Altogether six witnesses have been examined on behalf of the prosecution. Apart from the prosecution evidence, relevant documents including post-mortem examination report, inquest report and fardbeyan have been proved and marked as exhibits.

6. It is argued by the learned amicus curiae on behalf of the appellant that the witnesses who claim to be the eye witnesses, are all family members and no independent witness has been examined to support the prosecution case. Oral evidence is not corroborated by the medical evidence. The incidence took place at the dead of night and there was no source of light in which the witnesses have claimed to identify the appellant.

7. Learned A.P.P. has defended the judgment of conviction and sentence.

8. Having heard both the sides and on perusal of record of case, it is evident that the incidence took place in the house of the deceased at night. This part of the prosecution case has come up consistently in the testimony of all the material witnesses. I.O. has been examined as P.W.

6 and in para 4, he has described the place of occurrence to be the courtyard in the house of the informant.

9. Once the incidence takes place within the four corners of the house, family members become the natural witness to the occurrence and their testimony cannot be discarded on account of their relationship.

10. Deceased died a homicidal death, is proved by the Doctor (P.W. 5) who has proved the post-mortem examination report (Exhibit 1).

The following injuries were found over the body of deceased: -

i. Almost healed lacerated wound 2" x 2" on vertex of the scalp. On dissection, scalp bone was found fractured. On further dissection, meninges were found congested. On further dissection, brain was found lacerated with collection of blood.

Doctor opined that cause of death was shock and hemorrhage due to injury no. (i).

11. FIR was lodged without any delay on the very next day. Informant (P.W. 4) has deposed that the incidence took place on Wednesday night when he was sleeping in the veranda of his house. His father was also there, when the appellants entered into the house and started abusing and assaulting him. As a result of assault, the deceased sustained injuries over his head. When he rushed

to his rescue, they threatened him. On hulla, villagers gathered there. His father became unconscious and he was taken for treatment. Nothing significant has come in his cross-examination, so as to disbelieve his account. His oral account is corroborated by the testimony of P.W. 1, who is a neighbor of the informant. On hulla, when he went to the place of occurrence, he saw the appellants assaulting the deceased. In his cross examination, he deposed, his son (informant) raised hulla and he was present at the place of occurrence. Testimony of P.W. 2 who is also a neighbor, is also to the same effect. He has also deposed that he saw the appellants assaulting the deceased.

12. On the testimony of these witnesses, I find that the prosecution has succeeded to prove the incidence in which the deceased was assaulted by the appellants in his house at midnight.

13. Matter for consideration is whether the charge under Section 302 of the IPC is proved against the appellants.

14. The post-mortem examination report does not suggest indiscriminate assault by the accused persons, as there was one ante-mortem injury found over the dead body. The incidence took place on intervening night of 16-17.10.2002 whereas the post-mortem examination was conducted on 26.10.2002. The post-mortem examination was conducted about a week after the incidence from which it is evident that death was not instantaneous. Only one lacerated wound 2" x 2" on vertex of the scalp was found and on dissection, scalp bone was found fractured. A single blow cannot in all circumstance, be an evidence of disbelieving the intention to cause death. It has been held in *Mahesh Balmiki v. State of M.P.*, (2000) 1 SCC 319

"9. Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him."

15. In the present case, appellant was the brother of the deceased and had entered into the house at night and assaulted him. Had he any intention to cause death, he could have used any sharp cutting weapon which is available in any household as a weapon of assault. The evidence of indiscriminate assault by all the accused persons, is belied by the medical evidence. These facts are not indicative of the requisite intention or knowledge to commit murder. The appellant and the deceased had issues of dispute regarding partition of land which was the genesis of offence.

16. On these evidences, I am of the view that appellant is guilty for causing culpable homicide not amounting to murder (Section 304 Part II of the IPC). Judgment of conviction and sentence passed under Section 302/34 of the IPC is set aside and instead he is convicted under Section 304Part II of the IPC.

17. Appellant No.1- Panchu Marandi has served the sentence of seven. On the point of sentence, considering the age, antecedent and over all facts and circumstance of the case, the period already undergone by the appellant, will meet the ends of justice.

With this modification in finding in sentence, Criminal Appeal stands dismissed.

Pending Interlocutory Application, if any, is disposed of. Appellant No.1- Panchu Marandi is on bail. His sureties stand discharged from the liabilities of their bail bond.

Considering the assistance given by learned Amicus Curiae, we hereby direct the Member Secretary, JHALSA, Ranchi to pay remuneration of Rs.7500/- to him at the earliest.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.