

Soma Roy Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Nov-05-2015

Appellant : Soma Roy

Respondent : State of Jharkhand

Judgement :

1 Cr. (Jail) Appeal (D.B.) No. 162 of 2005 th [Against the Judgment of Conviction dated 25 th November, 2004 and Order of Sentence dated 27 November, 2004 passed by the Addl. District & Sessions Judge, Fast Track Court I at Chaibasa in Sessions Trial Case No.130 of 2000] ----- Soma Soy son of Kondro Soy, resident of Wandi Jahir, Tola Ramda, P.S. Toklo, District Singhbhum West, Jharkhand. Appellant -versus- The State of Jharkhand Respondent ---- PRESENT HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HONBLE MR. JUSTICE P.P. BHATT ---- For the Appellant: Mrs. Vandanda Singh, A.C. For the Respondent : Mr. Pankaj Kumar, A.P.P. ---- Dated 5th November, 2015 Per Virender Singh,C.J.

Appellant Soma Soy (hereinafter to be referred to as accused), after being convicted for the offence of Section 302 Indian Penal Code and Section 323 Indian Penal Code, vide impugned judgment of Additional District & Sessions Judge, Fast Track Court I (Chaibasa) dated 25th November, 2004, has preferred the instant appeal through jail in which one Mrs. Pushpa Singh was appointed as Amicus Curiae to assist the Court. When the instant matter was taken up for final consideration, the Court was informed that Mrs. Pushpa Singh, Advocate had stopped coming to the Court, as such, Mrs. Vandana Singh, Advocate was

appointed as Amicus Curiae to assist the Court on behalf of accused. She sought some time to prepare the brief and this further delayed the final consideration of the instant appeal. The accused is stated to be in custody for the last 15 years.

2. The deceased in this case is one Bijay Soy son of Pradhan Soy. The allegation against the accused is that on 18th December, 1999, he committed the murder of Bijay Soy by severing his head with an axe behind his house and took away the severed head of Bijay Soy inside his room located at the 2 backside of his house and kept in front of Goddess Durga. Pradhan Soy along with his brother Somnath Soy (witness) entered the room of the accused, upon which he obstructed them to enter his room and assaulted Somnath Soy also. However, they could succeed in catching the accused and snatched the blood stained axe from his hand. Thereafter, Pradhan Soy, the informant and his brother dragged the accused outside from his room. It is on these allegations, the first information report came to be lodged with the concerned police station. However, no motive has been projected for this murder. The police swung into action, prepared the inquest report of headless body of Bijay Soy and his severed head, blood stained axe was also seized, which was produced by the informant, autopsy of the dead body was conducted by P.W.8 Dr. Bijay Kumar Singh. P.W.4 Somnath Soy, the brother of the informant was also medically examined by the P.W.7 Dr. Pamela Kujur. After completion of the investigation, challan was filed against the accused for facing the trial for the offences under Sections 302/307 of the Indian Penal Code for which he faced the trial. He now stands convicted for the charge of Section 302 Indian Penal Code and Section 323 Indian Penal Code as the charge of Section 307 Indian Penal Code is diluted to Section 323 Indian Penal Code on account of medical evidence.

3. Prosecution, in support of its case, has examined P.W.1 Sumi Soy, P.W.2 Lal Singh Soy, P.W.3 Sadhu Charan Soy, P.W.4 Somnath Soy (injured witness), P.W.5 Pradhan Soy (informant and father of the deceased), P.W. 6 Pasupati Singh (investigating officer), P.W.7 Dr. Pamela Kujur (she medically examined the injured witness Somnath Soy) and P.W.8 Dr. Bijay Kumar Singh.

4. After the incriminating evidence was put up to the accused, he was afforded an opportunity to produce evidence in defence, but, he did not produce any witness in support of his defence. 3 5. Heard Mrs. Vandana Singh, Amicus Curiae and Mr. Pankaj Kumar, learned Additional Public Prosecutor. We have also gone through the medical evidence.

