
(2012) 04 JH CK 0114

In the Jharkhand High Court

Case No : Criminal (Jail) Application (DB) No. 1872 of 2004

Yadu Hansda

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 04 JH CK 0114

Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J

Bench : Division Bench

Advocate : None, for the Appellant; Ravi Prakash, APP. for The State, for the Respondent

Final Decision : Allowed

Judgement

1. Nobody appears on behalf of the appellant. Mr. Ashish Verma, learned panel counsel is appointed as Amicus Curiae in this appeal to assist this court on behalf of the appellant.

Lateron

This appeal is directed against the impugned judgment of conviction and sentence passed on 10/09/2004 and 13/09/2004 respectively by the 7th Additional Sessions Judge, F.T.C. No. 4, Godda in Sessions Case No. 73 of 2003/118 of 2003, convicting the appellant for the offence u/s 302 IPC and sentencing him to undergo R.I. for life and a fine of Rs. 5000/and in default thereof R.I. for six months. The prosecution case, in short, is that PW3 Salkhu Hansda, the informant, lodged his fardbeyan on 07/02/2003 at about 11.30 that on 06/02/2003, which was the last date of Bandhana festival, the appellant, who happens to be his brother and used to quarrel with his mother after taking liquor and used to threaten her, at about 1011 in the night, the appellant and his wife quarrel with the mother of the appellant and both killed her by assaulting with Axe.

2. The prosecution examined 9 witnesses. PWs.1, 4, 5, 6,, 7 and 8 are either hearsay or tendered witnesses. PW9 is the Doctor, who conducted the postmortem. PW2 Churki Hansda is the only witness presented by the prosecution as an eyewitness. But on going through the deposition it is not possible to accept that she is an eyewitness. She interalia stated that when there was marpit, she awoke. She also said that the deceased took liquor on the date of occurrence. She simply said that the appellant assaulted the deceased on her head by Axe due to which she died. She did not say anything about the other injuries found by the Doctor. She appears to be a chance witness.

3. In the facts and circumstances of the case, it will not be safe to uphold the conviction of the appellant only on the basis of such evidence of PW2. In our opinion, the prosecution has not been able to prove its case against the appellant beyond all reasonable doubts. Accordingly, we are inclined to acquit him giving benefit of doubt. In the result, this appeal is allowed. The impugned judgment of conviction and sentence passed by the trial court against the appellant is hereby set aside. The appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.