
(2025) 10 JH CK 0042

Jharkhand HC

Case No: Criminal Appeal (D.B.) No. 1045 Of 2003

Chhotu Singh son of
Late Khudi Singh

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Oct. 15, 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: Soumya S. Pandey, S.K. Vishwakarma, Pankaj Kumar

Final Decision: Dismissed

Judgement

Pradeep Kumar Srivastava, J

1. We have already heard Ms. Soumya S. Pandey, learned amicus curiae appearing for the appellant and Mr. Pankaj Kumar, learned 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 30.04.2003 and order of sentence dated 01.05.2003 passed by Additional Sessions Judge - XIII, Dhanbad in S.T. No.77 of 2002 arising out of Barora (Baghmara) P.S. Case No.19 of 2001 (G.R. Case No.285 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 is that on 29.01.2001 at about 07:00 p.m., the informant Jhulan Bhuiya (P.W.5) son of the deceased returned to his home after discharging his duties then he was informed by his grandmother that Chhotu Singh (present appellant) has assaulted to his mother. In the meantime, younger brother of the informant told that his mother is not speaking

anything then informant along with his uncle Bharat Bhuiya and Lakhan Bhuiya went to see his mother and found her lying dead. It is further alleged that younger brother of informant namely Sudhir also informed that Chhotu Singh has assaulted to his mother with pawa (leg) of a cot.

On the basis of above information, Barora (Baghmara) P.S. Case No.19 of 2001 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 him for the aforesaid offence. Accordingly, the case was committed to the Court of sessions where S.T. Case No.77 of 2002 was registered. The present appellant denied the charge levelled against him and claimed to be tried.

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

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

Exhibit 1 : Postmortem 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 assailing the impugned judgment of conviction and order of sentence has vehemently argued that out of seven witnesses examined in this case by the prosecution, P.W.1 Lakhan Bhuiya, P.W.2 Akli Devi, P.W.3 Pushpa Kumari and P.W.4 Bharat Bhuiya have been declared hostile by the prosecution and not supported the prosecution case regarding culpability of the appellant in connection with the alleged crime. Further, P.W.5 Jhulan Bhuiya is also hearsay witness from Pushpa Kumari (P.W.3). Therefore, his evidence also does not support the prosecution story.

P.W.7 Dr. Shailendra Kumar has conducted autopsy on the dead body of the deceased and found following :-

(i) Multiple patterned bruises of blue colour of lathi or rod were found, all over the back of trunk, all over the buttocks and thighs (back and outer aspects) on both sides. There portions were swollen and blue and ecchymosis was found on cutting the skin. These patterned bruises were numerous in number more than fifty.

(ii) Dorsum of left hand was found swollen and bruises with multiple abrasions all over. Bones of left thigh were found broken.

(iii) Abrasions :-

- (a) 1/2" x 1/2" on outer side of right eyebrow.
- (b) 1/2" x 1/2" on the front of right ear.
- (c) 1/2" x 1/4" at the right angle of lower jaw.
- (d) 1/4" x 1/4" over right clavicle.
- (e) 1.1/2" x 1" just above pubic symphysis.
- (iv) Multiple abrasions of varying size found all over front of both the thighs.
- (v) Abrasion :-
 - (a) 2" x 1/4" on the left side of lower jaw.
 - (b) 1.1/2" x 1/2" on the knee joint in front of both sides.
 - (c) 1" x 1" on left side back of chest.
 - (d) 1/2" x 1/2" on right side back of chest.
- (vi) Lower lip was lacerated in middle 1/4" x 1/4" x muscle deep.

On dissection heart, stomach and bladder were empty. Uterus was normal and non-pregnant. All internal organs were pale. Scalp and skull were intact. Brain and meninges were congested. Time elapsed since death from 18 to 24 hours.

Cause of death opined - due to shock and haemorrhage and extensive ecchymosis as a result of systematic beating by rod or lathi or by some other hard blunt objects.

9. The prime witness of this case is the P.W.6 Sudhir Bhuiya who happens to be the younger brother of the informant. This witness is a child of 11 years and son of the deceased. According to his evidence, on the date and time of occurrence, he was playing with his younger sister, meanwhile, he heard cries of his mother and went inside the house then saw that accused Chhotu Singh (present appellant) was assaulting his mother with pawa of a cot. When Chhotu Singh saw him, he threatened him of dire consequences, if raised alarm or complained anyone about this occurrence then he fled away outside the house. The evidence of this witness suffers from material contradictions and discrepancies as regards genesis and manner of occurrence rendering him to be not creditworthy.

10. The learned trial court has committed serious error of law in convicting the appellant on uncorroborated testimony of a child witness whose evidence itself suffers from material contradictions and discrepancies, 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 minor injuries like multiple abrasions and laceration on outer side of her eyebrow, front of right ear, lower jaw, both thighs, knee joined and back of chest. 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. Moreover, the injuries sustained by the deceased have not been opined to be 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. The appellant has remained in custody for more than 9 years, therefore, sufficiently punished for his guilt. 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 more than 9 years.

11. On the other hand, learned Public Prosecutor for the State defending the impugned judgment of conviction and order of sentence of appellant has submitted that he has committed murder. There were multiple injuries although in the nature of abrasions but different parts of body have been chosen including the chest which was immediate cause of death of the deceased. The appellant has caused death of the deceased without any excuse and has rightly been held guilty and sentenced. The impugned judgment and order of conviction and sentence of appellant require no interference by way of this appeal which is devoid of merit and fit to be dismissed.

12. We have given thoughtful consideration to overall facts proved in this case. It appears that sole eye witness is a child witness aged about 11 years namely Sudhir Bhuiya (P.W.6) who has claimed to have seen the accused while assaulting to his mother and due to sustaining injuries, she died. This P.W.6 was also threatened of dire consequences, if he discloses the incident to anyone or raise any alarm. There is no material elicited in the cross-examination of this witness to disbelieve his testimony and there is no circumstances to consider that he was tutored rather the informant (P.W.5) himself disclosed that when he returned from his duty P.W.6 told him about the assault given to his mother by the present appellant through pawa of a cot. Thereafter, deceased was found lying dead in her house. 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 evidence of P.W.7 Dr. Shailendra Kumar, who has conducted autopsy on the dead body of deceased and found injuries caused by hard and blunt substance. 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 opinion of the doctor 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 injury sustained by deceased was sufficient to cause death in ordinary course of nature. There was no injury on vital part of body like head, 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, at best the case falls under Section 304 Part II of the I.P.C. 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 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 conviction and 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.

16. We take this opportunity to appreciate the assistance rendered by Ms. Soumya S. Pandey, learned amicus curiae and direct the Member Secretary, High Court Legal Services Committee to process fee of Rs.7,500/- (Seven Thousand and Five Hundred only) to Ms. Soumya S. Pandey within a period of four weeks from the date of receipt/production of a copy of this order.

17. Office is directed to ensure that a copy of this order is served upon Member Secretary, High Court Legal Services Committee.