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(2009) 05 JH CK 0023

Jharkhand High Court

Case No: Criminal Appeal (DB) No. 1216 of 2003

Daud Hans	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision: May 5, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 300, 302, 304, 85

Citation: (2011) 1 JLJR 512

Hon'ble Judges: Prashant Kumar, J; Narendra Nath Tiwari, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. The Appellant Daud Hans was tried for the charge u/s 302 I.P.C for killing his own infant female child by dashing her against a big stone. He has been convicted u/s 302 I.P.C. and sentenced to undergo rigorous imprisonment for life by the impugned judgment passed by Additional Judicial Commissioner, Khunti in S.T. No. 219 of 1999.

2. The case was instituted on the fardbeyan of the wife of the Appellant Haliani Purti (P.W.-5).

3. Briefly stated prosecution case is that the informant was in her Mayka (her parents house). On 04.06.1998 at about 4:30 p.m., while the informant was feeding milk to her ailing daughter aged about six months, the Appellant asked her to accompany him and go to is village. Since the daughter was ailing the informant denied to a company his husband. The Appellant became enraged by the informant''s denial to go with him and forcibly snatched away the baby - Sangilan Hans from the lap of the informant and dashed her against a big stone in the courtyard, due to which her head broke into pieces and she succumbed to death.

4. The police on investigation submitted charge sheet u/s 302 I.P.C.

5. The charge u/s 302 I.P.C. was framed against the Appellant. The Appellant denied the charges and claimed to be tried. He was put on trial, in his examination u/s 313 Code of Criminal Procedure, he denied to have committed any offence.

6. The prosecution in order to establish the charge against the Appellant, altogether examined seven witnesses :

P.W. 1 is Dr. Mrs. Lalita Verma, who had conducted autopsy on the dead body of the deceased child; P.W.-2 Rayan Purti, is a hearsay witness; P.W.-3 Merry Purti, was tendered; P.W.-4 Samiran Purti, a villager; P.W.-5 Hariani Purti, the informant and mother of the deceased; P.W.-6 Pandya Purti, the brother of the informant and P.W.-7, a formal witness who has proved F.I.R. (Ext-3), Fardbeyan (Ext-4) and Inquest Report (Ext-5).

7. Learned trial court on conclusion of trial held the Appellant guilty of the charge u/s 302 I.P.C. on the basis of the evidence of the informant, corroborated by the medical evidence of P.W.-1.

8. Learned Counsel for the Appellant assailing the Appellant''s conviction submitted that the prosecution has not been able to establish the charge u/s 302 I.P.C. against the Appellant by any independent witnesses. The only eye-witness in this case is informant, who is the mother of the deceased child. Learned trial court heavily relied on the sole testimony of P.W.-5 without any corroboration by any independent witness. The Investigating Officer has not been examined and the Appellant could not confront him on vital contradictions in the prosecution case and evidence. Learned Counsel submitted that the impugned judgment is not based on convincing evidence on record and is liable to be set aside. Learned Counsel for the Appellant also alternatively argued that the alleged act of the Appellant was in a sudden fit of anger provocation and in inebriated condition. There was no intention or pre-meditation to kill the deceased. His conviction u/s 302 I.P.C. is, thus, not proper. The case falls within the Exception defined u/s 85 of the I.P.C. as also Exception (1) to Section 300 of the I.P.C. and at any rate the case comes within the fold of Section 304 Part-II of the I.P.C.

9. Learned A.P.P., on the other hand, submitted that this is a case of cruel and brutal murder of an ailing infant female child of six months. The Appellant was in full knowledge that the injury caused by him to the child would certain to cause death. The informant, who was alone a(sic) that time and witnessed the occurrence, has fully supported the case in her deposition. There is nothing on record to disbelieve her testimony. Her evidence is also corroborated by the medical evidence of P.W.-1. It is quality not the quantity of evidence, which does matters. The medical evidence and oral testimony of P.W.-5 read together leave no(sic)iota of doubt that a child of six months has been killed by the Appellant in a brutal manner. Learned court below has rightly found the Appellant guilty for committing murder of the child and the charge u/s 302 I.P.C. against the

Appellant has been proved beyond the shadow of all reasonable doubts.

10. Having heard learned Counsel for the Appellant and learned A.P.P., we have meticulously scrutinized the evidences on record. We find from the evidence of P.W.-5 that she was the only person present at the time of occurrence and she has fully proved the prosecution case. Her evidence is consistent and unshaken. There is nothing in the cross-examination to discredit her testimony. P.W.-1, the Doctor, who has conducted the post-mortem on the dead body of the d(sic)ceased, had found back side of his head collapsed in parietal bone in right side, occipital bone fractured and brain matter absent. According to the post-mortem report the skull was found hollow without any brain material. P.W.-5 has clearly stated that when the child was dashed against the stone, the head was smashed and the brain material came out. We, therefore, find the said evidences cogent, clinching and positive and adequate to establish charge against the Appellant.

11. So far as second and alternative argument of learned Counsel for the Appellant is concerned, Exceptions defined in Sections 85 and 300 I.P.C. are not applicable in the instant case.

12. Section 85 of the I.P.C. provides that nothing is an offence which is done by a person who at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law. But the proviso further clarifies thus;

provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

13. In the instant case, on the one hand there is no clear evidence on record to prove that the Appellant, at the time of occurrence was under the influence of intoxication. On the other, there is also no evidence on record to establish that the accused was intoxicated by some one without his knowledge or against his will. In absence of the same, there is no application of Exception as provided u/s 85 of the I.P.C.

14. Exception (1) to the Section 300 I.P.C. is also not applicable in the instant case, as there was no provocation by the child whose death was caused by the Appellant.

15. Exception runs thus :

When culpable homicide is not murder.- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

First.- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

16. In this case, it is clear from the facts and evidences on record that this is not a case of giving provocation by the person whose death was caused by the Appellant. It was the informant (the Appellant''s wife) who had denied to go with the Appellant and not the deceased infant but the Appellant did not cause any injury to his wife and brutally killed the child.

17. Learned trial court has minutely appraised the evidences on record and has rightly held the Appellant guilty of the charge of committing murder of six months'' old infant.

18. We find no infirmity and illegality in the finding of the learned court below. There is no legal ground to interfere with the impugned judgment and conviction and sentence of the Appellant.

19. This appeal has, thus, no merit and is, accordingly, dismissed.