
(2009) 01 JH CK 0006

Jharkhand High Court

Case No: None

Bhatu Tuddu @
Gansha Tuddu

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Jan. 16, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 357
- Penal Code, 1860 (IPC) - Section 302, 304

Hon'ble Judges: M.Y. Eqbal, J; Jaya Roy, J

Bench: Division Bench

Judgement

M.Y. Eqbal, J.

The instant appeal is directed against the judgment dated 24th May, 2000 passed by the First Additional Sessions Judge, Jamshedpur in Sessions Trial No. 110 of 1997, whereby the sole appellant Gansha Tuddu @ Bhatu Tuddu has been convicted for the offence u/s 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. On the basis of fard beyan of Chandra Murmu recorded by the Sub Inspector of Police of Sundernagar P.S., an FIR was lodged on 26.12.96 and a case was registered being Parsudih P.S. Case No. 275/96 u/s 302 of the Indian Penal Code against the appellant.

3. The prosecution case in brief is that the informant Chandra Murmu has one daughter named Dulari, who married with the appellant Gansha Tuddu out of her own sweet will. Out of the said wed lock a girl child was born. Further case of the prosecution is that some quarrel used to take place between the daughter of the informant Dulari Tuddu and the appellant, her husband Gansha Tudu on small matters for which the appellant used to assault Dulari Tuddu. Dulari Tuddu used to take shelter in the house of the informant. However, whenever the appellant used to come to the house of the informant, Dulari Tuddu was sent back with the appellant. On the occasion of Dipawali, the appellant assaulted his wife Dulari, as a result of which she fled away from the house of the

appellant and took shelter in the house of the informant, who is her father. The appellant visited the house of the informant once or twice at about 10 PM and asked the informant and his wife namely Sugi Murmu to send Dulari with him. The informant and his wife told the appellant to come at day time to take Dulari with him. The appellant stayed in the house of the informant for about a week. On 25.12.96 the appellant returned to his house in the evening and again came back to the house of the informant at about 11.30 PM. At that time the appellant was armed with sword and was in drunken condition. The informant and his wife were making themselves warm near the fire. The appellant insisted the wife of the informant to send Dulari with him but Sugi Murmu declined to do so because of the night. On refusal by the wife of the informant to send her daughter Dulari with the appellant, the appellant gave a blow on the neck of Sugi Murmu, who fell down on the ground. The informant made hue and cry as a result of which his son and daughters and nearby people reached to the place of occurrence. The appellant after giving blow to Sugi Murmu, fled away with the sword. By the time of arrival of the people, Suggi succumbed to her injury.

4. After the occurrence the police party came at the place of occurrence and the investigating officer recorded the statement of the witnesses, prepared inquest report and sent the dead body for post mortem to MGM College and Hospital, Jamshedpur. After the occurrence alleged to have taken place, the appellant accused was arrested by the investigating officer along with the sword while he was hiding himself in the field of Champai Murmu. The police after investigation finally submitted charge sheet against the appellant u/s 302 of the Indian Penal Code and the case was committed to the court of sessions for trial where charge was framed against the appellant u/s 302 of the Indian Penal Code. The appellant pleaded not guilty and denied the charge against him.

5. The prosecution examined altogether 11 witnesses including the investigating officer and the doctor, who conducted the post mortem on the deceased. PWs. 1 and 7 are the sons and PW 4 is the daughter of the informant. PWs 2, 6, 9, 10, 11 are the neighbouring witnesses and PW 8 is the investigating officer. PW 5 is the doctor, who conducted the post mortem examination on the dead body of the deceased.

6. PW 3, the informant, narrated the occurrence, which took place in the night of 25.12.96 and the evidence of informant was supported by all the prosecution witnesses. The trial court, after examining the witnesses and after considering the evidence, both oral and documentarily adduced from the side of the prosecution, finally concluded that the prosecution established and proved the charge and the appellant was found and held guilty of the offence u/s 302 of the Indian Penal Code and accordingly convicted and sentenced the appellant to undergo life imprisonment.

7. Mr. A.K. Sahani, learned Counsel appearing for the appellant, assailed the impugned judgment of the trial Court as being contrary to facts and evidence on record. Learned Counsel firstly submitted that the trial Court failed to consider that the informant was the only solitary eyewitness and there is much contradiction in the evidence of the other

witnesses and submitted that conviction could not be based on the evidence of solitary eyewitness of the occurrence. Learned Counsel secondly submitted that from the prosecution case itself, it is evidently clear that the accused-appellant was in drunken condition and because of refusal by the deceased to take her wife, gave a single blow and fled away. There is no allegation or evidence of giving repeated blow with the intention and knowledge to kill the deceased. Hence, in any case, conviction ought to have been under part II of Section 304 of the Indian Penal Code by giving a lesser punishment and not u/s 302 of the Indian Penal Code.

8. It is well settled by the Supreme Court that it is a general rule that a Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. It is for the Court to act upon the testimony of the witness. It is equally well settled that the evidence has to be weighed and not counted.

9. In the instant case, it is evident that the informant, who is the reliable witness, has deposed about the occurrence took place in the night of 25.12.1996. On being refused by the deceased, mother-in-law of the appellant, to take his wife in the night, he inflicted injury on her neck by sword, as a result of which, the deceased fell down on the ground and blood started oozing out from the wound. On his cry, the son and daughter of the informant, who were sleeping in the house, and also the villagers rushed to the place of occurrence.

