

Sole Hembrom. Vs. the State of Jharkhand.

Sole Hembrom. Vs. the State of Jharkhand.

SooperKanoon Citation : sooperkanoon.com/911513

Court : Jharkhand Ranchi

Decided On : Nov-26-2010

Judge : Mr. Justice Sushil Harkauli; Mr. Justice D. N. Patel, J.

Acts : Indian Penal Code (IPC) - Sections 302, 304.

Appeal No. : Criminal (Jail) Appeal No. 186 of 2006.

Appellant : Sole Hembrom.

Respondent : The State of Jharkhand.

Advocate for Pet/Ap. : Mr. A.S.Dayal, Adv.

Judgement :

1. The present appeal has been preferred against the judgment and order of conviction and sentence dated 30th November, 2005 and 1st December, 2005 respectively, passed by learned 3rd Additional District & Sessions Judge, Dumka (F.T.C.) in Sessions Case No. 150 of 2003, whereby, the appellant, namely, Sole Hembrom, has been convicted for the offence under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

Factual matrix:

1. It is the case of the prosecution that a First Information Report was lodged at Ramgarh Police Station within the district of Dumka on 17th December, 2002 at 12 noon by Rahora Hembrom (informant-P.W.7) on 16th December, 2002 he was in

his house, as he was having some pain in his hydrosel, and his mother, namely, Muni Besra (deceased) was sleeping in the adjacent room. On that day at 13 hours, his cousin brother, namely, Sole Hembrom (appellant), came there having axe in his hand and started alleging that the mother of the informant viz. Muni Besera is a "witch" and she has killed his son and thereafter, gave axe blow on the head of his mother. The informant further stated that on the day of incident, his daughter, namely, Bale Hembrum (P.W. 1) was also there at the place of incident. It is further stated by the informant that having killed his mother, Sole Hembrom (appellant) fled away after throwing the axe in the courtyard. The informant is the son of the deceased.

2. Thereafter, investigation was carried out, charge sheet was submitted and after commitment, the case was numbered as Sessions Trial No. 150 of 2003 and on the basis of the evidences of the prosecution witnesses as well as on the basis of the materials seized like blood stained axe with a wooden handle, recovered from the courtyard, and on the basis of other documentary evidences, the appellant-accused was convicted for the offence punishable under Section 302 of the Indian Penal Code and was sentenced to undergo imprisonment for life and against the judgment and order of conviction and sentence, the present appeal has been preferred.

Reasons:

1. We have carefully gone through the records and proceedings of the trial court and having perused the evidences on record of the prosecution witnesses, it appears that P.W. 1, Bale Hembrum, is the eye witness of the incident, who has clearly narrated in her deposition that on the date of occurrence, she was ill and therefore she was in the house and her grand-mother (deceased) was also sleeping in the house. Accused came to her house having axe in his hand and assaulted her grand-mother with the axe on her head near eye. It has also been stated by P.W. 1 that her grand-mother, namely, Muni Besera, expired on the spot. The accused, thereafter, threw the axe and said now he will go to jail. It has also been stated by P.W. 1 that two days before the incident, son of the accused had expired.

Looking to her cross-examination, it appears that nothing is coming out in favour of the appellant-accused. Though P.W. 1 is a rustic witness, she has given clear deposition before the court about the whole incident, without any exaggeration. Her presence in the house is natural one. Thus, P.W. 1 is a trustworthy and reliable witness.

2. Looking to the deposition of P.W. 7, who is the son of the deceased and is also informant in the present case, it appears that this witness has also stated that two days before the incident, son of the accused had expired and the accused was calling the mother of the informant a "witch". Threat was also given by the accused to the mother of the informant. P.W. 7 has stated on oath that on 16th December, 2002, when he came at home, there was pain in his hydrosel. His mother was sleeping in the house. His cousin brother, who is accused, namely, Sole Hembrom, assaulted mother of the informant (Muni Besera) by axe on the left side of her head and she expired on the spot. Accused, thereafter, threw the axe in the courtyard and ran away. Thus, the motive is also alleged by this witness for committing murder of the deceased. The presence of this witness at his own house is a natural one.

Thus, it appears that neither there is any exaggeration nor there is any omission or contradiction, looking to the deposition of P.W. 9, the Investigating Officer. This witness (P.W. 7) has given clear deposition and, thus, is a reliable and trustworthy witness. He is also informant in the present case and has supported the deposition of P.W. 1.

3. Looking further to the depositions of other prosecution witnesses, especially P.W. 8 (Dr. Anant Kr. Jha), who was Medical Officer at Sadar Hospital, Dumka, it appears that he has carried out post-mortem examination of the deceased on 18th December, 2002 and has pointed out the following ante-mortem injuries: (i) There were incised wounds over left side of forehead from left eyebrow measuring 3 1/2" X 2" X deep into cranial cavity. On further dissection brain matters found lacerated and cranial cavity was found full of blood. In the opinion of the doctor death was due to head injury aforesaid which was caused by hard and heavy instrument. Time elapsed since death was within 72 hrs.

4. Thus, looking to the deposition of P.W. 8 and also looking to the post-mortem note at Ext. 3, it appears that there is enough corroboration to the depositions of P.W. 1 and P.W. 7. Looking to the nature of injury, it appears that it was sufficient to cause death of the deceased in ordinary course of nature. The injury has been caused by hard and heavy instrument, as stated by the doctor (P.W. 8).

5. Looking to the deposition of P.W. 9, who is Investigating Officer, it appears that the dead body was found from the house of the informant. Similarly, the blood stained axe with a wooden handle was also recovered from the courtyard and blood stained earth was also recovered from the southern portion of the house of the informant at Village- Barmasiya, Police Station- Ramgarh, District- Dumka. Seizure list was prepared in presence of the Rasik Soren (P.W. 3), who has also proved the seizure list.

6. Looking to the depositions of other prosecution witnesses also, it appears that there is enough corroboration to the depositions of P.W. 1 and P.W. 7.

7. Thus, looking to the overall evidences on record, especially the depositions of P.W. 1 and P.W. 7, it appears that the prosecution has proved the offence beyond reasonable doubts, which has been committed by the appellant-accused. Thus, no error has been committed by the trial court in appreciating the evidences on record and in punishing the appellant-accused for committing murder of the deceased Muni Besera.

8. The depositions of P.W. 1 and P.W. 7 are, thus, getting enough corroboration from the depositions of P.W. 8 and P.W. 9. Medical Evidence is also supporting the case of the prosecution. The place of occurrence has also been proved by the prosecution and there is also enough corroboration by the proof of seizure list with the help of P.W. 9 and P.W. Blood stained axe was recovered from the courtyard of the house of the informant. Thus, it is the appellant who has committed the murder of the deceased Muni Besera by causing head injury by means of axe. The motive has also been pointed out that two days before the occurrence, son of the appellant-accused had expired and, therefore, the appellant-accused was calling the deceased a witch.

9. It also appears from the evidence on record that the appellant-accused had come at the house of the informant and that too with an axe, only with a view to commit murder of the deceased. Thus, there is enough mens rea on the part of the appellant-accused and the act committed by the appellant-accused is well-thought and well-planned. Thus, it cannot be said that there was no intention on the part of the appellant-accused to commit murder and hence we are also not inclined to convert the offence under Section 302 of the Indian Penal Code into an offence, punishable under Section 304 Part I or Part II of the Indian Penal Code.

10. In view of the aforesaid facts, we are of the view that no error has been committed by the learned trial court in convicting the appellant and sentencing him to undergo imprisonment for life. Thus, there is no substance in this Criminal Appeal, which is, accordingly, dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com