
(2019) 02 JH CK 0012

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 725 Of 2014

Sonu Behera @ Tiblu Behera @ Tiblu

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 300, 302, 304
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 6, 7

Citation : (2019) 02 JH CK 0012

Hon'ble Judges : Aparesh Kumar Singh, J;Kailash Prasad Deo, J

Bench : Division Bench

Advocate : Arun Kumar, Gouri Shanker Prasad

Final Decision : Partly Allowed

Judgement

1. Heard learned counsel Mr. Arun Kumar representing the appellant as a panel lawyer of JHALSA and learned Additional Public Prosecutor Mr. Gouri Shankar Prasad.

2. This appellant is undergoing rigorous imprisonment for life with a fine of Rs.5,000/-, in default whereof to suffer three months simple imprisonment upon his conviction for the offence under Section 302 of the I.P.C. for the murder of his wife namely Shanti Behara rendered by the learned court of Additional Sessions Judge-II, Ghatsila in Session Case No.94 of 2013 vide impugned judgment of conviction dated 14th July 2014 and the order of sentence dated 16th July 2014. Informant is a Chowkidar no.1/7 Uttam Karamkar of village Meria, P.S. Musabani, District East Singhbhum upon whose Fardbeyan recorded by Sub-Inspector A.K. Dubey, Officer-in-charge, Musabani Police Station at 12.30 hours on 18th July 2012 at Quarter No. SPR 7/9 Harijan Basti, P.S. Musabani, the F.I.R. was lodged bearing Musabani P.S. Case No.35/2012 under Section 302 of the Indian Penal Code on 18th July 2012 at 15 hours against the sole accused/appellant herein. The informant has interalia made the following allegations in his

Fardbeyan:

On 18th July 2012 he was on deputation in law and order duty in Musabani market when he got information at 12:00 hours that one person in Harijan Basti has killed his wife by an assault with Kulhari and brought the dead body into his quarter. In order to verify this information, he reached there and found a crowd assembled. On being asked, the villagers informed that accused Sonu Behera @ Tiblu Behera son of Late Monu Behara, Quarter No.SPR 7/9 Harijan Basti of Musabani Police Station has been living with his wife Shanti Behara aged 40 years for five years. Both of them were engaged in manual labour. On that day at around quarter to 12:00 they had returned to their quarter from their work. Accused Sonu Behera aged 45 years demanded money from his wife for drinking liquor. This resulted in heated exchanges between the two whereupon the accused Sonu Behera with a Kulhari in his hand chased his wife Shanti Behara in order to kill her. She ran and on reaching in front of the house of Sushila Mukhi (P.W.8) sat on a bench. Accused Sonu Behera @ Tiblu followed her to that place and assaulted with the Kulhari upon her neck which resulted in injuries and she died at the same place. Thereafter, he picked up the body of his wife and brought it to the Quarter No.SPR 7/9 and went out of his house with the Kulhari. The blood stained Kulhari was seized from the accused Sonu Behera @ Tiblu Behera with the help of the villagers. He narrated the incidence to the Officer-in-charge, Musabani Police Station and the incidence was confirmed by the other villagers namely Sushila Mukhi, Munna Sona, Lal Mohan Karua, etc. The informant asserted that the accused Sonu Behera @ Tiblu Behera aged 45 years son of Late Monu Behara of Quarter No.7/9 Harijan Basti, P.S. Musabani, District East Singhbhum has with an intention to commit murder of his wife assaulted on her neck and caused her death and then brought the dead body to his house.

