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Court : Jharkhand

Decided On : Apr-20-2010

Judge : Amareshwar Sahay, J.

Appellant : Brindaban Munda @ Sarjava

Respondent : The State of Jharkhand

Disposition : Appeal dismissed

Judgement :

Amareshwar Sahay, J.

1. This appeal has been filed by the appellant from the jail against the the judgment of conviction and order of sentence dated 13th of July 2004 passed by the 1st Additional Sessions Judge, Seraikella -Kharsawan in S.T. No. 195 of 2000, whereby and whereunder the trial Court convicted the appellant for committing offence under Section 304(II) of the Indian Penal Code and sentenced him to undergo R.I. for a period of 7 years and to pay a fine of Rs. 5000/- and in default of payment of fine to undergo R.I. for three months.

2. The prosecution case, in short, is that on 11.2.2000, the informant P.W.1 Panchu Munda had gone to the nearby river for taking bath. At about 9.15 a.m. his cousin sister, P.W.3, Parvati Kumari came to the river and informed him that his mother, Gurubari Mundain had been assaulted by lathi by the appellant and her

dead body was lying in the courtyard of the house. On this information the informant rushed to his house and then found his mother lying dead in pool of blood in the Angan with head injuries with brain tissues bulging out. He reported the matter to the police. Accordingly, first information report was registered under Section 302 of the Indian Penal Code. The police submitted charge sheet after completion of investigation under Section 302 of the Indian Penal Code and thereafter the appellant was put on trial.

3. In order to establish the charge 8 witnesses were examined on behalf of the prosecution.

4. The trial Court on consideration of the evidence of the prosecution as well as materials on record convicted the appellant under Section 304 II of the Indian Penal Code and not under Section 302 of the Indian Penal Code and sentenced the appellant to the extent indicated above.

5. Ms. Rashmi Kumari (A.C.), learned Counsel for the appellant submitted that the prosecution has miserably failed to prove its case beyond all reasonable doubt, but even then the trial Court has wrongly convicted and sentenced the appellant for the charge under Section 304(II) of the Indian Penal Code.

6. I have gone through the evidence of then prosecution witnesses and find from the postmortem report that two lacerated wounds over left temporal area of skull 3 x 2' and 2 x 1/2' were found by the Doctor. From the evidence of Doctor it appears that more than one lathi blows were given on the head of the deceased due to which she died. From the evidence of eye witness, P.W.3, who has given vivid description of the occurrence and has clearly stated that it was the appellant who gave lathi blow on the head of the deceased lady due to which she fell down dead, it clearly established that the appellant caused the death of the deceased by assaulting her with lathi on her head. P.W.2 has also fully corroborated the evidence of the P.W.3.

7. In view of the clear evidence of P.W.3 and P.W.8, Investigating Officer, I find that the learned trial Court has rightly held the appellant guilty under Section 304(II) of the Indian Penal Code and accordingly convicted and sentenced him

thereunder.

8. I do not find any merit in this appeal. Consequently, this appeal is dismissed and the judgment and order of conviction and sentence passed against the appellant is hereby confirmed.

9. From the records it appears that the appellant is all along in custody since 13.2.2000 i.e. more than 10 years. Therefore, it appears that the appellant has already served out the sentence awarded to him by the trial Court.

10. In the result, while affirming the judgment of conviction and order of sentence passed by the trial Court, this appeal is dismissed. In view of the fact that the appellant has already served out the sentence and as such, he must have been released by now but in case, if he is still in custody, is directed to be released forthwith if not wanted in any other case.

11. In the result, this appeal is dismissed.

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