6. We do not feel the necessity of entering into much details of the prosecution case as we do not find any inherent weaknesses in the case of the prosecution, especially after rescanning the evidence of P.W.5 Pradhan Soy, the father of the deceased, and P.W.4 Somnath Soy, the injured witness. It would be relevant to advert to the evidence of P.W.4 Somnath Soy in brief. He deposed that at the time of occurrence he was in his house, when Choreya Soy came to him and told that accused had murdered Bijay Soy, then he along with P.W.5 Pradhan Soy went to the place of occurrence where they saw the accused in the room. He was having a blood stained axe in his hand. They also saw headless body of Bijay Soy lying behind the house of the accused and the accused had offered the severed head before Goddess Durga. He further deposed that he along with first informant tried to catch the accused, but accused gave a blow from his backside as a result thereof he sustained injury on his head. The injury has been found to be simple in nature by P.W.7 Dr. Pamela Kujur. He further deposed that on hearing of shouting, several persons had arrived there. Accused was caught hold and blood stained axe was snatched from him. He was then sent to Chakradharpur hospital, where he was examined.

7. We have seen the cross examination of this witness, we find no weakness in the same, which would make him untrustworthy witness. He is injured witness of the prosecution and at the same time a very natural witness, who along with his brother went to the house of the accused. The prosecution case unfolded by him is getting full support from the evidence of P.W.5 Pradhan Soy, the father of the deceased and the first informant. The medical evidence available on record also strengthens the case of the prosecution. We, 4 therefore, do not feel the necessity of entering into more details of the prosecution case.

8. Mrs. Vandana Singh, in order to create some doubt in the case of the prosecution, submitted that the case of the prosecution is that a villager came shouting to P.W.1 Sumi Soy, wife of P.W.5 Pradhan Soy, the first informant that her son has been killed by the accused, but the said witness has not been examined by the prosecution during the trial. In our view, this argument, perhaps, has no substance as the very case set up by the prosecution itself is that the first informant and his brother P.W.4 Somnath Soy, after receiving the information that the accused had assaulted Bijay Soy, reached the house of the accused and then noticed the dead body lying in the house of the accused and the accused also present with blood stained axe. We, therefore, reject the submission of Mrs. Vandana Singh on that count at least.

9. We are conscious of the fact that the accused had claimed that at the time of occurrence he was insane, but that plea will not be available to him. In course of cross examination, it was put to P.W.1 Sumi Soy that the accused was insane at the time of occurrence by way of a suggestion, but, she refused. P.W.7 Dr. Pamela Kujur had examined the accused on 18.12.1999, which is after few hours of the occurrence and prepared the injury report also, but, she did not mention that the accused was insane or he was even behaving in an abnormal manner. No question was put to her when she stepped into witness box and she has also not deposed anything in her evidence which could support the insanity of the accused. A feeble attempt was also made in this regard from the defence side when P.W.4 Somnath Soy had stepped into witness box. It is worth mentioning here that defence did not produce any documentary evidence in support of the claim of the accused that he was insane at the time of the occurrence. We are conscious of the fact that in the ordersheet of the case available from trial court records, it appears that during 5 detention period of the accused in jail he was sent to Mental Hospital at two stages, but, this does not suggest that he was insane at the time of occurrence or we cannot draw an inference in his favour that under the influence of insanity, he has done the alleged occurrence so as to extend benefit of insanity to him under Section 84 of the Indian Penal Code.

10. After rescanning the entire prosecution evidence in its right perspective, we are of the considered view that the prosecution has been able to prove the charge

of Section 302 of the Indian Penal Code against the accused to the hilt. So far as charge of Section 307 Indian Penal Code is concerned and now diluted to Section 323 Indian Penal Code, may be turns out to be irrelevant, after upholding the conviction of the accused under Section 302 Indian Penal Code, but for our satisfaction, we have seen the medical evidence and find that he has been rightly convicted for Section 323 Indian Penal Code as the injury on the person of P.W.4 Somnath Soy (injured witness) turned out to be simple in nature caused by blunt weapon.

11. The net result is that the appeal on hand merits dismissal in toto. Ordered accordingly. Since the instant appeal has been filed through Jail, Registry is directed to inform the appellant of the outcome of the appeal through the Jail Superintendent concerned.

12. A sum of Rs.3,500/- (Rupees Three Thousand Five Hundred) shall be paid to Mrs. Vandana Singh, Advocate (Amicus Curiae) by the State for rendering assistance to the Court on behalf of the accused. (Virender Singh, C.J.) (P.P. Bhatt, J.) High Court of Jharkhand, Ranchi Dated, the 5th November, 2015 LAK NAFR

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