

Sai Vs. State of Chhattisgarh

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Court : Chhattisgarh

Decided On : Apr-29-2003

Reported in : 2003(3)MPHT72(CG)

Judge : K.H.N. Kuranga, C.J. and; L.C. Bhadoo, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

Appeal No. : Criminal Appeal No. 160/2001

Appellant : Sai

Respondent : State of Chhattisgarh

Advocate for Def. : Sharmila Singhai, Dy. Govt. Adv.

Advocate for Pet/Ap. : Shailendra Dubey, Adv.

Judgement :

L.C. Bhadoo, J.

1. The accused/appellant has preferred this criminal appeal under Section 374(2) of Cr.PC, being aggrieved by the judgment dated 14-12-2000 passed by the 3rd Additional Sessions Judge, Bastar, Camp : Jagdalpur in S.T. No. 90/2000 by which the learned Additional Sessions Judge after holding the accused/appellant guilty for the offence punishable under Section 302 of IPC sentenced him to

undergo imprisonment for life and to pay a fine of Rs. 5,000/-in default of payment of fine to further undergo R.I. for one year.

2. The relevant prosecution story for the disposal of this criminal appeal is that on 12th August, 1999, at about 7.00 p.m., accused Sai came to the house of deceased Bannuram and started quarrelling in connection with some land dispute and he assaulted the deceased by piercing the arrow in the stomach of the deceased. On receiving the report, the Station House Officer, Barsur, registered a case and started investigation and got Bannuram medically examined. Injured Bannuram was admitted in the hospital and during the treatment Bannuram succumbed to the injuries, therefore, the post-mortem of the dead-body of Bannuram was conducted by Dr. Vijay Thakur. After the post-mortem, he prepared the report (Ex. P-1). The accused was arrested and in pursuance to the information given by the accused (Ex. P-4), the arrow was recovered at the instance of the accused through Ex. P-2. After completion of the investigation, a challan was filed against the accused for the offence punishable under Section 302 of IPC.

3. The learned Additional Sessions Judge framed the charge under Section 302 of IPC. The Accused denied the charge. The prosecution, in order to prove the offence against the accused examined five witnesses. The statement of the accused under Section 313 of Cr.PC was recorded in which he denied the statements of the prosecution witnesses and stated that he is innocent and he has been falsely implicated. The learned Additional Sessions Judge after hearing the public prosecutor and the Counsel for the accused convicted and sentenced the accused/appellant by the impugned judgment as mentioned above.

4. We have heard the learned Counsel for the parties.

5. As far as the question of nature of the death of deceased Bannuram is concerned, the learned Counsel for the accused did not dispute the nature of the death of the deceased being homicidal. Even otherwise, Dr. Vijay Thakur (P.W. 1) has stated in his statement that on 20th August, 1999, when he was working as Surgeon in Maharani Hospital, Jagdalpur, he conducted the post-mortem on the body of deceased Bannuram and he noticed that there was one stitched wound on the stomach of the deceased, 6 x 1/2 inches in length. After opening the body, he

found that the pus formation in the intestine of the deceased. Blood was present in the parietal cavity. In the upper part of the stomach 1 x 1/2 inch long stitched wound was present. In the opinion of doctor, the cause of the death was haemorrhage, shock and septicemia. His report is Ex. P-I. Therefore, in view of the above statements of the doctor and the prosecution witnesses that the accused/appellant pierced the arrow in the stomach of the deceased, it stands proved that the death of Bannuram was homicidal in nature.

