
(2014) 01 JH CK 0128

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 753 of 2003

Raju Gulathi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302 307 324 326 34

Citation : (2014) 3 AJR 418 : (2014) 1 JLJR 550

Hon'ble Judges : Prashant Kumar, J; Amitav K. Gupta, J

Bench : Division Bench

Advocate : Rajesh Kumar in Cr.A. No. 753/2003, Ananda Sen and Manoj Kr. Dash in Cr.A. No. 1105/2005, for the Appellant; Shekhar Sinha, Assistant Public Prosecutor in Cr.A. No. 1105/2005 and Mr. T.N. Verma, Assistant Public Prosecutor in Cr.A. No. 753/2003, for the Respondent

Final Decision : Partly Allowed

Judgement

Prashant Kumar, J.—These appeals arose from the judgment of conviction and order of sentence dated 21.04.2003 passed by Additional District & Sessions Judge, Fast Track Court, Seraikella in Sessions Trial No. 138 of 2002, whereby and whereunder he convicted all the appellants under Sections 302 and 307 of the I.P.C. and sentenced them to undergo imprisonment for life for the offence u/s 302 and rigorous imprisonment of 10 years for the offence u/s 307 of the I.P.C. The learned court below further ordered that both the sentences will run concurrently. Since these appeals arose from the common judgments of conviction and order of sentence, therefore, both appeals are heard together and disposed of by this judgment.

2. The case of prosecution in brief is that the informant received information about occurrence from his niece Anjana Kumari that, Subhash Palash (brother-in-law of informant) came to the house of his mother along with two others, on 12.2.2002 at 9.00 P.M. and asked her sister namely Sama Palash as to whether she will go with him or not ? It is further alleged that when Sama Palash refused,

he inflicted several injuries on the body of Sama Palash by knife. It is further alleged that appellant Subhash Palash also inflicted injury on the head to his son namely Akash Palash. It is further alleged that all the three appellants inflicted injuries on the body of Sama Palash, Akash Palash and mother of the informant (Anjalina Bakhala-deceased).

3. On the basis of aforesaid information police instituted Adityapur (RIT) P.S. Case No. 27/2002 dated 13.2.2002 under Sections 341, 324, 326, 307 read with 34 of the I.P.C. and took up investigation. In course of investigation all the injured were treated in T.M.H., Jamshedpur. It is further stated that after treatment, all the injured were discharged from T.M.H., Jamshedpur. Thereafter, one of the injured namely Anjalina Bakhala was taken to Bilaspur for better treatment. It is stated that in course of treatment she died on 15.4.2002. It is farther stated that post-mortem examination of deceased-Anjalina Bakhala took place of Bilaspur and police received the post-mortem report. It appears that after completing the investigation police submitted charge sheet against the accused persons under Sections 302, 450, 341, 324, 326, 307 read with 34 of the I.P.C. It appears that after cognizance the case committed to the Court of Sessions as the offence under Sections 302 and 307 of the I.P.C. are exclusively triable by a Court of Sessions.

4. After commitment, the case was transferred in the file of learned court below for trial. The learned court below vide order dated 8.10.2002 framed and explained the charges to the appellants under Sections 307 and 302 of the I.P.C., to which they pleaded not guilty and claimed to be tried. Thereafter, prosecution examined altogether 11 witnesses in support of its case and also produced documents such as injury reports - (Ext. 1 Series), F.I.R. (Ext. 6), Application of the informant for giving information to the Bilaspur police regarding the death of Anjalina Bakhla (Ext. 4), fardbeyan (Ext. 5) and post-mortem report of deceased (Ext. 7). It appears that after considering the evidences available on record, the learned court below convicted and sentenced the appellants as stated above, against that present appeal filed.

5. While assailing the impugned judgment the learned counsel for the appellants submitted that, admittedly appellant (Subhash Palash) had strain relation with P.W. 7 (his wife), as they are in litigating terms. It is further submitted that because of the aforesaid strain relation appellant Subhash Palash and other two appellants, who happens to be the friend of Subhash Palash, have been falsely implicated. It is further submitted that in the instant case appellants convicted on the sole evidence of P.W. 7, because the evidence of other three witnesses, who claim themselves to be the eye-witnesses are not reliable. It is submitted that conviction of the appellants on the sole testimony of P.W. 7 is not warranted as she had strain relation with the appellants. It is further submitted that even the statements of P.W. 7 is taken to be true then also no offence u/s 302 of the I.P.C. is made out, because the deceased died after more than two months and that too by septicemia. Accordingly, it is submitted that at best offence u/s 307 of the

I.P.C. is made out and the appellants had already been punished for the same as they already remained in custody for more than 11 years.

