

(2007) 04 JH CK 0091

Jharkhand High Court

Case No: None

Suraj Oraon

APPELLANT

Vs

The State of Bihar (now
Jharkhand)RESPONDENT

Date of Decision: April 23, 2007**Acts Referred:**

- Evidence Act, 1872 - Section 32
- Penal Code, 1860 (IPC) - Section 302, 304

Citation: (2007) 3 JCR 324**Hon'ble Judges:** Dhananjay Prasad Singh, J; Amareshwar Sahay, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

1. Sole appellant Suraj Oraon stands convicted for the offence punishable u/s 302 of the Indian Penal Code and sentenced to serve rigorous imprisonment for life, by the 3rd Additional Judicial Commissioner, Ranchi in Sessions Trial No. 707 of 1993.

2. Brief facts lending to this appeal are that deceased Cherga Oraon has gone with the appellant in the morning of 6.3.1993 and he did not return till night. As further stated, P.W.I Budha Oraon, the informant and uncle of the deceased, came to know at 7.30 P.M. that the deceased has been injured by someone. He goes to the place of occurrence and found the deceased lying badly injured, blood oozing out from his body and one female, wife of Ganshu Pian, trying to put water in his mouth. He further asserted that when he went near the deceased, he disclosed that the appellant has given dagger blow on his chest and he will die and by this time, P.W.3, wife of the deceased as well as other villagers assembled there. They were also informed regarding overt act committed by the appellant against the deceased. The deceased breathed his last in their presence.

3. Next day in the morning at 7.30 A.M., police arrived at the spot and recorded the statement of Budha Oraon and on the basis of which, Ratu Police Station Case No. 34 of 1993 u/s 302 of the Indian Penal Code was registered against the appellant. The police investigated the case and submitted charge sheet against him on the basis of which, the trial of the appellant was initiated by framing charge u/s 302 of the Indian Penal Code on 30.6.1994. The appellant pleaded not guilty and claimed false prosecution, However, after examining the witnesses, the trial court found and held him guilty u/s 302 of the Indian Penal Code and sentenced him to serve rigorous imprisonment for life. At one stage of the appeal, it was asserted before this Court that the appellant was of unsound mind. However, this has come on record that the Medical Board found him mentally alert and fit.

4. The present appeal has been preferred mainly on the grounds that there was no eyewitness of the occurrence and the conviction was made on the basis of surmises and conjectures. It is also submitted by Mrs. Lily Sahy, learned Counsel for the appellant that the learned trial court has failed to consider the material contradictions available on records in prosecution version between eyewitnesses of the occurrence. According to Mrs. Sahay, the incident was reported to police in the evening of 6.3.1993 by P.W.4 and that version has been concealed. It was also submitted that the informant having received information went to the place of occurrence but he does not disclose the name from whom this information was received neither the said person has been produced before the trial court to substantiate this fact. It is also submitted that P.W.3 Panho, wife of the deceased has not asserted before the trial court that deceased has disclosed the name of the appellant. According to Mrs. Sahay, there was contradiction in the statements of P.W.3 and P.W. 5 regarding the manner in which assault took place. Therefore, the appellant having already remained in custody for more than fourteen years may be acquitted of the charges.

5. We have gone through the materials on records to consider the submissions made before us by Mrs. Sahay, learned Counsel for the appellant. It is undisputed fact on record that Cherga Oraon was found injured by witnesses in the evening of 6.3.1993 and the deceased informed regarding the appellant to have caused these injuries on him. It is also undisputed fact that he succumbed to those injuries found and proved by P.W.6 Dr. Niranjana Minz, during post-mortem examination held on 7.3.1993. The post-mortem report marked Ext. 2 mentions one stab wound, 5"X2"X cavity deep on right chest front upper part having perforated right lung and right atrium of the heart, resulting in death. Therefore, the death of the deceased is proved beyond doubts with stab wound said to be caused by the appellant.

6. It is undisputed fact on record that there was no eyewitness of the occurrence except P.W.4 Mahadeo Oraon, who asserted that in the day time he along with appellant and deceased had gone for taking food and when they were returning, the appellant started challenging for fight and during this period, he assaulted the

deceased with dagger. He further asserted that on the alarms raised by the deceased, villagers arrived including himself. He further admitted that before this incident, three of them have taken "Harira". According to him, his house was situated nearby. He even asserted that he does not know why the appellant assaulted the deceased and the incident took place all of a sudden. This witness has been criticized by the counsel for the appellant. However, the other prosecution witnesses, P.W.1 Budha Oraon, P.W.2 Birsa Oraon, P.W. 3 Panho, have consistently stated before the trial court that when they reached near the deceased, they were informed by the deceased himself that the appellant has assaulted him with Chhura and as a result of said injuries, he died. The postmortem report supports the prosecution version that the deceased has died because of the stab injuries. The name of the appellant has come from the mouth of deceased himself. There is no dispute that deceased Cherga Oraon was in senses when the witnesses named above, P.W.1, P.W.2, P.W.3, P.W.4, arrived there including P.W.5. These witnesses are truthful because they have not asserted that they saw the appellant assaulting the deceased. In such circumstances, non-examination of the persons, who informed P.W.1 or the wife of the said Ganshu Pain does not make much difference. The last statement of the deceased regarding cause of his death is admissible in evidence u/s 32 of the Indian Evidence Act. As such, we find that the prosecution has been able to prove beyond doubts that the appellant has given the dagger blow to the deceased in the evening of 6.3.1993.

7. However, during scrutiny of the evidence on records, we find that the appellant has committed this offence all of a sudden without having any apparent reason. It has further come on record that the appellant along with deceased and P.W.4 have consumed "Harira" just before the occurrence. The evidence of P.W.4 further mentions that at times, the appellant got angry without any apparent reason. We are, therefore, find that the offence committed by him is squarely covered by Section 304 Part-I of the Indian Penal Code, culpable homicidal not amounting to murder. Accordingly, we find and hold that the conviction of the appellant u/s 302 of the Indian Penal Code deserves to be filtered to conviction u/s 304 Part-I of the Indian Penal Code.

8. In the result, the conviction of the appellant u/s 302 of the Indian Penal Code and sentence to serve rigorous imprisonment for life recorded by the learned court below is hereby altered to one u/s 304 Part I of the Indian Penal Code and he is sentenced to serve rigorous imprisonment for ten years, i.e. the period already undergone by him in custody. With the modification aforesaid the appeal is hereby dismissed. Let the appellant, who is in jail, be released from custody forthwith, if not wanted in any other case.