6. As far as the question of causing the death by inflicting injury on the stomach of deceased Bannuram by piercing arrow is concerned, the learned Counsel for the accused/appellant also did not dispute this fact. However, he argued that, in the facts and circumstances of the case, the offence against the accused/appellant does not travel beyond the offence punishable under Section 304 (II) of IPC, because the injury was inflicted by the accused/ appellant all of a sudden without any pre-concerted plan and the deceased died after 8 days of the date of the incident, that too by formation of the pus in the intestine and on account of not receiving the proper treatment. The injured could have been saved if he had been given the proper treatment. In order to appreciate the argument of the learned Counsel for the accused/appellant, we have perused the evidence available on the record. Sudru (P.W. 2) has stated that the accused pierced the arrow in the stomach of deceased Bannuram. He saw the accused inflicting the injury by arrow in the stomach of the deceased. The accused after inflicting injury by the arrow in the stomach of the deceased took out the arrow from the stomach of the deceased and fled from the scene. There was a land dispute between the deceased and the accused. Mase Bai (P.W. 3), who is the wife of deceased Bannuram has also supported the statement of Sudru (P.W. 2), and said that the accused pierced the arrow in the stomach of her husband, at that time : she was present in her house. She herself saw the accused inflicting injury and at that time Chaitu, Mandru, Katia, Dashru and Sudru were also present, thereafter her husband and Dashru reported the matter to the police, thereafter her husband was taken to the Maharani Hospital, Jagdalpur, where he died after 8 days. Katiamram (P.W. 4) has also supported the statement of all these witnesses and said that at about 5.00 p.m. he was at the residence. Accused Sai had pierced the arrow in the stomach of Bannuram, the intestine also came out on account of that injury. Bannuram told

him that accused Sai had pierced the arrow. There was land dispute between the deceased and the accused. The police enquired from accused Sai in his presence and the accused gave information that the arrow was lying in his house and the arrow was recovered from his house by the police, through Ex. P-2, Dashru (P.W. 5) has also said that the accused pierced the arrow in the stomach of Bannuram and after piercing the arrow accused fled from the site. In the cross-examination of all these witnesses, nothing has come on account of which the statement of these witnesses become doubtful. Therefore, in view of the above evidence, it stands proved that accused Sai inflicted injury by piercing the arrow in the stomach of deceased Bannuram.

7. It is clear from the statement of Dr. Vijay Thakur (P.W. 1), that the death of the deceased was caused on account of haemorrhage, shock and septicemia. He has said that at the time of the post-mortem examination, he found the pus formation in the intestine of the deceased. In his cross-examination, the doctor has said that it is true that if the deceased was taken to the hospital immediately, his life could have been saved. The septicemia can occur if the wound is not cleaned. Therefore, in view of the statement of the doctor, the deceased could have been saved if had he been given the proper treatment. The deceased died after 8 days of the injury which was inflicted upon the stomach. Moreover, as per the eye-witnesses, there was some dispute of land between the deceased and the appellant and the accused all of a sudden came and he after inflicting the injury by arrow in the stomach of the deceased immediately ran away from the scene of occurrence, as such there is nothing on record which shows that the accused inflicted injury after a concerted plan to murder the deceased. From the circumstances, it appears that on account of the land dispute, the accused out of frustration inflicted the injury by the arrow and the deceased died only after 8 days of the incident. In view of the above circumstances, it can not be inferred by any stretch of imagination that the accused had inflicted injury with the intention to cause the death of the deceased or with the intention to cause murder he caused such injury which is likely to cause the death in all probability. However, from the evidence available on the record, it can safely be inferred that while causing injury by the arrow in the stomach of the deceased, the accused had a knowledge that this injury was likely to cause the death, as such the offence against the accused/

appellant under Section 302 of IPC is not made out and the offence under Section 304(II) is made out.

8. Therefore, the conviction under Section 302 of IPC, in the facts and circumstances of the case and in view of the above discussion can not be sustained and to this extent the judgment of the learned Trial Court is not correct.

9. In the result, the appeal is partly allowed and the conviction under Section 302 of IPC is set aside and the same is converted into offence punishable under Section 304, (II) IPC and the sentence of the accused/appellant is reduced from imprisonment for life to R.I. for 5 years and the fine amount of Rs. 5,000/- is maintained.

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