

(2010) 03 JH CK 0020
Jharkhand High Court
Case No: None

Sohrai Toppo

APPELLANT

Vs

The State of Bihar (Now
Jharkhand)

RESPONDENT

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 ♦Tangi♦ blow on her neck. He ran towards his mother, but before he could reach the accused-appellant fled away after giving one or two ♦Tangi♦ blow to his mother-deceased. Then, he made ♦Hullah" and found that his mother received injuries on her neck and right pakhura and bleeding was coming out and she died after sometime. On hearing "Hullah" the villagers, namely, Mangu Tirkey and Laxmi Oraon etc. assembled there and saw the dead body and stated that the accused-appellant, Sohrai Toppo used to say that his mother was a witch due to which his wife was ill and she died on the same day.

5. On the basis of the said Fardbeyan, a case u/s 302 of the Indian Penal Code was registered and after investigation police submitted charge-sheet in the case.

6. Since, the case was exclusively triable by a Court of Sessions and learned Chief Judicial Magistrate after taking cognizance, who committed the case to the court of Sessions where the trial was held and finally after trial learned Additional Sessions Judge found the appellant guilty as aforesaid and convicted him thereunder.

7. It appears that in course of trial the prosecution has examined 12 witnesses. P.W. 1, Mangu Tirkey, P.W. 2, Lachhuman Oraon, P.W. 3, Sukhlal Toppo, P.W. 4, Chamru Toppo, P.W. 5, Ramchandra Ram, P.W. 6, Leo Lakra, P.W. 7, Sursen Lakra, P.W. 8, Leo Lakra, P.W. 9, Basant Kujur, P.W. 10, Bagi Kujur-the informant, P.W. 11, Kamta Ram the I.O. of the case and P.W. 12, Dr. Krishna Deo Choudhary.

8. The informant, Bagi Kujur, who was examined as P.W. 10, has fully supported the prosecution case and stated that on the date of occurrence i.e. on 26.6.96 at about 4 p.m. since his mother was grazing her cattle at Bazar Tanr about 100 yards from his house. At that time, the accused-appellant, Sohrai Toppo came armed with a ♦Tangi♦ and went towards the place of occurrence where his mother was grazing the cattle and suddenly the accused-appellant, Sohrai Toppo gave a ♦Tangi♦ blow on her neck, as a result of which she fell down. The accused-appellant again gave a ♦tangi♦ blow on her person and blood was coming out. He ran towards his mother, but before he could reach, the accused-appellant fled away, saying that his mother is a witch. He identified the accused- appellant in Court. He proved his signature in the Fardbeyan, which is marked as Ext.-1/2.

In his cross-examination, he stated that when he returned from the market then he had seen that his mother for grazing the cattle at the place of 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 ♦Bagicha♦. 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-6x3x4 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.