

Criminal Appeal (D.B.) No. 46 of 2017

[Arising out of judgment of conviction dated and order of sentence both dated 25.11.2016 passed by learned Principal Sessions Judge, Pakur in Sessions Case No. 115/14]

1. Shividhan Tudu son of Late Ragda Tudu
2. Babudhan Tudu son of Late Ragda Tudu
Both residents of Village & Mauza Bagrapara, P.O. & P.S. Pakuria, Town and District Pakur Jharkhand **Appellants**

--Versus--

The State of Jharkhand **Respondent**

For the Appellants : Mr. Mahesh Tewari, Advocate
For the State : Mr. Abhay Kumar Tiwari, A.P.P.

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

RESERVED ON: 25.09.2024

PRONOUNCED ON: 30.09.2024

Per Gautam Kumar Choudhary, J. Appellants are before this Court in appeal against the judgment of conviction and sentence under Section 302/34 of the IPC.

2. Informant is the husband of the deceased and as per the FIR, the appellants struck his wife with stone over her face, when she was going to dispose of cow dung. Getting this information when the informant rushed to the place of occurrence, he found her lying on the PCC road and the appellants were assaulting her with stone. On his approach, both of them fled away. Genesis of offence has been stated to be land dispute.

3. On the basis of fardbeyan, Pakuria P.S. Case No.41/14 was registered under Sections 302/34 of the IPC against the appellants. Police on investigation found the case true and submitted charge sheet and the appellants were put on trial for the offence under Sections 302/34 of the IPC.

4. Altogether 6 witnesses have been examined on behalf of the prosecution and relevant documents including Postmortem Examination Report has been adduced into evidence and marked as exhibit.

5. It is argued by the learned counsel on behalf of the appellants that there are vital contradictions in the testimony of witnesses. As per the FIR informant was the sole eye witness whereas in evidence, P.W. 2 and P.W. 4 have claimed themselves to be eye witnesses. P.W. 4 has gone further and deposed that after the

assault, appellants robbed the jewelleries of the deceased. These contradictions have been proved by the IO (PW 5).

6. Learned Counsel on behalf of the State has defended the Judgment of conviction and sentence. It is argued that informant (PW-1) has consistently stated in the FIR as well as in his testimony that he had seen the occurrence.

7. Autopsy Surgeon noted the following ante mortem injuries on the dead body:

Left angle of lips-torn

Laceration size-1/2" x1/2" x1/2"x 1/2", Lacerated injury over left forehead-size 1"x1/2" x bone deep. Laceration over left lateral canthus of eye-size 1"x1"x1/2"- Incised wound over left side of head, anterior to left temporal bone of size 2" diameter. Swelling over occipital region of size 3" diameter. On internal examination frontal bone was found to be fractured.

As per the autopsy surgeon (P.W. 6) cause of death was due to head injury.

8. From the above extensive injuries, it is difficult to be persuaded by the defence plea that these injuries were caused by fall on the road. Injuries are multiple over face and head and in normal circumstances, it cannot be caused by a simple fall on the road. These injuries are possible in a road traffic accident, but no such plea has been taken in defence during trial. What can be safely concluded is that death was homicidal in nature and not accidental.

9. Coming to the author of crime, at the outset, a testimony of a witness, cannot be rejected only on the ground that his name does not figure in the FIR. Statements made in a FIR can be used to confront the informant to elicit contradiction, but it does not bind the other witnesses.

10. In the present case, there are strong reasons to discard the testimony of P.W. 4 as direct eye witness to the incidence. She has deposed that the appellants after the assault had taken away gold jewelleries like earring and necklace. She has also alleged that they had committed theft of jewelleries and cash from her house. These do not at all find mention either in the FIR or in her earlier statement under Section 161 of the Cr.P.C. Her attention was drawn in cross examination at para 4. Further, no charge sheet has been submitted for committing theft under Section 379 of the IPC.

11. P.W. 1 who is the informant of the case has specifically stated that incidence took place at 9 O'clock in morning and on hulla, when they reached there, he saw the appellants assaulting his wife with stone. The injuries were both

on face as well as on front and back side of her head. Both the appellants fled away after the incidence. This part of his testimony is corroborated by the FIR under Section 157 of the Evidence Act. Once the testimony of the informant is corroborated by the FIR, it hardly matters if there is any contradiction between his deposition and the unsigned re-statement given to the police. His testimony is further corroborated by P.W. 2, who is also a resident of the same village and the sister of the deceased. It has been disposed that both of them smothered the face of the deceased with stone and she saw the incidence while returning from the field. The Investigating Officer (P.W. 5) has deposed in para 10 that the house of this witness was situated near the house of the deceased. He has deposed that he was stating on the basis of his own information and has not mentioned it in the case diary. It has also been deposed by the I.O. that appellant absconded immediately after the incidence. Cumulative reading of the testimony of these witnesses gives credence to the informant's evidence that it was the appellants who have committed the offence. Both the appellants in a pre-planned manner had intercepted the deceased and brutally assaulted her with stone resulting in her instantaneous death.

12. In view of the direct eye witness account duly corroborated by the medical evidence, I do not find any infirmity in the judgment of conviction and sentence passed by the learned court below for the offence under Section 302 of the IPC which is accordingly, affirmed.

Criminal Appeal stands dismissed.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 30th September, 2024

AFR/Anit