

(2009) 10 JH CK 0063
In the Jharkhand High Court

Somai Hembram

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:

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

Citation : (2009) 10 JH CK 0063

Hon'ble Judges : Rakesh Ranjan Prasad, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—This criminal appeal has been preferred by the appellant against the judgment and order of conviction and sentence passed by the Additional Sessions Judge, Sahibganj in Sessions Trial No. 14 of 1997 dated 17th September, 1999, whereby, the present appellant-accused has been punished to undergo life imprisonment for the offence u/s 302 of the Indian Penal Code, for committing murder of one Raska Murmu, who is husband of PW6-informant.

2. If the case of the prosecution is unfolded, the relevant facts are as under:

It is the case of the prosecution that on 4th January, 1997 at about 13.00 hours, incident has taken place when PW6 with her husband, namely Raska Murmu, were coming from hill side and when they came near the house of one Dariya Kisku, the present appellant-accused was standing with Lathi and he caused injury to Raska Murmu on right temporal region and by this injury, he has fallen down and thereafter, he expired. Thereafter, FIR was filed by PW6, namely Meroo Pawariya on 5th January, 1997 at 13.45 hours at Barhait Police Station, District-Sahibganj. Investigation was carried out, statement of witnesses was recorded, chargesheet was filed and Sessions Trial No. 14 of 1997 was registered against the appellant-accused and upon evidence, the appellant-accused has convicted for an offence punishable u/s 302 of the Indian Penal Code. Against this order, the present appeal has been preferred.

3. We have heard learned Counsel appearing for the appellant-accused, who has argued out the case, in detail, and submitted that there are enough omissions, contradictions and improvements in the depositions of the prosecution witnesses. This aspect of the matter has not been properly appreciated by the trial court and, hence, the judgment and order of conviction and sentence, passed by the trial court, deserves to be quashed and set aside. It is also submitted by the learned Counsel for the appellant-accused that prosecution has failed to prove the prosecution case beyond reasonable doubt. So called eyewitnesses PW3 and PW4, who were earlier examined, cannot be re-examined as PW6 and PW7. Neither even any motive is proved by the prosecution. Investigating Officer has not been examined. Place of occurrence is also not proved. Only one Lathi blow has been given, which is a hard and blunt substance and in absence of any motive, the appellant-accused could not be punished for an offence punishable u/s 302 of the Indian Penal Code. This aspect of the matter has not been properly appreciated by the trial court and hence, the judgment and order of conviction and sentence passed by the trial court, deserves to be quashed and set aside. So called eye witness PW9 is also not an eye witness at all, because he is not referred in FIR nor PW6 and PW7, who are alleged eye witnesses of the incident have shown his presence. Thus, the case of the prosecution is full of improvements, omissions and contradictions.

4. We have heard learned A.P.P. for the State, who has submitted that the prosecution has proved an offence of murder of Raska Murmu beyond reasonable doubt with the help of eye witnesses, who are examined as PW6 and PW7 as well as PW9. All these three witnesses have narrated the whole incident, in detail. Place of occurrence is also proved by the prosecution with the help of these witnesses. Weapon used by the accused has also been narrated by these witnesses. Looking to the FIR also, there is consistency in the prosecution version right from the FIR, the place of occurrence, weapon used by the accused and the narration of other eye witnesses. Medical evidence is also corroborating to the depositions given by the eye witnesses. Initially, PW3 and PW4, were examined, who have turned hostile, but, subsequently an application was given by the State on 6th March, 1998 for recalling of the witnesses on the ground that PW3 and PW4 were examined, but, they were never Meroo Pawariya. and Talamai Marandi and therefore, an order was passed by the trial court for re-examination of the witnesses on 21st September, 1998 and thereafter, correct witnesses, namely Meroo Pawariya was examined as PW6 on 21st September, 1998 and Talamai Marandi was examined as PW7 on 21st September, 1998 and these two witnesses have narrated the whole case, in detail. They have also stated that they are giving the evidence for the first time in the court. They have also identified the accused in the court. Never any objection has been raised by the defence side upon the order passed by the trial court dated 21st September, 1998, nor looking to the cross examination of these two witnesses PW6 and PW7 any suggestion has been made by defence about their recalling the earlier examination. Thus, PW6 and PW7 are correct eye witnesses examined by the

prosecution and they are rightly relied upon by the trial court as trustworthy witnesses and therefore, no error has been committed by the trial court in appreciating the evidences of PW6, PW7 and PW9 to be read with medical evidence given by PW1, to be read with Exhibit-1 postmortem report and Exhibit-3 FIR and the appellant-accused is rightly punished for the offence punishable u/s 302 of the Indian Penal Code and this Court may not interfere with the order of conviction and sentence, passed by the trial court and therefore, the present appeal deserves to be dismissed.

