

## Sohrai Toppo Vs The State of Bihar (Now Jharkhand)

**Court:** Jharkhand High Court

**Date of Decision:** March 15, 2010

**Acts Referred:** Penal Code, 1860 (IPC) " Section 302, 304

**Hon'ble Judges:** Pradeep Kumar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Pradeep Kumar, J.

No body appears on behalf of the appellant on repeated call. Then, on the request of the Court Mr. Suresh Kumar,

Adv., argued the case as amicus curie on behalf of the appellant.

2. The appeal is directed against the judgment of conviction and order of sentence dated 21st January, 2000 passed by Sri Harballava Chandra

Prasad, Additional District & Sessions Judge, Simdega in Sessions Trial No. 279 of 1996, by which judgment he found the appellant guilty u/s 304

Part I of the Indian Penal Code and sentenced him to undergo R.I. for 7 years. Considering the fact that the appellant is in jail custody since

28.6.96 and the appellant's action was not premeditated nor he had any intention to cause death of the deceased.

3. It is submitted by the learned Counsel for the appellant that the bail of the appellant was refused when the appeal was admitted on 14.3.2000

and he has remained in custody for more than 7 years. The State has got no ground for enhancement and since there is no evidence that the

appellant had any intention to cause death of the deceased and as such the appellant should be released forthwith.

4. After hearing both the parties and going through the record, I find that the prosecution case was started on the basis of a Fardbeyan given by

one Bagi Kujur on 26.6.96 at 21.30 hrs. before the Officer-in-charge, Thethai Tangar Police Station stating therein that on the same day at about

12 p.m. in the noon he had gone to the market and when he was returning from the market at about 3 p.m. then his mother was grazing her cattle

at Bazar Tanr about 100 yards from his house. Then, at about 4 p.m. the accused-appellant, Sohrai Toppo came armed with a Tangi and

went to the place of occurrence where his mother was grazing the cattle and suddenly he gave a blow on her neck He ran towards

occurrence and just under the "Mahua" tree the accused-appellant, Sohrai Toppo committed the murder of his mother. There is a "tand" in

between the house of the informant and the place of occurrence. He further stated that he raised Hullah that the accused-appellant is assaulting his

mother. Then, the witnesses, namely, Mangu Tirkey and Laxmi Oraon etc. came to the place of occurrence. He also stated in para 11 that the

"tangi" by which the accused-appellant assaulted his mother and thereafter he had thrown the same at the place of occurrence. The said tangi was

lying there.

9. The other witness-P.W. 1, Mangu Tirkey stated that the Investigating Officer had come to the village and blood stained was recovered from the

place of occurrence. He proved his signature on the seizure-list, which is marked as Ext.-1. He also stated that on "Hullah" he reached the place of

occurrence i.e. on 26.6.96 then he saw the mother of the informant was lying dead at the place of occurrence and on that very same day wife of

accused-appellant, Sohrai Toppo had died and he had doubts that Nauni Uraon has caused the death of the wife of the accused-appellant Sohrai

Toppo since she was a witch, hence the accused-appellant assaulted her and fled away.

10. P.W. 2, Lachhuman Oraon he also proved his signature on the inquest report, which is marked as Ext. 1/1. He also stated that he had not

stated to the police that since the accused-appellant had suspected that the deceased, Nauni Uraon to be a witch and she caused the death of his

wife.

11. P.W. 3, Sukhlal Toppo, was declared hostile and he has stated nothing.

12. P.W. 4, Chamru Toppo was also declared hostile.

13. P.W. 5, Ramchandra Ram has proved the formal F.I.R., which is marked as Ext.-2.

14. P.W. 7, Sursen Lakra has also supported the prosecution case and stated that on the date of occurrence i.e. on 26.6.96 at about 4 p.m. when

he was returning from the market then he saw that the deceased, who was grazing her cattle in the  $\frac{1}{2}$  Bagicha  $\frac{1}{2}$ . Then, suddenly the accused-

appellant, Sohrai Toppo came with a tangi and assaulted her, causing her death. He again gave two or three "tangi" on her neck and other part of

the body and fled away. Since, the wife of the accused-appellant was ill since long time and he had suspected that the deceased was a witch due

to which on the same day the wife died at about 2 p.m.

15. P.W. 8, Leo Lakra has proved his signature and that of the I.O. on the seizure-list, which is marked as Ext. 4.

16. P.W. 9, Basant Kujur stated that he received information by Dharmendra Bhagat that his mother has been killed by accused-appellant, Sohrai

Toppo. Then, he went to the village and he saw the dead body. The accused-appellant committed her death by calling her a witch.

17. P.W. 11, Kamta Ram the I.O. of the case has stated that he recorded the fardbeyan of the informant, which is marked as Ext.3. He also

recorded the further statement of the informant. He also prepared the inquest report, which is marked as Ext.-5. He also collected the blood

stained and prepared a seizure-list, which is marked as Ext.-4. He came to the place of occurrence and send the dead body for post-mortem

examination.

18. All the witnesses during examination have stated that the accused- appellant, Sohrai Toppo caused the death of the deceased as he had

suspected her to be a witch since his wife died on the same day after long ill. Then submitted charge-sheet.

19. Thus, after going through the evidences on record and the postmortem report, it appears that the prosecution has proved the fact under

misconception that the victim was a witch due to which the wife of the accused-appellant was ill since a long time and subsequently she died on the

date of occurrence itself. The accused-appellant, Sohrai Toppo ran towards the place of occurrence where the victim was grazing the cattle and

gave a "tangi" blow, causing incised injury on the back of her neck-6 $\frac{1}{2}$ x3 $\frac{1}{2}$  inches cutting all the soft tissues of the neck and also cervical

vertebral and the desophagm and part of the trachea of 3rd cartilage level and the right cardocial vessels of the neck, due to said "tangi" she died

at the place of occurrence itself. In the opinion of the doctor that the injuries was fatal.

20. Since, it appears from the post-mortem report that there was no repetition of blow. The learned trial court rightly considering the case of the

prosecution and that of the weapons found the appellant guilty u/s 304 Part I of the Indian Penal Code and sentenced him to undergo R.I. for 7

years.

21. I find nothing to interfere with the finding of the conviction and sentence. Accordingly the appeal is dismissed.

22. However, it appears that the appellant is throughout in jail custody since 28.6.1996 and has remained in custody for more than the sentence

passed against him. It hopes that he must have been released by now, but the trial court is directed to verify the same. If he has not released the

trial court is directed to send release order immediately, if not wanted in any other case.

23. With the aforesaid observation, the appeal is dismissed.

24. The criminal revision application filed by the State being Cr. Rev. No. 286 of 2000 is also dismissed as per the discussions made above, since

it requires no consideration for enhancement.