

(2006) CriLJ 3555 : (2006) 2 AIRJharR 431

Jharkhand High Court

Case No: Criminal App. No. 182 of 1990 (R)

Chano Mochi

APPELLANT

Vs

The State of Bihar (now
Jharkhand)

RESPONDENT

Date of Decision: March 21, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302

Citation: (2006) CriLJ 3555 : (2006) 2 AIRJharR 431

Hon'ble Judges: Rakesh Ranjan Prasad, J; N. Dhinakar, J

Bench: Division Bench

Advocate: A.K. Kashyap, for the Appellant; B.V. Kumar, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

1. Accused appeals.

2. The appellant, on being charged and tried u/s 302 I.P.C. for an offence murder on the allegation that he caused the death of a child, Rabindra, aged about 20 days, was found guilty, as charged and sentenced to imprisonment for life, which is under challenge in this appeal.

3 The deceased child, Rabindra is the grand son of P.W. 2, Gangauri Bhuiyan, who is the husband of P.W. 1. P.W. 5 is the father of the deceased child and husband of P.W. 4. They were residing in the village along with the appellant who was also related to them. On 13-12-1988, at about 10.30 a.m. P.Ws. 4 and 5 were inside the house. P.W. 2 was sitting on the cot on which the deceased child was also sleeping who was covered with blanket. The appellant entered in the house with a lathi and beat the deceased child and thereafter ran away from the place, On seeing this, P.Ws. 1 and 2, who were present,

raised alarm and P.W. 4, who came out of the house, chased the appellant and caught him. A Fardbayan, Exhibit 2 was laid at the police station at 4.40 p.m. on the same day. The investigation in the crime was, thereafter, taken up. After investigation was taken up, inquest was conducted and after inquest, body of the deceased child was sent to the hospital with a request for an autopsy. On the receipt of the requisition Dr. K.M. Shah, P.W. 10 conducted autopsy and found bruise covering the right temporal region on the skull. On dissection, the doctor noticed that the membranes were lacerated and underline big haematoma was present. The brain tissues were gravely lacerated and oedematous. He issued Exhibit 1, the Postmortem Certificate with his opinion that the deceased child died on account of shock and hemorrhage due to head injury.

4. After completion of investigation, final report was filed against the appellant, who, on being questioned u/s 313 Cr. P.C., denied all the incriminating circumstances. He did not examine any witness on his side.

5. Learned Counsel appearing for the appellant relying upon the evidence of P.W. 1 strongly contends that the appellant must have beaten the deceased with a lathi without knowing that the child is lying on the cot and therefore, the appellant is entitled for an acquittal.

6. On the above contention, we have heard Mr. B.V. Kumar, learned Counsel appearing for the State and perused the evidence.

7. The case of the prosecution is that at about 10.30 a.m. on 13-12-1988, the appellant entered the house with a lathi in his hand and beat the deceased child, aged about 20 days, who was lying on the cot covered with a blanket and that the said incident was witnessed by P.W. 1, the grand mother and P.W. 2, the grand father of the deceased child. According to the prosecution, on seeing this ghastly act of the appellant beating the deceased child, P.Ws. 1 and 2 raised alarm and P.Ws. 4 and 5 came out from the house and that P.W. 4 chased and caught hold of the appellant. On going through the evidence of P.Ws. 1, 2, 4 and 5, we find no infirmity In their evidence for us to come to the conclusion that the appellant could not have beaten the deceased child leading to his death. In fact, even the learned Counsel appearing for the appellant did not submit that the deceased was not beaten by the appellant, but he only contends that the deceased must have been beaten by the appellant without knowing that the child was lying on the cot. In support of the said plea, the learned Counsel has relied upon the evidence of P.W. 1 who is the grand mother of the child. It is no doubt true that the P.W.1, in his evidence, has stated that the child was sleeping on the cot covered with a blanket and was not visible to a naked eye, but from his alone it cannot be inferred that the appellant did not know that the child was sleeping on the cot and that without any intention beat the child with a lathi not knowing that the child is under the blanket. If the deceased child was beaten by the appellant without his knowing that the child was lying on the cot, then there was no necessity for the appellant to run away from the place for him to be chased by P.W. 4, The natural conduct of any person, if he beats a child without knowing that a child

is sleeping, is to feel remorse and cry. It is not expected of any human being to run away from the place immediately after beating the child. The conduct of the appellant in this case, which could be seen from the evidence of P.Ws. 1 and 2 that after beating the child, he started running away from the place, indicates that he knew even before he beat the child that the child is sleeping inside the blanket and that he deliberately hit the child in order to cause the death so that he could cause anguish and agony to the relatives of the child. We, therefore, reject the contention of the counsel for the appellant that the child was beaten by the appellant without his knowing that the child was sleeping on the cot covered with a blanket. It is also worthwhile to mention that when the appellant was questioned u/s 313 Cr. P.C., he did not come out with any such explanation and on the contrary, he simply denied all the incriminating circumstances put against him. In the absence of any statement by the appellant that he beat the deceased child without knowing that the child was sleeping on the cot covered with a blanket, we cannot accept the arguments of the counsel for the defence at the appellate stage to hold that the child was beaten to death by the appellant without his knowing that the child was sleeping on the cot covered with a blanket. We, therefore, confirm the conviction and sentence and dismiss the appeal.

8. It is reported that the appellant is on bail. His bail bonds stand cancelled. The Sessions Judge is directed to take steps to commit the appellant to prison.