5. Having heard learned Counsel for both the sides and looking to the evidences on record, it appears that the whole incident has taken place on 4th January, 1997 at about 13 hours. PW6-Meroo Pawariya and her husband Raska Murmu were coming from hill side area. Near the house of Dariya Kisku, the appellant-accused was standing with stick in his hand. No sooner did PW6 and Raska Murmu came nearer, the appellant-accused caused assault by Lathi-hard and blunt substance, and caused injury on the Raska Murmu on right temporal region. Immediately upon receiving this injury, Raska Murmu has fallen down and he expired immediately. Thereafter, FIR was filed by PW6 on 5th of January, 1997 at 1.3.45 hours wherein also, the name of the accused has been given, weapon is also described, other eye witnesses have also been described. Looking to the deposition of PW6, who is wife of the deceased and was accompanying by her husband at the time of assault, she has narrated the whole incident, in detail, without any exaggeration, omissions or contradictions. Looking to her cross-examination, nothing has come out in favour of the present appellant-accused. Initially, some eye witnesses were examined on 16th January, 1998, but, thereafter, an application was given by the prosecution on 6th March, 1998 for recalling of PW3 and PW4. Both these witnesses came on 21st September, 1998 and it was further argued by the. prosecution that these witnesses PW6 and PW7 came with police and it is submitted by the State that earlier examination of PW3 and PW4 were never Meroo Pawariya and Talamai Marandi, but, they were somebody else, who have turned hostile. Thus, correct witnesses were examined as PW6 and PW7, who are Meroo Pawariya and Talamai Marandi and depositions of PW3 and PW4 were expunged on 21st September, 1998. Looking to the cross-examination of this PW6, no defence has been taken by the prosecution about re-examination or miss-identity. Thus, PW6 has rightly been examined as an eye witness, who is a wife of the deceased and earlier PW3, who was examined, was somebody else and therefore, trial court has rightly expunged the disposition of PW3 and in our view also, PW6 is reliable and trustworthy witness, who is wife of the deceased.

6. We have also perused the deposition of PW7, who is also an eye-witness, who is Talamai Marandi. Near the house of Dariya Kisku, appellant-accused had caused an assault upon the deceased. This witness PW-7 is a wife of Dariya Kisku. Thus, near the house of PW7, the incident has taken place. She has been examined as an eye witness. She has also narrated the whole incident, in detail, and without any omissions, contradictions or improvements, she has narrated

that appellant-accused was standing with a stick in his hand and no sooner did PW6 and Raska Murmu came near from hill side area, the appellant accused assaulted Raska Murmu and caused an injury. Raska Murmu has fallen down and thereafter, he expired. This witness is referring as eye witness in FIR, filed by PW6. She has also stated that she has given disposition in the court for the first time. Thus, PW4, who was examined as Talamai Marandi, was somebody else and therefore, the deposition of PW4 was lightly expunged by the trial court vide order dated 21st of September, 1998. Looking to the cross-examination of this witness also, nothing has come out in favour of the present appellant-accused. Thus, PW7 is a reliable and trustworthy eye witness and though she is rustic witness, she has given clear deposition before the trial court, without any omissions, contradictions or exaggerations.

7. We have also perused the deposition of PW9, who is Baburam Murmu, son of the deceased. He has also examined as eye witness by the prosecution, who has also narrated the whole incident, in detail, that when PW6 and the deceased were coming from the hill side area, near the house of Dariya Kisku, appellant-accused caused an assault upon Raska Murmu by Lathi and sustaining this injury, Raska Murmu has fallen down and ultimately, expired. It is contended by the learned Counsel for the appellant-accused that this witness is not referred in the FIR as eye witness and, therefore, he is not at all an eye witness. This is got up witness. This contention is not accepted by this Court mainly for the reason that looking to the overall disposition of PW9 and his cross-examination, he is trustworthy and reliable witness. Even during cross-examination, no part of the deposition have been shaken or taken away, on the contrary, looking to the FIR, it has been narrated by PW6 that there are other eye witnesses also. Thus, PW6, PW7 and PW9 are the eye witnesses of the incident.

