

Khalil Mian and Anr Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Dec-09-2017

Appellant : Khalil Mian and Anr

Respondent : State of Jharkhand

Judgement :

Criminal Appeal (D.B.) No. 491 of 2009 ----- Against the judgment of conviction dated 28.02.2009 and order of sentence dated 04.03.2009 passed by Shri Mohammed Kasim, Additional Sessions Judge, Fast Track Court No. 9, Giridih in Sessions Trial No.95 of 2007. ----- 1. Khalil Mian son of Shahdali Mian 2. Mansoor Mian son of Khalil Mian . . Appellants --Versus-- The State of Jharkhand . . Respondent For the Appellants : Mr. K.N. Roy, Advocate For the State : Mr. Vijay Kumar Tiwari, A.P.P. PRESENT HON'BLE MR. JUSTICE ANANT BIJAY SINGH HON'BLE MR. JUSTICE B.B. MANGALMURTI

JUDGMENT

Per Anant Bijay Singh, J.

Two appellants have preferred the instant appeal as they have faced the trial in Sessions Trial No.95 of 2007 before the court of Shri Mohammed Kasim, Additional Sessions Judge, Fast Track Court No.9, Giridih whereby vide judgment dated 28th February, 2009, the learned Sessions Judge held the appellants guilty for the offence under Sections 302/34, 341/34 of the Indian Penal Code and

sentenced the appellants to undergo rigorous imprisonment for life with fine of Rs.2000/- each under Section 302/34 I.P.C. and in default of fine undergo under S.I. for one month and also go under imprisonment for one month for the offence under Section 341/34 of the Indian Penal Code and both the sentences shall run concurrently.

2. The appeal was filed on 23.05.2009 and on 06.07.2009 delay in filing the memo of appeal was condoned. The appeal was Admitted for hearing and Lower Court Records were called for.

3. The case of prosecution as unfolded on the basis of fardbeyan of Rebun Bibi (P.W.7) wife of Abass Mian recorded by A.S.I. Askandh Pathak on 06.10.2006 at 11.50 a.m. alleging inter alia that on 06.10.2006 at about 10.45 a.m. in front of house of one Mansoor Mian 2 Criminal Appeal (D.B.) No. 491 of 2009 the informants goat discharged the urine on Chabutra constructed by Forest Department whereupon hot discussion exchanged between the informant and the wives of male accused persons. Meanwhile, Abass Mian came to the place of occurrence and tried to pacify the matter. It is alleged that Khalil Mian (appellant no.1) and Mansoor Mian (appellant no.2) came to the place of occurrence and assaulted Abass Main by means of Sabbal on his head as a result of which he fell down on the ground and became unconscious and blood started oozing from the wounds. Habib came to the place of occurrence and tried to intervene. It is alleged that informant took Abass to police station from where he was sent to hospital in injured condition for treatment where he died after five days.

4. In this case the police after investigation submitted final form and charges under Sections 341/34, 323/34 and 302/34 of the Indian Penal Code against these appellants on 06.10.2006. The case was committed to the court of Sessions on 24.02.2007 and thereafter the case was transferred to the court of Additional Sessions Judge, Giridih. During course of trial, the prosecution examined ten witnesses. P.W.1 is Dr. Manjurul Hassan who was posted at Deori Primary Health Centra as Medical Officer, In-charge and examined Abass Mian. P.W.2 Habib Mian is eye witness, P.W.3 Aainul Ansari is also the eye witness, P.W.4 Kamruddin Ansari, P.W.5-Gulsan Bibi is also eye witness, P.W.6 is Majnu

Khatoon, P.W.7 Rebuna Bibi is informant and wife of deceased, P.W.8 is Ahmad Ansari who has been declared hostile, P.W.9 Askandh Pathak, who is I.O. of this case who has recorded the fardbeyan of P.W.7 and has drawn the formal F.I.R. which is marked as Ext.A. P.W.10 is Dr. A.K. Choudhary, who was posted as Associate Professor in the Department of Forensic Medicines in RIMS and conducted the post-mortem examination of the deceased. The defence has also examined D.W.1 Saheb Rai.

5. Counsel for the appellants while pressing the evidence of P.W.7, who is informant of this case and wife of deceased Abass Mian categorically supported the case of prosecution and submitted that 3 Criminal Appeal (D.B.) No. 491 of 2009 Khalil Mian (appellant no.1) assaulted by means of Sabbal thereupon he received injury and was referred for treatment where he died. This evidence is supported by evidence of P.W.4- Kamruddin Ansari and P.W.2-Habib Mian who is eye witness and P.W.3- Aainul Ansari. Counsel for the appellants further while referring the evidence of P.W.1 Dr. Manjurul Hassan, who has examined Abass Mian on 06.10.2006 at Deori Primary Health Centre and found following injuries:- Injury No.1- lacerated wound on back of head 2 X14" X14" bone deep, red in colour. Injury No.2- lacerated wound on the middle of forehead X in shape 1 X14" bone deep, red in colour. Injury No.3-lacerated wound in the middle of head with depressed fracture of parietal bone X in shape, three in number of size 3 X14, 2 X14, 4X14. All are bone deep. Bone is found in multiple pieces of fractured parietal bone of head. Advised X-ray. Injury No.4-Bruise with swelling on the middle of right hand 2 X2???. M.1- 1 brown aila on the middle of forehead. The age of injury within six hours. Injury No. 1 and 2 are simple in nature, injury no.3 is grievous in nature and opinion of injury no.4 are kept reserved. All injuries caused by hard and blunt substances. The patient was referred to RIMS. P.W.10- Dr. A.K. Choudhary, who conducted the post mortem examination on the dead body of Md. Abass on 12.10.2006 found following injuries:- Bruises- Rail track 1. 10 cm X1cm on right scapular region.

