(2025) 10 JH CK 0080

Jharkhand HC

Case No: Criminal Appeal (D.B.) No. 632 Of 2002

Vijay Singh — APPELLANT

Vs

State Of Jharkhand — RESPONDENT

Date of Decision: Oct. 17, 2025

Acts Referred:

- Indian Penal Code, 1860 — Section 300, 302, 304II

Hon'ble Judges: Rongon Mukhopadhyay, J; Pradeep Kumar Srivastava, J

Bench: Division Bench

Advocate: Yogesh Modi, Fahad Allam

Final Decision: Dismissed

Judgement

Pradeep Kumar Srivastava, J

1. We have already heard Mr. Yogesh Modi, learned counsel appearing for the appellant and Mr. Fahad Allam, learned A.P.P. appearing for the State.

2. Instant criminal appeal has been preferred by above named sole appellant for setting aside the judgment of his conviction dated 21.08.2002 and order of sentence dated 22.08.2002 passed by 1st Additional District and Sessions Judge, Fast Track Court, Garhwa in S.T. No.182 of 1987 / T.R. No.01 of 2001, whereby and whereunder the appellant has been held guilty for the offence under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

FACTUAL MATRIX

3. Factual matrix giving rise to this appeal as depicted in the F.I.R. lodged by one Ramdev Choudhary (P.W.4) is that on 24.02.1987 at about 08:00 a.m., while he was sitting at the house of Rekha Choudhary along with his wife Etwaria Devi (P.W.9), meanwhile, the accused Vijay Singh armed with lathi, started abusing to Rekha Choudhary scolding as to why he did not come to build his house wall on yesterday. Upon this, Rekha Choudhary replied that due to some extraordinary circumstances, he could not attend his work yesterday, due to this reason, the accused got enraged

and started assaulting to Rekha Choudhary by his lathi on chest, back and arm resulting in serious injuries. Rekha Choudhary was being brought to hospital but in the way he died. It is alleged that the informant and wife of deceased raised alarm then villagers Rajendra Singh, Guput Mallah and Sahdev Choudhary rushed towards the place of occurrence and rescued the injured.

On the basis of above information, Garhwa P.S. Case No.20 of 1987 dated 24.02.1987 was registered for the offence under Section 302 of the I.P.C. against the present appellant.

4. After completion of investigation, charge-sheet was submitted against the appellant for the aforesaid offence. Accordingly, the case was committed to the Court of sessions where S.T. Case No.182 of 1987 was registered. The present appellant denied the charge levelled against him and claimed to be tried.

5. In the course of trial, altogether 11 witnesses were examined by prosecution.

Apart from oral testimony of witnesses, following documentary evidence has been adduced :-

Exhibit 1 : F.I.R.

Exhibit 2 & 2/1 : Signature on fardbeyan

Exhibit 3 : Photocopy of post-mortem report

6. On the other hand, no oral or documentary evidence has been adduced by defence and the case is denial from occurrence and false implication.

7. The learned trial court after examining the evidence available on record found the appellant guilty for commission of offence under Section 302 of the I.P.C. and sentenced him as stated above.

8. Learned counsel for the appellant has vehemently argued that out of 11 witnesses examined in this case only P.W.4 and P.W.9 are alleged to be eye witnesses and other witnesses are of formal nature. The learned trial court has committed serious error of law in convicting the appellant on uncorroborated testimony of eye witnesses whose evidences itself suffer from material contradictions and discrepancies and only on the basis of conjecture and surmises convicted the appellant under Section 302 of the I.P.C. Therefore, impugned judgment and order of conviction and sentence of the appellant not sustainable under law and fit to be set aside. The appellant deserves to be acquitted from the charge levelled against him.

In the alternative, it is prayed that the deceased has sustained multiple injuries like multiple abrasions, laceration and bruise on outer left knee, right side of chest wall, left and right side of lower back, left and right shoulder. The scalp and skull were intact, therefore, no vital part of the body has been chosen for assaulting which may indicate the intention of the appellant to commit murder of the deceased rather it happened at the spur of moment in a sudden manner. The post-mortem report of the deceased also shows that cause of death was due to shock and haemorrhage and it is not specifically proved by Dr. Arbind Kumar (P.W.11) that injuries sustained by the deceased were sufficient in ordinary course of nature to cause death. Therefore, the ingredient of offence under Section 300 of the I.P.C. which defines murder has not been proved in this case rather the facts proved leads to commission of offence under Section 304 Part II of the I.P.C. It is further argued that the appellant has remained in custody about 6 years during trial of the case and has sufficiently been punished for his guilt. Hence, conviction under Section 302 of the I.P.C. of the appellant is absolutely unwarranted under law which is fit to be set aside. Hence, conviction and sentence of the appellant require to be altered/modified and the appellant may be held guilty for the commission of offence under Section 304 Part II of the I.P.C. and sentence is also required to be altered to the extent of imprisonment already undergone by the appellant during trial of the case which is about 6 years.

9. On the other hand, Mr. Fahad Allam, learned A.P.P. for the State defending the impugned judgment and order of conviction and sentence of the appellant has submitted that the appellant has caused bodily injuries to the deceased without any excuse while complaining as to why the deceased did not attend his duty although reasonable explanations were offered by the deceased but the appellant has given indiscriminate lathi blow to the deceased causing instantaneous death. Hence, the offence comes under the purview of murder and he has been rightly held guilty and sentenced by the learned trial court which suffers from no illegality or infirmity calling for any interference by way of this appeal which is devoid of merits and fit to be dismissed.

