

(2011) 07 JH CK 0014

Jharkhand High Court

Case No: Criminal Appeal (DB) No. 130 of 2003

Gopal Raut

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: July 28, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 302, 304, 323, 376, 511

Citation: (2011) 4 JCR 216 : (2011) 7 RCR(Criminal) 2544

Hon'ble Judges: R.K. Merathia, J; P.P. Bhatt, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. Heard the parties.

2. This appeal arises out of judgment of conviction dated 16.12.2002 and the order of sentence 17.12.2002 passed by learned Sessions Judge,

Deoghar in S.T. No. 243 of 2000 by which, the appellant was convicted under Sections 302 and 323 of the Indian Penal Code and sentenced to

undergo R.I. for life and a fine of Rs. 20,000/- for the offence u/s 302, IPC. If the fine was not paid, sentence of R.I. for a further period of two

years was imposed. A further sentence of 3 months of R.I. was imposed against the appellant for the offence u/s 323, IPC. Both the sentences

were to run concurrently.

3. The prosecution case, in short, is that the informant, Sanjay Kumar Sah, PW 6 lodged a fardbeyan on 11.7.1999 at about 7:00 p.m. stating that

his maternal uncle Ramesh Kumar Sah (the deceased) working as an agent in District Transport Office, Deoqhar, was going with the informant for realising money from the parties. When they reached the market, the deceased stopped his scooter and asked the informant to bring the money from one Santosh Maheshwari (PW 4) whereupon, the informant went to the shop of Santosh Maheshwari. When he was returning at about 8:00 p.m. he saw the appellant abusing the deceased saying that he would kill him. One Dilip Rout and Pappu Yadav were also there and they were also abusing the deceased with filthy language and were provoking the appellant to kill the deceased. The appellant assaulted the deceased with iron rod on the middle of his head and neck, due to which, the deceased fell down. The appellant also assaulted the informant by iron rod. On alarm, Mukesh Kumar (younger brother of the deceased, PW 2) and other persons started assembling there. On seeing them, the appellant and other persons fled away. The deceased had bleeding injury on his head and he became unconscious. He was taken to Sadar Hospital, where he died during the treatment. It was alleged that there was enmity between the appellant and the deceased and the appellant used to threat the deceased with dire consequences. Dilip Raut and Pappu Yadav have been acquitted by the trial Court. "

4. Mr. A.K. Kashyap, the learned senior counsel appearing for the appellant submitted that PW 1, Santosh Kumar and PW 2, Mukesh Kumar Sah are interested witnesses and they are not the eye-witnesses though they have been projected as eye-witnesses. The name of PW 1 was not disclosed in the FIR. Regarding PW 2, it was said in the FIR that on alarm, PW 2 and other persons came there and therefore, P.Ws. 1 and 2 are not the eye-witnesses. PW 6, who is the informant, and said to be the eye-witness, inter alia, said that there was some quarrel between the appellant, Dilip Rout and Pappu Yadav on the one hand and the deceased on the other hand. It is alleged that Dilip Rout and Pappu Yadav (both acquitted) were provoking the appellant to kill the deceased on which, the appellant assaulted the deceased on his head with iron rod but his intention to kill the deceased has not been proved. It is further submitted that the statement of Madhu Devi, the wife of the appellant, has been

recorded u/s 161, Cr. P.C. in paragraph 118 of the case diary, who said that she had instituted a case being Deoghar P.S. Case No. 228/1998

dated 2.9.1998 for the offence under Sections 376/511 of the I.P.C. against the deceased, which was pending. He further submitted that the

Doctor has also opined that the injury, found on the deceased could be caused, was possible if one is moving on scooter and the scooter skipped

and rider falls on bolder on the road side. He submitted that, therefore, the false implication of the appellant in this case can not be discarded. He

lastly submitted that at best the appellant could have been convicted u/s 304 Part-II of the Indian Penal Code.

5. On the other hand, learned counsel for the State submitted that there are eye-witnesses to the occurrence and therefore, the defence in this case

that it was a case of accident can not be accepted only on the basis of the opinion of the Doctor. It is also submitted by the learned counsel for the

State that there is no other material to support the case of the defence. He supported the impugned judgment.

6. We are unable to accept the defence version that the deceased died due to accidental fall. However, we find force in the submission of the

learned counsel appearing on behalf of the appellant that the appellant has committed offence punishable u/s 304, Part-II of the Indian Penal Code

as it has come in evidence that there was dispute between the appellant and the deceased, and before the assault, the appellant was provoked by

Dilip Raut and Pappu Yadav (both acquitted). The deceased died due to one injury on his head caused by hard and blunt substance/iron rod. The

other injury was swelling with echymosis of left side of the neck 2 1/2" X 2" which was not the cause of the death of the deceased. There was no

repetition of blow. P.Ws. 1 and 2 can not be said to be the eye-witnesses of the actual occurrence. PW 6, the informant of this case is said to be

the eyewitness. As noted above, there was provocation by the acquitted accused persons and there was exchange of filthy language at the time of

alleged occurrence. In the circumstances, we accept that there was no premeditation to kill the deceased and occurrence took place during sudden

quarrel and there is nothing to show that the appellant took undue advantage and acted in a cruel or unusual manner.

7. In the result, the conviction u/s 302, IPC is altered into conviction u/s 304, Part-II IPC. So far as the sentence is concerned, it is stated that the

appellant is in jail for more than 12 years. Accordingly, the period of sentence is modified to the period already undergone by the appellant in jail.

With this modification in conviction and sentence, this appeal is partly allowed. Since the appellant is in jail, he is directed to be released forthwith,

if not wanted in any other case.