

Criminal Appeal (S.J.) No. 108 of 1994 (R)

Against the judgment of conviction dated 30th May, 1994 and order of sentence dated 4th June, 1994 passed by the Additional Judicial Commissioner, Khunti in Sessions Trial No.138 of 1982.

Samuel Soy @ Samal	Appellant
	--Versus--		
The State of Bihar	Respondent
For the Appellant	: Mr. Gajendra Pd. Roy, Advocate		
For the State	: Mr. V. S. Sahay, A.P.P.		

PRESENT

HON'BLE MRS. JUSTICE JAYA ROY

JUDGMENT

Jaya Roy, J. The appellant has filed this appeal against the judgment of conviction dated 30th May, 1994 and the order of sentence dated 4th June, 1994 passed by the Additional Judicial Commissioner, Khunti in Sessions Trial No.138 of 1982.

2. Prosecution case in brief is that on 08.01.1981 at about 2 p.m. the informant along with Phuljence Topno (deceased) had gone to the house of Manual Soit (P.W.-5) at village Kurki to talk about the marriage of his own brother. While both of them were returning to their village after talk, one Birsi Mundain of the said village Kurki, called them to her house at about 5 p.m. for taking Haria (country made liquor). While they were taking Haria, Birsi asked them to stay there for three days. On her request, they sat in the courtyard near fire and when they were enjoying the fire, Samuel Soy (appellant), Somra Pradhan, Manuel @ Manoranjan and 8-10 other persons of the village Kurki arrived there and they set near the fire and took liquor. All of them danced and took supper also. Thereafter, all started talking with each other. After some time, few of the persons went away. Thereafter, Samuel asked Phuljence that as to why he had come there. On that, Phuljence and the informant both replied that they came because they were called. Thereafter, exchange of hot words in between accused Samuel and deceased was started. The appellant Samuel along with few persons caught hold Phuljence and started

beating with fist, leg and slap. After assaulting him badly, they took him to the house of Manuel to enquire whether they had come for marriage negotiation. They also threatened Phuljence to kill him but Manuel did not allow them. Thereafter, in the morning hour at about 3 a.m. the victim succumbed to his injuries. The said occurrence was reported to Mukhia and others and on being asked by them, the informant lodged the F.I.R. at Murhu Police Station at about 9.30 a.m.

3. On the basis of the F.I.R., the case was registered and the matter was investigated into and after completion of the investigation, charge-sheet was submitted against the appellant and two other persons namely Longo Soy and Budhan Bodra under Sections 302/34 of the Indian Penal Code.

4. Prosecution has examined six witnesses on his behalf to prove the prosecution case. The defence of the case is totally denial of the occurrence. The trial Court after considering the evidence and materials on record, convicted the appellant under Sections 304/34 of the Indian Penal Code and acquitted other two accused namely Longo Soy and Budhan Bodra. The appellant was sentenced to undergo R.I. for five years by the order dated 04.06.1994.

5. Amongst the prosecution witnesses, P.W.-1 is the doctor, who held the post mortem report and the post mortem report is Ext.-1. P.W.-2, Francis is the informant who is only eye witness of the occurrence. P.W.-3 has been tendered. P.W.-4 has been declared hostile by the prosecution. P.W.-5, Manuel Soy is the person to whose house the informant and the deceased had gone on the day of the occurrence to negotiate the marriage of the informant's brother and where the victim took his last breath. P.W.-6 is a formal witness who has proved the F.I.R. and inquest report.

6. Counsel for the appellant has submitted that the post mortem report shows that the victim has received two injuries:-

(i) *One lacerated wound of size 2" X 1/2" X 5 1/2" on the back of the head. On further exploration, subcutaneous tissue was blood stained. Bone was*

fractured and brain matter was lacerated with blood clots inside cranial cavity.

(ii) One bruise 2" X 1½" was found on the left cheek. On dissection, subcutaneous tissue was blood stained.

7. Learned counsel for the appellant has submitted that in this case only eye witness P.W.-2 has been examined and he has stated that Samuel and other assaulted the victim with fist, leg and lathi. He has not stated regarding any specific assault made by the present appellant neither he named other persons who also have assaulted the victim. Counsel for the appellant has pointed out that as there is no specific statement regarding any particular assault made by the appellant, it cannot be said that only due to assault made by the appellant, the victim died. At best, it can be said that the appellant has also assaulted the victim i.e. also only by fist, leg and lathi. Counsel for the appellant has contended that at best the petitioner can be convicted under Section 325 of the Indian Penal Code.

8. P.W.-5 has also not stated anything regarding the present appellant that he ever threatened the victim to kill him or he has assaulted the victim. He has only stated that the victim was brought by Budhan, Somra and other villagers in injured condition. Even in his cross examination, he has not stated anything as to whether the injured has ever uttered the name of the appellant as his assailant.

9. Counsel for the appellant has further pointed out that the I.O. has not been examined in this case which cause heavily prejudice to the appellant.

10. Counsel for the State has opposed but could not point out any material against the appellant regarding any specific blow given by the appellant on the victim. He has only contended that the P.W.-2 has named the appellant as one of the assailants.

11. Therefore, in my opinion as there was nothing in the evidence to show that the present appellant inflicted the fatal injury on the victim and other two accused have been acquitted on the ground of benefit of doubt and the exact nature of injury

caused by the appellant is not established, the conviction under Section 304/34 of the Indian Penal Code is not at all tenable. Therefore, I modify the conviction under Section 304/34 of the Indian Penal Code to under Section 325 of the Indian Penal Code. Accordingly, the appellant is convicted under Section 325 of the Indian Penal Code. In respect of the sentence, as 15 years have passed and the appellant is on bail and now he is aged about more than 65 years, I modify the sentence to the period already undergone.

12. Accordingly, this appeal is dismissed with the aforesaid modification in the conviction and sentence.

(Jaya Roy, J.)

Jharkhand High Court, Ranchi
Dated, 18th August, 2009
Anit/N.A.F.R.