2. 30 cm X1cm and 30 cm X1cm on back of chest and abdomen.

3. 30 cm X1cm on back of right side of chest.

4. 15 cm X3cm both buttock situated transversely. Lacerated wound (partially united):- 1. 3 cm X1cm X soft tissues on right side of parietal region of head.

2. 7 cm X2cm and 5 cm X1cm both wound deep on anterior part of left parietal region of head under neath. There was depressed and comminuted fracture of left parietal bone measuring 7 cm X5cm, into area and portion of brain was thrased incised the brain matter there was a crack fracture of left parietal temporal bone started from the antro-lateral margin of said fracture 4 Criminal Appeal (D.B.) No. 491 of 2009 (depressed comminuted) and other crack fracture of left parietal bone starting from the posterior margin of the said depressed fracturing. There was presence of extradural blood clot 5 cm X3cm X1cm on left fronto parietal hemisphere of brain, there was a laceration of brain under neath with presence of sub-dural blood and blood clot over left hemisphere of brain. There was defused contusion of left frontal parietal, temporal scalp with temporal muscle. Opinion:- All the injuries are ante mortem and caused by hard and blunt substance. Death due to head injury. The times since death between 6 to 24 hours from the time of post mortem examination. This P.M. report is prepared by P.W.10 and marked as Ext.5.

6. Counsel for the appellant submitted that appellants have no intention to cause death so it falls under Sections 304 Part-II I.P.C. and the appellants have remained in custody for 11 years and so sentence of the appellants under Section 302 of the I.P.C. may be converted to under Section 304 Part-II of the I.P.C.

7. Learned A.P.P. appearing on behalf of the State during course of argument has referred the evidence of P.W.9 Askandh Pathak, who is I.O. of this case who stated in his examination-in-chief that on 06.10.2006 he was posted at Deori P.S. and on that day Rebun Bibi (P.W.7) came to the police station. He stated in Para 3 that there has been discrepancies in the place of occurrence which is near a Chabutra situated in south western side of the house of Abass Mian (deceased) and in the southern side of Chabutra house and land of Habib is situated. He has further submitted that doctor has marked the injury and issued requisite for injuries which is marked as Ext.4. P.W.6 Majnu Khatoon has stated that Khalil Mian assaulted by means of Sabbal on the deceased. P.W.7 Rebuna Bibi has stated

that he has admitted in cross-examination that there was land dispute going on between the parties. Learned A.P.P. submitted that witnesses have not supported the case of prosecution and the trial court has rightly convicted the appellants and as such the appeal may be dismissed.

8. After hearing the parties and going through the records and the evidence of P.W.10- Dr. A.K. Choudhary, who conducted the post-mortem on the dead body of the deceased, in his opinion 5 Criminal Appeal (D.B.) No. 491 of 2009 injuries received by the deceased are sufficient in ordinary course of nature to cause death. In his cross-examination, he has stated that injury is caused by hard and blunt substance. Reading the evidences of P.W.10- Dr. A.K. Choudhary and other eye witnesses namely P.W.2 Habib Mian, P.W.3 Aainul Ansari and P.W.5-Gulsan Bibi covers the provision of law Section 300 I.P.C. which reads as under:- 3rdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

9. There is force in the submission advanced on behalf of learned counsel for the appellants that the appellants have no intention to commit murder of the deceased. They might have the knowledge as they have given only one single blow. As per the evidence of doctor, the injury is sufficient in ordinary course of nature to cause death.

10. Taking into consideration, the conviction under Sections 302/34, 341/34 of the Indian Penal Code is hereby altered and converted to Section 304 Part-II of the Indian Penal Code in view of the fact that they have knowledge that by overt act the person may die and they have remained in custody for more than 11 years so the sentence is further reduced to 10 years which they have already undergone. The sentence is modified to the aforesaid extent only.

11. In the result, this appeal is hereby dismissed with modification in sentence and the sentence of the appellants under Section 302 of the I.P.C. is converted to under Section 304 Part-II of the I.P.C. and they are awarded the sentence to the period already undergone by them. The appellants, named above, who are in custody, are directed to be released forthwith, if not wanted in any other case.

(Anant Bijay Singh, J.) (B.B.Mangalmurti, J.) Jharkhand High Court, Ranchi Dated,
9th December, 2017 Anit/A.F.R.

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