3. Investigation commenced upon institution of F.I.R. and after finding the case true, chargesheet bearing no.47/2012 dated 31st July 2012 was submitted under Section 302 I.P.C. against the sole accused. Cognizance was taken by the learned court on 22.09.2012. The case was committed thereafter to the court of sessions on 05.01.2013. Charges were framed under Section 302 I.P.C. against the sole accused on 21st May 2013 by the learned court of District and Additional Sessions Judge-II, Ghatsila. The charges were explained to the accused in Hindi which he denied and claimed to be tried. The case was thereafter put up for trial in which prosecution adduced eight witnesses named as under :-

P.W.1- Uttam Karmkar,

P.W.2- Mohan Mardi,

P.W.3- Munna Sona,

P.W.4- Sunita Sona,

P.W.5- Anita Sagar,

P.W.6- Dr. Kamlesh Kumar Prasad,

P.W.7- Md. Nizamul Khan and

P.W.8- Sushila Mukhi.

4. The prosecution also adduced the following documentary evidence in support :

Ext.1 - signature of P.W.1 in Fardbeyan

Ext.1/1- Fardbeyan

Ext.2 - signature of P.W.2 in seizure list

Ext.2/1- signature of P.W.3 in seizure list

Ext.2/2- seizure list

Ext.3 - post-mortem report

Ext.4 - formal F.I.R.

Ext.5 - forensic report

Ext.X- photograph of accused with Kulhari.

All these exhibits were adduced without objection.

5. Upon closure of the prosecution evidence, the material evidence was put to the accused during examination under Section 313 Cr.P.C.. His case was of denial and he pleaded complete innocence. The defence did not produce any witness or documentary evidence in support of their case.

6. Upon consideration of the entire material evidence on record and the submissions of the learned counsel for the parties, the learned court convicted the sole accused for the charge under Section 302 I.P.C. holding that the prosecution has been able to prove the case beyond shadow of all reasonable doubts.

7. Learned counsel Mr. Arun Kumar in support of the challenge to the impugned conviction and order of sentence has made the following submissions:-

8. After placing the evidence on record, it is submitted on behalf of the appellant that the First Information Report is based upon the Fardbeyan of a Chowkidar who was not witness to the occurrence and admittedly heard it from the mouth of the villagers. He has not seen the assault and claims to have reached the quarter of the accused/appellant where the body of the deceased Shanti Behara was lying. He has formulated a hypothesis behind the occurrence. According to the informant P.W.1 there was a quarrel between the accused and the deceased soon after return from their work when the accused demanded money from her for having liquor. A heated exchange ensued and the victim was chased by the accused appellant with a Kulhari in order to kill her. This hypothesis is not corroborated by evidence of any other prosecution witnesses. Nobody else has seen the accused and the deceased quarreling before the incidence. P.W.8 has

also not seen them quarreling, though she has deposed as an eye-witness. Testimony of P.W.1 who was a hearsay witness alone is not sufficient to justify the motive for the crime. P.W.8 whom the prosecution has produced as a star witness and an eye-witness to the occurrence has not seen the occurrence, but described the aftermath of the incidence. As per this witness, the couple were sitting quietly in front of her house and on being asked, told her that they were just relaxing after coming back from their work in the shade of a tree. It is further submitted that prosecution has set up its case of assault by Kulhari (a sharp cutting weapon) on the neck i.e. a vital part of the body of the victim by the accused appellant. The Kulhari- a weapon of the assault was not produced during trial to substantiate the prosecution case. Rest of the prosecution witnesses like P.W.2 and P.W. 3 are seizure list witnesses who have not seen the occurrence. The prosecution had tried to prove photographs of the accused holding Kulhari which were marked as Ext.X for identification on objection. Presence of the accused with the Kulhari taken together with the manner of assault has not been proved by the prosecution to hold the accused/appellant as the sole person liable for the offence. The couple had been living for five years together and there is no evidence of any previous quarrel or repetitive quarrel between them. All these circumstances taken together do not substantiate the guilt of the accused.