10. PWs.1, 4 and 7, who are the sons and daughter of the informant, have fully supported the statement of the informant that they rushed to the place of occurrence from the rooms where they were sleeping, hearing the cry of their father (informant) and saw that the accused killed their mother Sugi Murmu by sword. They further stated in their evidence that the accused Ganesh Tuddu fled away towards east after seeing them. The other neighbouring witnesses, PWs. 6, 9, 10 and 11 also gave consistent evidence that on hearing the hue and cry of the informant, they came out from their house and went to the house of the informant where they found Sugi Murmu fallen on the ground because of injury on her neck wherefrom blood was oozing. PW.5, who conducted post mortem on the dead body of Sugi Murmu found that the muscle and vessels were cut because of the sword blow. He opined that the death was caused on account of injury inflicted on her neck by a sharp-cutting instrument. PW.8, the Investigating Officer, also supported the version of the informant. He has proved the F.I.R., seizure-list of sword in presence of the witnesses and categorically stated that the accused was arrested on the same day.

11. From the evidence adduced by the prosecution, the learned Sessions Judge rightly found the charge proved against the accused-appellant. Consistent version of the prosecution witnesses that the accused-appellant gave the fatal blow to the deceased is also supported by medical evidence. In my opinion, therefore, minor contradiction in the evidence of the witnesses shall be of no help to the accused-appellant. I am further of the opinion that the testimony of the informant who is the eyewitness, has not been shaken,

although he was cross-examined at length and the same was corroborated by evidence of other witnesses. In that view of the matter, the conviction based on the testimony of the informant is not liable to be interfered with.

12. However, the question that falls for consideration is as to whether conviction of the accused-appellant u/s 302 of the Indian Penal Code is justified?

13. Admittedly, the accused gave a single blow on the neck of the deceased and there is no evidence of repetition. After giving a single blow, the accused fled away. There is no evidence to the effect that the accused knew that the injury inflicted would be likely to cause death or that the accused knew that the accused must in all probabilities, cause death. The evidence about premeditation is lacking and as per the prosecution case, because of sudden refusal from the side of the deceased to allow the accused to take his wife, he gave one blow on the neck of the deceased and fled away. In our considered opinion, therefore, conviction u/s 302 of the Indian Penal Code is not justified. Hence, conviction u/s 302 Indian Penal Code is altered u/s 304 Part II of the Indian Penal Code.

14. Section 304 of the Indian Penal Code reads as under:

304. Punishment For Culpable Homicide Not Amounting to Murder: Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

15. From bare perusal of the aforesaid provision, it is manifestly clear that in case of conviction under Part II of Section 304, the punishment prescribed is imprisonment of either description for a term which may extend to ten years, or with fine or with both. In other words, conviction shall be imprisonment with fine also. In the instant case, the undisputed facts are that the appellant was married with the daughter of the informant and out of their wedlock, female child was born who by the time attained marriageable age and has been living with her mother in the house of the informant. In the facts and circumstances, the question that arises for consideration is as to whether while reducing the sentence, a fine in the form of compensation is also to be imposed. At this stage, I would like to refer Section 357 of the Code of Criminal Procedure which reads as under:

357. Order to pay compensation - (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation, in the opinion of the Court, recoverable by such person in a civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe that same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this Section may also be made by an appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

16. From perusal of the aforesaid provision, it is manifestly clear that this Section empowers the Court, imposing the sentence, to order the whole or part of the fine imposed to be applied in the payment to any person convicted, for any loss or injury caused by the offence. It would not be out of place to mention here that various advanced countries like U.K., Canada, U.S.A., Australia and New Zealand have made such provision in their criminal justice system. The United Kingdom Criminal Justice Act, 1988 has been enacted. Australia has also enacted a Legislation based on the United Nations declaration of 1985. Victim of Crime Act became a part of Federal Law in the United States in 1984.

17. Section 357 of the Code, as quoted herein above, is also similar type of legislation which empowers the Court to award compensation to the victims while passing judgment

of conviction.

18. In the case of [Hari Kishan Vs. Sukhbir Singh and Others](#), while considering Section 357 of the Code, the Supreme Court observed:

10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with Sub-section (1). We are concerned only with Sub-section (3). It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.

19. As noticed above, by reason of the death of Sugi Murmu, the informant, who is her husband, is not only the victim, but the wife and the girl child of the appellant have also suffered a lot for the offence committed by the appellant. They have suffered substantial loss and irreparable injury by reason of the offence committed by the appellant.

20. keeping in view all the facts and circumstances, in our opinion, ends of justice would be met if we order that while reducing the sentence, it would be most appropriate to direct the appellant to pay fine of Rs. 15000/- (Rs.Fifteen thousand) by way of compensation to the informant. The said amount shall be utilized for meeting the marriage expenses of the girl child of the appellant who attained the marriageable age.

21. For the aforesaid reasons, this appeal is partly allowed by holding that conviction u/s 302 of the Indian Penal Code is to be altered u/s 304 Part II of the Indian Penal Code. We further hold that the period the appellant remained in custody will be undergone. Consequently, the appellant, who is in custody, is set at liberty if not wanted in any other case. It is further ordered that the appellant will pay a fine of Rs. 15000/- (Rupees Fifteen thousand) by way of compensation to the informant within a period of one month from today.