

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B.) No. 1035 of 2018

(Against the judgment of conviction dated 22.06.2018 and order of sentence dated 27.06.2018 passed by learned Additional Judicial Commissioner-VI, Ranchi in S.T. No.226 of 2015).

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Umesh Bedia, s/o Late Niraj Bedia, r/o Village Jawabeda, PO & P.S. Ormanjhi, Dist- Ranchi **..... Appellant**

Versus

The State of Jharkhand **.... Respondent**

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For the Appellant : Mr. Indrajit Sinha, Advocate
Mr. Akhouri Awinash, Advocate
For the State : Mr. Pankaj Kumar, Public Prosecutor
: Ms. Sharda Kumari, AC to PP

PRESENT

Sri Ananda Sen, J.

Sri Gautam Kumar Choudhary, J.

J U D G M E N T

11/17.10.2024

By Court:

IA No. 397 of 2024

Since this criminal appeal has been taken up for final hearing, this interlocutory application, filed for suspending the sentence and to release the appellant, namely, Umesh Bedia on bail, is dismissed.

Cr. Appeal (D.B.) No. 1035 of 2018

1. This criminal appeal is preferred against the judgment of conviction dated 22.06.2018 and order of sentence dated 27.06.2018 passed by learned Additional Judicial Commissioner-VI, Ranchi in ST Case No. 226 of 2015, whereby the sole appellant was convicted under sections 302/ 504/ 506 of IPC. He was sentenced to undergo R.I for life under Section 302 of IPC with fine of Rs.10,000/-, to undergo S.I. for one year under Section 504 IPC and to undergo S.I. for two years under

Section 506 of IPC. All the sentences were ordered to run concurrently.

2. The informant is the father of the deceased and the appellant is the husband of the deceased. As per the informant, the appellant was married to the deceased 20 years ago and he used to assault the deceased quite often. On 13.02.2015, he received an information that his daughter had been done to death, on receipt of this information, when he went to her house, he found the appellant in the house near the dead body. On the basis of *fardbeyan* Ormanjhi P.S. Case No. 28 of 2015 was registered under Sections 302, 504 and 506 of the IPC. The police after investigation found the case true and submitted charge sheet against the appellant for the offences under Sections 302, 504 and 506 of the IPC. After taking cognizance, case was committed for Sessions Court from where, this case was transferred to the Court of Additional Judicial Commissioner-VI, Ranchi. Charges have been framed against the accused Umesh Bedia under Sections 302, 504 and 506 IPC which were read over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried.

3. Altogether 08 witnesses were examined, who are as follows:-

- (i) P.W.1 – Dinesh Bedia
- (ii) P.W.2- Deo Kr. Bedia
- (iii) P.W.3- Panwa Bedia
- (iv) P.W.4- Balra Kr. Bedia
- (v) P.W.5- Sheela Devi
- (vi) P.W.6- Sunil Bedia
- (vii) P.W.7- Sati Lal Bedia
- (viii) P.W.8- Ashok Kumar

4. Several relevant documents including post-mortem examination report was proved. Postmortem report was marked as Exhibit-2.

5. It is submitted by the learned counsel appearing on behalf of the appellant that there is no direct or circumstantial

evidence to bring home the charge against the appellant. The Doctor has not been examined to establish that the injuries sustained by the deceased, were sufficient in the ordinary course of nature to cause death. The entire case rests on the testimony of the informant who only stated that when he went there, he found appellant to be sitting in the house next to the dead body.

6. Learned Counsel for the State defended the judgment of conviction and order of sentence. It is submitted that there was past history of marital discord and the appellant used to assault the deceased. Informant has died and son of the deceased has deposed that his mother used to take wine and did not cook food which led to marital discord and altercation as in the postmortem examination report there was a specific reference to the injuries sustained by the deceased. Thus, the onus will shift in terms of Section 106 of the Evidence Act on the appellant to explain the homicidal death of his wife. They also submit that contusions were found on different parts of the body.

7. Law is settled that before invoking Section 106 of the Evidence Act, the prosecution is required to prove the foundational facts. Only by invoking Section 106 of Evidence Act, an accused cannot be convicted. If a logical conclusion can be drawn from the proved facts, then only accused is under obligation to explain as to how the person died.

It is not in dispute that appellant was the husband and they were sharing the same domestic household. From the Post-mortem Examination Report, it is evident that the deceased died a homicidal death. The appellant was also present there as deposed by the informant. The informant could not be examined as he had died but this fact is proved by the son of the appellant. Furthermore, the appellant has taken a plea of alibi, but no evidence has been led that he was

not at his home and was working somewhere else. Thus, the foundational fact for invoking section 106 of the Evidence Act is made out. It is only this appellant who could have accomplished the act and none else. In the absence of any explanation coming from the appellant regarding the cause of homicidal death of the deceased, the only irrebuttable conclusion that will follow is that it was the appellant who was the author of the crime.

8. It is argued on behalf of the appellant that in the absence of examination of the doctor and there being no injury on the vital part of the body it cannot be inferred that injuries sustained by the deceased were sufficient in the ordinary course of action to cause death. The injuries as appearing from the post-mortem report are as follows:-

Abrasion :-

- (1) 3 cm x ½ cm left arm lateral side upper part.*
- (2) 3 cm x 1 cm, 1 cm x ½ cm back of left forearm upper part.*
- (3) 3 cm x ½ cm left chest lateral side lower part.*
- (4) 2 cm x ½ cm left leg middle part.*
- (5) 4 cm x 2 cm, 3 cm x ½ cm right gluteal region lateral side.*

Lacerated wound:-

- (1) 3 cm x ½ cm x soft tissue back of right palm.*
- (2) 2 cm x ½ cm soft tissue front of right leg, middle part.*
- (3) 4 cm x 1 cm x soft tissue right side of pubic area.*

Diffuse contusion area:-

- (1) Both upper limb, back of both arm both thigh, both leg upper part, back of chest, lower part, back of abdomen, both gluteal region.*

From a bare reading of the injuries it is apparent that most of the injuries are abrasions and the lacerated wounds were found on right palm, front of right leg and soft tissue on the right side of the weak area which cannot be called a vital part of the body. There is no fracture found on any part of the body nor was there any incised wound. It is however, come in evidence that a spear was also there in that room but it appears that it was not used in the offence as no perforated wound was found on the body of the deceased.

9. Considering these evidences, we are of the view that the offence under Section 302 of the IPC is not made out and the ante-mortem injuries sustained by the deceased will make out

an offence under Section 304 Part-II. Thus, the conviction of the appellant is hereby modified to section 304 Part II of IPC.

10. The learned counsel for the appellant submitted that the appellant has already served sentence for more than nine years.

11. Considering the aforesaid facts and circumstances considering the age and antecedent and overall facts and circumstances the sentence of imprisonment for the period already undergone shall meet the ends of justice.

12. The criminal appeal is partly allowed with modification of finding and sentence. The appellant be released forthwith, if not wanted in any other case.

13. The Trial Court Records to be transmitted back to the Court concerned below.

(Ananda Sen, J.)

(Gautam Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi

Dated 17/10/2024

NAFR /Prashant./Abha Cp 03.