9. Alternatively, learned counsel Mr. Arun Kumar has premised his argument on the plea that assumingly the involvement of this appellant in the commission of the murder of his wife is proved, the testimony of the prosecution witness no.1 read with that of P.W.8 and other materials on record, go to show that the accused did not bear an intention to kill his wife. There was no repetition of assault even as per the medical evidence of P.W.6 Dr. K.K. Prasad. There was only one injury found in the back of the neck. The evidence of P.W.1 read with deposition of P.W.8 and the medical evidence lead to the conclusion that the case of the appellant falls under Exception-4 to Section 300 of the Indian Penal Code. As per the case of the prosecution also, the accused chased his wife after a heated exchange on denial of money for buying liquor and there was no pre-meditation. The act was committed in the heat of passion upon a sudden quarrel and there was no time gap within which the offender / accused took undue advantage by procuring a weapon of assault and got time to ruminate before inflicting the sole injury upon his wife. Prosecution has also not been able to show that he acted in a cruel and unusual manner in the process. As such, even if the guilt of the appellant is proved, he is entitled to the benefit of Exception-4 under Section 300 of the Indian Penal Code. His conviction and sentence may therefore be modified to that under Section 304 Part-II of the Indian Penal Code, if not acquitted under Section 302 of the Indian Penal Code.

10. Learned Additional Public Prosecutor has supported the findings recorded by the learned trial court which are on the basis of appreciation of the entire material evidence on record. Learned Additional Public Prosecutor has read the evidence of P.W.1 and P.W.8 in entirety in the context of the prosecution case set

up through the mouth of the informant Uttam Karmakar, a Chowkidar. The statement of P.W.1 (informant) completely supports the prosecution story initially made in the Fardbeyan and from the statement of P.W.8 the commission of the offence by this accused stands unerringly proved to the hilt. The assault occurred in front of the house of P.W.8 after the victim reached there and sat under a tree on a bench on being chased by her husband, the accused, while P.W.8 was taking bath in her house. She has truthfully narrated the manner of occurrence and accepted not having seen the assault. However, as soon as she heard a cry from the mouth of the victim, came back and she saw the accused drawing the Kulhari out of the neck of the victim just after the assault. Statement of P.W.8 who is an independent eye-witness is all the more reliable as she denies knowledge of any previous incidence/quarrel between the two and has deposed only to the extent what she saw. The defence has not been able to elicit any contradiction in her statement. The testimony of P.W.2 and 3 both corroborate the seizure of Kulhari from the hand of the accused which was recorded in the seizure list and their signatures as well as seizure list have been proved as Ext.2, 2/1 and 2/2 respectively. The medical evidence in the nature of P.W.6 Dr. K.K. Prasad who conducted the post-mortem examination on the body of the deceased completely corroborates the testimony of eye-witness P.W.8, so far as the single fatal assault by a sharp cutting weapon described as 5 cm x 4 cm deep x ½ cm on the back of neck of the victim is concerned. This injury was sufficient in the ordinary course of nature to cause death as per the opinion of the Doctor also. The case of the prosecution is thus complete and without any gaps or loop holes. The motive and reason behind the crime, the manner of occurrence, the immediate effect and aftermath of the occurrence and seizure of the Kulhari from the hand of the accused, all have been proved by the prosecution to make its case full proof. The conviction of the accused/appellant recorded under Section 302 I.P.C. therefore does not suffer from any error of law or perversity in appreciation of the evidence calling for interference in appeal.

11. Learned A.P.P. has also countered the argument of learned counsel for the appellant Mr. Arun Kumar on the plea of modification of the conviction to one under Section 304 Part-II relying upon the Exception-4 to Section 300 of I.P.C. He submits that the sequence of events narrated through the mouth of P.W.1 and P.W.8 in particular and his conduct after the incidence also as described through P.W.8, P.W.2 and P.W.3, i.e. seizure list witnesses together do not support the plea that the accused inflicted the assault in a heat of passion upon a sudden quarrel and without pre-meditation. The accused had intentionally chased the victim up to a distance and even the statement of P.W.8 do not show any heated exchanges between the two before the fatal assault was committed. The appellant cannot derive the benefit of Exception-4 to Section 300 of I.P.C. in such circumstances. The judgment of conviction and order of sentence is well considered and therefore does not call for any interference in appeal.