6. On the other hand, learned Additional P.Ps. appearing for the State submits that in view of the statement of P.W. 7, appellants have been rightly convicted and sentenced by the court below. Thus, no interference require in these appeals.

7. Having heard the submissions, we have gone through the record of the case. It is not in dispute that P.W. 6-Akash Palash, P.W. 7-Sama Palash and deceased Anjalina Bakhla had received sharp cut injuries on their body on the date of occurrence, thus the question arose in these appeals as to whether the appellants had committed the present crime or not? This bring us to consider the oral testimonies of the witnesses.

8. From perusal of evidence available on the record, we find that P.W. 7 (wife of the appellant-Subhash Palash), is the star witness of this case. This witness stated that on 12.2.2002 appellants came to her house and sat on the sofa. Appellant Subhash Palash asked, as to whether she accompanied him or not? When she refused, all the appellants inflicted cut injuries on her person by knife and bhujali. She further deposed that on hearing the hue and cry her mother arrived at the scene of occurrence. Thereafter, she had also been assaulted by all the accused persons, due to that she received injuries on various parts of her body including abdomen. She further deposed that when her son started crying, he was assaulted by the appellant (Subhash Palash) due to that he received injury on his head. In the cross examination her aforesaid version remain intact.

9. However, learned counsel, appearing for the appellants, submitted that her evidence cannot be looked into, because she had strain relation with her husband, (Subhash Palash). It is submitted that a maintenance case is going on in between them, therefore, there is every chance of false implication. The aforesaid submissions of learned counsel for the appellants cannot be accepted because it has come in the evidence of P.W. 7 that maintenance case has already been disposed of and appellant (Subhash Palash) directed to pay a sum of Rs. 17,00/- per month to P.W. 7 as maintenance. Under the said circumstance on the date of occurrence, P.W. 7 has no grievance against the appellant, rather the appellant had reason to commit present crime, because aforesaid case went against him.

10. It is further submitted by Mr. Ananda Sen that the statement of P.W. 7 does not find any corroboration from other evidences. Because, the evidence of P.Ws. 5 and 6 (who are the child witness) are tutored and P.W. 11, who is claiming himself to be the eye-witness, does not find any support from P.Ws. 5, 6 and 7. Accordingly, it is submitted that only on the basis of statement of P.W. 7 appellants can not be convicted.

11. We do not find any merit in the aforesaid submission because even if the evidence of P.Ws. 5, 6 and 11 excluded, as submitted by learned counsel for the appellants, then also, we find that the evidence of P.W. 7 find full support from

the evidence of doctors P.Ws. 1 and 10.

12. In view of the discussions made above, we come to the conclusion that appellants inflicted various injuries on P.Ws. 6, 7 and deceased Anjalina Bakhla. Now the question arose, which offence made out against the appellants? From perusal of post-mortem report, it is clear that cause of death is septicemia. It also appears that deceased died after more than two months of the occurrence. It has come in the evidence of P.W. 4 that T.M.H. discharged the deceased and they took her to their home without any objection. It further appears from his evidence that even in Bilaspur she has not been admitted in any hospital, rather P.W. 4 used to take his mother on different intervals for dressing of the injuries. Thus, it appears that due to improper treatment septicemia developed in the wounds of deceased and because of that she died. Under the aforesaid circumstance, the cause of death is not injury, rather the subsequent development in her injury due to negligence of the prosecution party. Under the said circumstance, we find that the offence u/s 302 of the I.P.C. is not made out against the accused persons. However, we find that the appellants inflicted repeated injuries on different parts of the body of the deceased and one of the injury is grievous in nature. Under the said circumstance, we find that the appellants inflicted such injuries with an intention to commit murder. Thus, in our view offence u/s 307 of the I.P.C. made out against the appellants for inflicting injury on Anjalina Bakhla. We further find that the accused persons are liable for the offence u/s 307 of the I.P.C. for inflicting injuries on P.Ws. 6 and 7, because repeated injuries made on the head of P.W. 6, and multiple incised wound found on the neck and other parts of the body of P.W. 7.

13. In the instant case appellants are in custody for more than 11 years. Under the said circumstance, in our view, if they have been punished for the period undergone in jail custody that will meets the ends of justice.

14. In view of the discussions made above, these appeals are partly allowed. The judgment of conviction of appellants u/s 302 of the I.P.C. for the death of Anjalina Bakhla is hereby modified and we hereby held that the appellants are guilty of the offence punishable u/s 307 of the I.P.C. and they are accordingly convicted under that Section. We hereby modify the sentence of the appellants to under go imprisonment for the period undergone by them in the jail custody. Accordingly, we direct that the appellants be released forthwith, if not wanted in any other case.