8. Looking to the deposition of PW1, i.e. Dr. Nand Kishore Prasad, who has carried out postmortem on the deceased on 7th January, 1997, has narrated the injury as under:

Ecchymosed skin with swelling on the right side of head and neck.

On dissection of the wound there was fracture of parietal bone of the skull with extradural and subdural hemarrhage and bloodstain over and around the wound. Brain was found damaged and blood clot present on the brain tissue.

In view of the aforesaid inquiry, an opinion for the cause of the death was given by this witness that due to aforesaid injury, death has taken place. Injury was capable of being caused by hard and blunt substance. Injury was caused on the vital part of the body. The injury was sufficient and is in ordinary course of nature to cause death of the deceased, as per disposition of PW1. Thus, contention raised by the learned Counsel for the appellant-accused is that, there is only one Lathi blow on the head, without any motive and therefore, appellant-accused may not be punished for the offence of murder, but, he may be punished for an offence of committing culpable homicidal, not amounting to murder. This

contention is not accepted by this Court looking to the medical evidence and looking to the Clause thirdly of Section 300 of Indian Penal Code. The appellant-accused was waiting for the deceased to come nearer and accused has also weapon-Lathi in his hand. No sooner did PW6-the informant and her husband came nearer, the appellant-accused caused injury by Lathi on his head. Thus, head injury has been caused. As stated hereinabove by PW1, the injury was sufficient, in ordinary course of nature to cause the death of the deceased. Thus, the case of the appellant-accused is not falling within any of the exception of Section 300 of the Indian Penal Code, on the contrary, covered by Clause thirdly of Section 300. There is no need of intention of murder, but, if there is intention to cause to a bodily injury and if this bodily injury is sufficient in ordinary course of nature to cause the death of the deceased, then offence is covered by Section 300 of Indian Penal Code, especially, by Clause thirdly thereof. Looking to the evidences on record of PW6, PW7 and PW9 to be read with the disposition of PW1, no error has been committed by the trial court in convicting the appellant-accused for an offence punishable u/s 302 of the Indian Penal Code for committing murder of Raska Murmu. Prosecution has proved an offence beyond reasonable doubt.

9. Learned Counsel for the appellant-accused has also submitted that Investigating Officer has not been examined and place of occurrence has also not been proved and therefore, the benefit may be given to the appellant-accused. This contention is not accepted by this Court mainly for the reason that right from the FIR, the place of occurrence is clearly narrated by the prosecution and looking to the clear deposition of eye witnesses PW6, PW7 and PW9, there is no mistaken identity of the appellant-accused, of the place of occurrence and no mistake in describing weapon in the hand of the appellant-accused. The whole incident has taken place in the broad day light. Presence of PW6 is also natural, PW7 is a villager near whose house, the whole incident has taken place. She is an independent witness. Thus, PW6 was accompanying the deceased, has been examined as eye witness. PW7 is a villager near whose house, the whole incident has taken place, has also examined as eye witness and PW9, who is son of the deceased was nearer the place of scene of occurrence. Thus, all the three witnesses are eye witnesses and rightly they have believed by the trial court. We see no reason to discard the evidences of these three eye witnesses. Thus, looking to their cross-examinations, it appears that they stand to their examination-in-Chief. By the deposition of medical evidence (PW1), also there is enough corroboration to the case of prosecution.

10. Looking to the evidence on record, the prosecution has proved beyond reasonable doubt that the present appellant has committed murder of the deceased-Raska Murmu and no error has been committed by the trial Court in appreciating the evidences on record, in convicting the present appellant-accused for an offence punishable u/s 302 of the Indian Penal Code. The judgment and order of conviction and sentence dated 17th September, 1999 passed by learned Additional Sessions Judge, Sahibganj in Sessions Trial No. 14 of 1997 is, hereby,

affirmed.

11. There is no substance in this criminal appeal and, hence, the same is hereby dismissed.