12. We have considered the submission of learned counsel for the appellant Mr. Arun Kumar engaged on behalf of JHALSA to represent him and learned

Additional Public Prosecutor Mr. Gouri Shankar Prasad. We have also gone through the entire material evidence on record and perused the impugned judgment as well.

13. The case of prosecution hinges upon the testimony of P.W.8 in particular. We have scanned the entire material evidence of the other prosecution witnesses namely P.W.1 the informant and Chowkidar who gave his Fardbeyan after learning about the incidence from the villagers after the occurrence at 12.00 P.M. on the fateful day i.e. 18th July 2012. The signature of the informant has been proved as Ext.1 during his examination. Fardbeyan has been proved as Ext.1/1. Upon his Fardbeyan, formal F.I.R. has been proved as Ext.4 by P.W.7.

14. The defence has not been able to discredit the prosecution story put up through the mouth of the informant who described the occasion and immediate cause for the occurrence in terms of Sections 6 and 7 of the Evidence Act containing the principles of Res-Gestae. Read together with the evidence of P.W. 8, these facts narrated through the mouth of P.W.1, the informant, constitute relevant facts which are so connected with the fact in issue that they form part of same transaction and project the circumstances leading to the occurrence and also the cause and effect thereof. The narrative described by P.W.-1 completely justifies the case of the prosecution so far as the presence of the accused and the deceased in front of the house of P.W.-8 is concerned. There were heated exchanges between the couple after they returned from work on account of denial of money by the victim to the accused for having liquor. As a result of the heated exchange, the appellant/accused was in state of fury and with a sharp cutting weapon (Kulhari) in his hand ran after the victim, who realizing the intensity of his anger tried to flee and thereby reached just in front of the house of P.W.8 when P.W.8 noticed both of them. Presence of these two accused and the victim in front of the house of P.W.8 is therefore well explained when read in continuity with the statement of the informant. P.W.8 in her statement has truthfully narrated the incidence without any embellishment or inconsistency. She saw the couple sitting on the bench while she was taking bath and turned back inside her house when she heard the scream of the victim. On hearing the scream which appears to be a rather feeble one, she turned around and saw the accused drawing back the Kulhari from the wedge of the neck just after the assault. The occurrence as described through P.W. 8 is spontaneous and immediate effect of the assault. P.W. 8 further goes on to say that the accused chased her also and by that time his wife had died. She further states that she had no enmity with the accused from before and the occurrence took place in front of her house. She had seen the accused carrying Kulhari in his hand as per her statement at Paragraph-7 made in her cross-examination. She also states that the police arrived at around 12:00 and that several persons had come by that time. We do not have any reason to doubt her statement taken in its entirety with the prosecution case projected through the mouth of P.W. 1. P.Ws. 2 and 3 have in their deposition categorically stated that they had seen the dead body and the Kulhari was seized from the hand of the accused in presence of the

Police. They are witnesses to the seizure-list and have proved their signatures thereupon marked as Ext.-2 and 2/1. Their statements also corroborates the statement of P.W. 8, who also had seen the Kulhari, the weapon of assault, in the hands of the accused/appellant. Thus, testimony of P.Ws. 2 and 3, taken in sequence and continuity, also prove the facts which were the effect of the facts in issue and constitute the state of things under which they happened. The prosecution had been able to prove the motive and the subsequent conduct of the accused from the mouth of these prosecution witness nos. 1, 8, 2 and 3. The Medical evidence of P.W.- 6 corroborates the only sharp cutting injury on the back of the neck of the deceased. The postmortem was conducted by P.W. 6 on 18th July, 2012 and only fatal injury as described by P.W. 8 were found on the body of the deceased as under:

Chop wound on back of neck - 5 cm x 4 cm deep x ½ cm.

