

(2012) 04 JH CK 0091

Jharkhand High Court

Case No: Criminal (Jail) Appeal (DB) No. 685 of 2004

Maina Bansfor

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: April 12, 2012

Acts Referred:

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

Citation: (2012) 2 JLR 392

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

Bench: Division Bench

Advocate: Krishna Shankar, APP for the State, for the Respondent

Judgement

1. Nobody appears on behalf of the appellant.

Mr. Krishna Shankar, A.P.P., appears for the State.

This appeal is directed against the judgement of conviction and order of sentence dated 31.03.2004 passed by the learned Additional Sessions Judge, Fast Track Court No. 6th, Dhanbad in Sessions Trial No. 345 of 2000, convicting the appellant u/s 302 IPC and sentencing him to undergo R.I. for life.

The prosecution case in short is that the informant-Suraj (PW-6) gave fardbeyan on 29.06.2000 at 0.15 hours before the police to the effect that when he was about to take food in his home, the appellant who was "Sala" (brother-in-law) of the informant, came and started abusing him and his wife, to which they protested. On which, the appellant assaulted them with fist and slaps and thereafter, he went running to his house and brought Tangi and assaulted the daughter of the informant, Sonam aged about seven years, on her head, due to which, she sustained head injury and became unconscious and she was taken to the hospital. After two days, she succumbed to her injuries. The cause of incident was said to be quarrel between the children of the appellant and the informant.

2. Prosecution examined nine witnesses. PWs-1 & 2 have been declared hostile. PWs-3 & 4 are inquest witnesses.
3. PW-5 is the wife of the informant, who inter-alia said that there was quarrel between her daughter (deceased) and the son of the appellant and thereafter, the alleged incident took place.
4. PW-6 is the informant. He supported the prosecution case.
5. PWs-7 & 8 are investigating officers.
6. PW-9 is the doctor who conducted postmortem on the dead body of the deceased. He found lacerated wound on the forehead of the deceased. In the opinion of the doctor, cause of death was the head injury sustained by the deceased.
7. Prosecution has been able to prove that the appellant killed the deceased by causing fatal injury on her head due to quarrel between the son of the appellant and the deceased. However, the question which needs to be answered is whether the appellant had intention to kill the deceased or not?
8. It appears that the parties are relatives. The appellant is the "Sala" (brother-in-law) of the informant. There was quarrel between their children, due to which the appellant assaulted the informant and his wife and also abused them. During such quarrel, the appellant brought tangi and assaulted the deceased, due to which she died. It further appears that the deceased died after two days in the hospital.
9. In the facts and circumstances of this case, it cannot be safely said that the appellant had (sic) intention to kill the deceased.
10. Accordingly, we are inclined to convert the conviction of the appellant from section 302 IPC into section 304 Part-II IPC. So far as the sentence is concerned, it appears that the appellant has remained in jail for more than eleven and half years. Accordingly, he is sentenced to the period already undergone. The appellant is in jail. He is directed to be released forthwith, if not wanted in connection with any other case. With this modification in conviction and sentence, this appeal is partly allowed.