

(2012) 06 JH CK 0003

Jharkhand High Court

Case No: Criminal Appeal (D.B.) No. 833 of 2003

Sukhram Munda

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: June 26, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 307, 323

Citation: (2012) 4 JCR 544 : (2012) 3 JLR 522

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

Bench: Division Bench

Advocate: A.K. Chaturvedi, for the Appellant; Amaresh Kumar, APP For the State, for the Respondent

Final Decision: Dismissed

Judgement

1. This appeal arises from the judgment of conviction and order of sentence dated 05.03.2003 and 06.03.2003 respectively passed by the Learned Additional Sessions Judge-cum-Fast Track Court No. 1, Gumla in Sessions Trial No. 84 of 2002, convicting the appellant under sections 302 and 307 IPC and sentencing him to undergo R.I. for life u/s 302 and R.I. for five years u/s 307 IPC. However, both the sentences were to run concurrently. The prosecution case in short is that the informant-Ropan Munda (PW-7) lodged a fardbeyan on 17.01.2002 at 14.15 hrs before the police stating therein that in the previous night at about 9.00 PM when he was talking with his family members, the appellant who happens to be his neighbour, suddenly came in his house with a piece of wood and without any reason, assaulted his brother Atwa Munda (deceased) on his head, due to which, he sustained bleeding injury and ultimately, he died. The informant along with Budhu Munda (PW-4) tried to caught hold of him, he assaulted Budhu Munda also on his head causing injury to him. Thereafter, the appellant fled away to his house leaving the wooden plank there.

2. After carefully going through the records, we are of the opinion that the occurrence as alleged cannot be disputed.

3. In the opinion of the doctor (PW-6) who conducted the postmortem examination on the dead body of the deceased, the deceased died due to head injury caused by hard and blunt substance. PW-3 is another doctor who examined Budhu Munda (PW-4) and he found lacerated wound on the head caused by hard and blunt substance, though it was simple in nature.

4. Prosecution has been able to prove that the appellant killed the deceased by causing fatal injury on his head. However, the question is whether the appellant had intention to kill the deceased or Budhu Munda (PW-4)? It has also come in the evidence that the appellant was behaving like a mad person for which his parents did not get him treated.

5. In the facts and circumstances of this case, it will not be safe to uphold the conviction of the appellant under sections 302 and 307 IPC as it is doubtful whether he had intention to kill the deceased or Budhu Munda (PW-4)?

6. Accordingly, we are inclined to convert the conviction of the appellant from section 302 IPC into section 304 IPC and from section 307 IPC into Section 323 IPC.

Accordingly, the appellant is sentenced to R.I. for ten years for the offence u/s 304 IPC and R.I. for one year for the offence u/s 323 IPC.

It appears that the appellant has remained in jail for more than ten years. Thus, he has already served the sentence. The appellant is directed to be released forthwith, if not wanted in connection with any other case.

With this modification in conviction and sentence, this appeal is dismissed