There was no other injury. The injury was caused by heavy and sharp object which corresponds to the weapon of assault (Kulhari) seized from the hands of the accused appellant. As per the opinion of the Doctor, cause of death was haemorrhage and shock due to above injury and time since death was less than 12 hours. The above injury was ante-mortem in nature. We find from the report of the forensic science laboratory which is adduced by the prosecution without objection as Ext.-5 that the axe used for assault contained human blood of Group-B. Thus, all the circumstances are proved on behalf of the prosecution beyond shadow of all reasonable doubt on the basis of these material evidence on record. On that count we do not find any error or lack of appreciation of evidence on the part of learned Trial Court.

15. We now proceed to deal with the alternative contention made on behalf of the appellant in order to gain the benefit of Exception-4 of Section 300 of the Indian Penal Code. While doing so, the evidence of prosecution witnesses are to be considered and read in entirety instead of taking isolated statement of prosecution witnesses here and there; such as the statement of P.W. 8 at paragraph-3 of her deposition where she says that these two persons i.e. the accused and the deceased were found sitting in front of her house on a bench and when asked stated that they had come back from work and relaxing under the shade of the tree. P.W.8 has narrated what she saw. However, the immediate cause and the preceding events which led the couple to reach in front of the house of P.W.8 could not have been stated by her. This immediate cause and the preceding events, leading to the commission of actual assault, have been explained through the mouth of P.W. 1 whose testimony we do not find any reason to doubt. As per the Fardbeyan and the statement of P.W. 1, the informant, there was a quarrel and heated exchange between the accused and his wife the deceased after they had returned from work at around 12:00 in the noon on 18th July, 2012 on the issue of denial of money by the victim to the accused for consuming liquor. The victim on realizing the heat of the occasion tried to flee away and was immediately followed by the accused/appellant to the

place of occurrence i.e, in front of the house of P.W. 8 with a Kulhari in his hand. Thus, the evidence on record suggest that there was a sudden quarrel between the accused and the deceased which incited a heat of passion in the minds of accused who ran after her with a weapon in his hand. At the place of occurrence the accused was found to have been inflicted one injury only on the back of neck of the victim though at that point of time there was no one else to prevent him from repetition of the assault. P.W. 8 has categorically stated that there were no one else present at that point of time. The sequence of events considered in that manner show that the accused did not get time to pre-meditate and absence of any repetition of blows on any part of the body including the neck belies an intention on his part to commit the murder of his wife. If the incidence is seen in such sequence and continuity, there was no such gap of time either for the accused to cool down and ruminate and to search a weapon in order to inflict the assault. The accused as such did not have any time to take undue advantage to inflict injury by procuring the weapon of assault from somewhere else.

16. The total circumstances considered in that light do persuade us to come to the conclusion that the act was not committed with an intention to cause the death of the victim, but was committed in the heat of passion upon a sudden quarrel without premeditation and without the opportunity to take undue advantage for carrying out the act of assault.

17. On the basis of the circumstances discussed hereinabove we are disposed to grant the benefit of Exception-4 of Section 300 I.P.C to the accused/appellant. Thus, the conviction of the appellant under Section 302 I.P.C for murder is modified to Section 304 Para-II of the I.P.C. Upon consideration of the totality of the facts and the circumstances, we are of the view that the sentence of 10 years of Rigorous Imprisonment would be proportionate to the guilt. As such, the sentence awarded by the learned Trial Court of Rigorous Imprisonment for life is modified to 10 years of Rigorous Imprisonment under Section 304 Part II of I.P.C. The impugned judgment of conviction and order of sentence is modified to the aforesaid extent and in the said manner. The instant criminal appeal stands partly allowed. Let the Lower Court Records be sent down to the learned Court concerned.

18. We accord our appreciation to the valuable assistance rendered by the learned counsel Mr. Arun Kumar representing the appellant on behalf of JHALSA during hearing of the case. The Member Secretary, JHALSA shall bear the admissible fee/legal remuneration due to the learned counsel Mr. Arun Kumar on production of a certified copy of this judgment along with an application within a period of four weeks from its receipt/production.