
(2012) 07 JH CK 0109

Jharkhand High Court

Case No: Criminal (Jail) Appeal (D.B.) No. 1075 of 2005

Dharma Girih

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 5, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304

Citation: (2013) 1 AJR 302 : (2012) 4 JLR 264

Hon'ble Judges: R.K. Merathia, J; Dhruv Narayan Upadhyay, J

Bench: Division Bench

Advocate: Krishna Shankar, A.C, for the Appellant; Ravi Prakash, Assistant Public Prosecutor for the State, for the Respondent

Judgement

1. This appeal is directed against the judgment of conviction and order of sentence dated 28.5.2005 and 31.5.2005 respectively passed by learned 3rd Additional Sessions Judge, F.T.C., Dumka in Sessions Trial No. 26 of 2003/64 of 2004, convicting the appellant u/s 302 I.P.C. and sentencing him to undergo rigorous imprisonment for life. The appellant was also convicted u/s A of the Prevention of Witch (Daain) Practices Act. 1999 and sentenced to undergo R.I. for six months I low ever, both the sentences ordered to be run concurrently. Mr. Krishna Shankar, Learned Counsel, appearing for the appellant submitted that he is not a position to dispute the manner of occurrence but the only question is whether the appellant had to commit murder of his mother or not.

2. From the F.I.R. it appears that there was hot exchange of words between the appellant and his step mother during which the appellant assaulted his mother with Lathi and legs. The Doctor found one lacerated wound 3"X4" bone deep over frontal region and one abrasion on right waist.

In the circumstances, it will not be safe to hold that the appellant had intention to kill his step mother. Accordingly the conviction u/s 302 I.P.C. is converted into

Section 304 Part II I.P.C. So far as conviction u/s 4 of the Prevention of Witch (Daain) Practices Act, 1999 is concerned, the conviction is upheld.

In the facts and circumstances of the case the impugned judgment of conviction and order of sentence is modified to the extent that the appellant is convicted u/s 304 Part II I.P.C. and sentenced to the period undergone by him, i.e., about 10 years. He has already undergone the sentence u/s 4 of the Prevention of Witch (Daain) Practices Act, 1999.

With this modification in conviction and sentence, this appeal stands disposed of. The appellant is directed to be released from jail forthwith, if not wanted in any other case.