

(2006) 07 JH CK 0008

Jharkhand High Court

Case No: Criminal Appeal No. 98 of 2001

Prem Chand Ho @ Prem Chand
Samad

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 6, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304, 34

Hon'ble Judges: Dhananjay Prasad Singh, J

Bench: Single Bench

Advocate: G.C. Jha, for the Appellant; Tapas Roy, APP., for the Respondent

Final Decision: Allowed

Judgement

D.P. Singh, J.

This appeal is directed against the judgment of conviction and order of sentence dated 22.2.2001 and 23.2.2001 passed in Sessions Trial No.659/193 of 1994, whereby and whereunder the learned 1st Additional Sessions Judge, Jamshedpur held the appellant guilty u/s 304 (Part II) IPC and convicted and sentenced him to undergo RI for 3 years.

2. The brief facts leading to this appeal are that on 1.7.1994 the deceased Ralsen Soren, brother of the Informant Pan! Mardi, had gone to the house of his sister at village Shankarpur, P.S. Parsudih, District East Singhbhum. It is further stated that when the deceased went to ease himself in the night at about 9 PM, the appellant has assaulted him because he did not inform the appellant regarding the part taken by the Pradhan Baski. It is further stated that the appellant has assaulted the deceased with Danda on his mouth, chest and backside. This was narrated by the deceased to the informant, when he returned back. According to the informant, she thereafter took the deceased for treatment in the hospital, where he breathed his last on 17.7.1994. The informant was examined by the police after preparation of

inquest, on the basis of which Parsudih P.S. Case No. 91/94 u/s 304 IPC was registered. The police investigated the case and arrested the appellant and thereafter submitted charge sheet against the appellant showing Pradhan Baski absconder u/s 304/34 IPC. The case was committed to the court of sessions for trial. The trial court after examining the witnesses held the appellant guilty for the offence u/s 304 (Part II) IPC and sentenced him to serve RI for three years.

3. The present appeal has been preferred on the ground that the appellant was convicted on mere surmises and conjecture. It is further asserted that the learned lower court has relied upon the hearsay witness, who has not seen the occurrence. It is also submitted that the FIR was lodged after 16 days of the alleged occurrence and all other witnesses, except the informant, have turned hostile. According to the learned Counsel, reliance placed upon the interested witnesses, where the delay has not been explained and it was not proper for the trial court to convict the appellant. The learned Counsel further pointed out that the post mortem report suggests otherwise the cause of death. It is further asserted that even if the prosecution story is accepted, the appellant having served the sentence during trial for nearly four months, deserves to be acquitted, as he has no knowledge that the deceased was having Tuberculosis at the time of occurrence.

4. Considering the above points raised by the learned Counsel for the appellant along with the evidences available in the lower court records, it appears that the deceased narrated the incident to the informant Pani Mardi in the night of 1st July, 1994. According to the informant, the appellant assaulted her brother because he did not answer the question of the appellant properly. It further mentions that the appellant gave a Hura blow with lathi and assaulted the deceased with fists and slaps. It is further asserted that she has taken the deceased to the house of Mukhia and thereafter to the police station. According to her version, he was forwarded to hospital for treatment by the police where he died during the treatment. The learned lower court has relied upon the uncorroborated testimony of the informant because she could not see the occurrence. It further appears that except PW 1, the informant, other witnesses PW 2 Sanko Murmu, PW 3, Bhim Soren and PW 4, Lakhan Murmu are witnesses of inquest report. PW 5 Suraj Manjhi has been declared hostile. PW 6 Ratan Hansda has declined to have any information regarding the incident. PW 1 has admitted in cross examination that she has not seen the occurrence. She further admitted that she has narrated about the incident to the Mukhia but he has not recorded her statement. It is further asserted that the police has recorded her statement next day, on which she has put her LTI.

5. PW 7 is I.O. of the case, who admitted in cross examination that deceased Raisen Soren was not sent for treatment to the hospital by the police neither any report was made regarding the alleged incident. This witness has asserted that on 17th July, 1994 he got Information that one injured was admitted for treatment in MGM hospital and died. He went there and recorded the statement of the informant on

17th July, 1994, vide Ext.3. He has prepared the inquest report also. Therefore, the assertion of the informant that she has narrated about the incident next day to the police become doubtful. In this context the post mortem report of the deceased, where the doctor has found lungs of the deceased filled of liquid odematus and congested with pus. Apart from this, two teeth were broken and one abrasion on the right side of chest.

6. In such view of the fact the prosecution version stand on the sole testimony of PW 1, who is admittedly not an eye witness of the occurrence. It is also admitted fact on record that the FIR was lodged after 16 days without any explanation of delay. In absence of any material on record that actually the deceased was assaulted by the appellant in the night of 1st July,1994, it would be improper to rely upon the sole testimony of an hearsay witness.

7. Having regard to the above mentioned facts and circumstances, I find and hold that the present appeal has got merit and deserved to be allowed.

8. In the result, this appeal is allowed and order of conviction and sentence is set aside. The appellant being on bail, is discharged from the liability of bail bonds.