10. It appears that altogether 11 witnesses were examined by the prosecution out of them P.W.1 Ganesh Prasad has simply proved the signature of Sri Nagendra Kr. Singh on the formal F.I.R. as Ext.1, P.W.6 Jagdish Choudhary and P.W.7 Banshi Ram have proved his signature on inquest report and P.W.8 is a seizure list witness who admits his signature on seizure list of blood stained soil seized from the P.O. P.W.3 Rajendra Singh has been declared hostile by the prosecution and expressed no knowledge about the occurrence. P.W.2 Ambika Choudhary, P.W.5 Guput Mallah and P.W.10 Sahdev Choudhary are hearsay witnesses from the informant and wife of deceased, therefore, their testimony cannot be considered as substantive piece of evidence.

P.W.11 Dr. Arbind Kumar Yadav has formally proved the post-mortem report of the deceased (Ext.3) due to non-availability of Dr. Shiv Prasad Ram who has conducted autopsy on the dead body of the deceased. The post-mortem report shows that the deceased has sustained 13 injuries by lathi like multiple abrasions, laceration and bruise on outer left knee, right side of chest wall, left and right side of lower back, left and right shoulder and the cause of death opined to be shock and haemorrhage as a result of above injuries.

11. The whole prosecution case rests on the evidence of eye witnesses namely P.W.4 Ramdev Choudhary (informant) and P.W.9 Etwaria Devi who happens to be the wife of the deceased.

P.W.4 Ramdev Choudhary has deposed that Rekha Choudhary was murdered about 14 years ago by Vijay Singh (appellant) using a lathi. He witnessed the incident around 08:00 a.m. near Rekha Choudharyâ€™s house. He has further stated that accused appellant came with a lathi and asked

Rekha (deceased) about why he had not come yesterday to build the wall of his house. Rekha (deceased) replied that he had gone to his relativeâ€™s house, but Vijay Singh did not listen and hit him on both arms by lathi, causing him to fall and then assaulted on his chest, stomach and back by lathi. On hearing the noise, villagers Harihar Singh, Guput Choudhary and Sahdev Choudhary arrived. This witness went back to his village, informed the village Chowkidar, and thereafter, they lifted Rekha Choudhary on a cot and were going to Sadar Hospital, Garhwa for treatment, he died on the way.

P.W.9 Etwaria Devi is the wife of the deceased. According to her evidence, at the relevant time of occurrence, she was present with her husband. In the meantime, at around 8 a.m., the accused Vijay Singh came and asked her husband to come for work. When her husband replied that he was brushing his teeth and would come soon, Vijay Singh started assaulting him with a lathi. When she raised an alarm, witnesses Sukan, Jugeshwar and Rajendra arrived, but by then the accused had fled away. Thereafter, they had taken her injured husband on a cot towards Garhwa Police Station. However, he died near the river before reaching the station. The evidence of both eye witnesses suffers from material contradictions and discrepancies as regards genesis and manner of occurrence rendering them to be not creditworthy.

12. We have given thoughtful consideration to overall facts proved in this case. It appears that there are two eye witnesses, i.e., P.W.4 Ramdev Choudhary (informant) and P.W.9 Etwaria Devi (wife of the deceased), who have claimed to have seen the accused appellant while assaulting to Rekha Choudhary (deceased) by lathi and due to sustaining injuries, he died. There is no material at all in the cross-examination of these witnesses to disbelieve or discredit their testimony. The place of occurrence, manner of occurrence and involvement of present appellant in the alleged offence has been proved beyond doubt by the prosecution which also finds corroboration from the post-mortem report (Ext.3) of the deceased that injuries were caused by hard and blunt substance. The Investigating Officer of the case has not been examined. We have also considered the nature and gravity of assault given to the deceased and the weapon used by the accused as well as the post-mortem report of the deceased that the death was caused due to shock and haemorrhage as a result of injuries sustained by the deceased. There is no specific opinion that the injuries sustained by deceased were sufficient to cause death in ordinary course of nature. No injuries are on the vital part of the body like head and appear to have been caused by mighty assault by lathi. Therefore, required intention and knowledge as propounded under Section 300 of the I.P.C. which defines the offence of murder, does not appear to be proved by the prosecution rather the case falls within the ambit of culpable homicide not amounting to murder punishable under Section 304 Part II of the I.P.C.

13. In view of aforesaid discussions and reasons, we are of the firm view that the learned trial court has failed to properly appreciate the overall scenario of the case and the legal principles attracting the offence of murder and arrived at wrong conclusion while holding the appellant guilty for the offence under Section 302 of the I.P.C. In our considered view, conviction of appellant for the offence under Section 302 of the I.P.C. does not appear to be warranted under law rather Section 304 Part II of the I.P.C is attracted in this case. Accordingly, we set aside the impugned judgment of conviction and sentence of the appellant for the offence under Section 302 of the I.P.C. which is

hereby altered to under Section 304 Part II of the I.P.C. Accordingly, appellant is held guilty for the offence under Section 304 Part II of the I.P.C. instead of Section 302 of the I.P.C. and sentenced to undergo imprisonment already undergone by him during trial. In the result, this appeal is dismissed on merits with modification in sentence as stated above. Appellant is on bail, he is discharged from the liability of bail bond and sureties are also discharged.

14. . Pending I.A., if any, stands disposed of.

15. Let a copy of this judgment along with trial court record be sent back to concerned trial court for information and needful.