

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction, dated 07.09.2010, and order of sentence, dated 08.09.2010, passed by Sri Kailash Kumar Mahtha, learned Additional Sessions Judge, F.T.C.-IV, Jamui in Sessions Trial No. 277 of 2009, arising out of Jamui P.S. Case No. 16 of 2009)

Criminal Appeal (DB) No.1194 of 2010

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Indu Devi, Wife of Laxman Chauhan, resident of Village- Kakan (Beldaria), P.S.-
Jamui, District- Jamui. Appellant

Versus

The State of Bihar Respondent/s

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Appearance :

For the Appellant/s : Mr. Neeraj Kumar @ Sanidh, Amicus Curiae

For the Respondent/s : Mr. Ashwani Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 21-04-2017

This appeal has been preferred against the judgment of conviction, dated 07.09.2010, and order of sentence, dated 08.09.2010, passed by Sri Kailash Kumar Mahtha, learned Additional Sessions Judge, F.T.C.-IV, Jamui in Sessions Trial No. 277 of 2009, arising out of Jamui P.S. Case No. 16 of 2009, by which the sole appellant, namely, Indu Devi, has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo R.I. for life.

2. The prosecution case, in short, as made out in the fardbeyan of Mangal Chauhan, resident of Beldaria (Kakan), P.S. and District- Jamui recorded by S.I. Bal Krishna Rai of Jamui police station on 19.01.2009, at 12.10 P.M., is as follows:



(i) The informant is the husband of the deceased. He works in a private Company at Calcutta. On 18.01.2009, his son Laxman Chauhan informed on telephone that Indu Devi has killed his wife Sumitra Devi with the help of her brothers, namely, Rajesh Chauhan, Ramtahal Chauhan, Kara Chauhan and Batohi Chauhan, all of village Matihani, P.S. Nardiganj, District Nawada. On receiving the news, he came to his house and found his wife Sumitra Devi dead. Her ear part was bleeding and there was swelling on her right eye. The informant divulged that his daughter-in-law Indu Devi was putting pressure on his wife Sumitra Devi (mother-in-law of Indu Devi) to transfer the land in her favour to which his wife did not accede, leading to altercation between them, and in course of which Indu Devi picked iron rod and struck a blow on Sumitra Devi, which hit her head.

(ii) On the basis of the Fardbeyan of the informant, Jamui P.S. Case No. 16 of 2009, dated 19.01.2009, was registered for the offences under Sections 302, 380/34 of the Indian Penal Code.

3. The police after investigation submitted charge-sheet under Sections 302 and 380/34 of the Indian Penal Code against Indu Devi only, whereas her brothers were not sent up for trial.

4. The learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions for trial. Charges were framed under Sections 302 and 380/34 of the Indian Penal Code



to which the appellant pleaded not guilty and claimed to be tried.

5. The defence of the appellant as appearing from the mode of cross-examination and statement under Section 313 of Cr.P.C., is one of complete denial of the occurrence and that the deceased was killed by some extremists.

6. The learned trial court relying upon the evidence of witness, namely, Sunil Chauhan (P.W.2), Shatrughan Chauhan (P.W.3) and Parittam Chauhan (P.W.5) convicted the appellant under Section 302 of the Indian Penal Code. Being aggrieved, the appellant has filed this appeal.

7. The prosecution, in order to substantiate its case, examined as many as 7 witnesses. P.W. 1 Laxman Chauhan is the husband of the appellant and the son of the deceased, P.W.2 Sunil Chauhan is the neighbour of the deceased, P.W. 3 Shatrughan Chauhan is the another son of the deceased. P.W.4 Dr. Amit Ranjan is doctor, who conducted post-mortem on the dead body of the deceased. P.W.5 Parittam Chauhan is also an eye witness. P.W. 6 Mangal Chauhan is the informant of the case. P.W. 7 Bal Krishna Das is the investigating officer of the case.

8. It would appear from the prosecution case that the informant Mangal Chauhan is not an eye witness to the occurrence and he got the information about the death of his wife from his son Laxman Chauhan (P.W.1), who informed him that Indu Devi



(appellant) has killed Sumitra Devi by hurling iron rod blow on her head.

9. P.W.1 Laxman Chauhan has not supported the prosecution case and was declared hostile.

10. P.W.2 Sunil Chauhan is the neighbour of the deceased. He stated that in the afternoon of 18.01.2009 upon halla, he came to the house of the deceased. He saw that the appellant abusing her mother-in-law Sumitra Devi. Soon thereafter, an altercation took place and in course of altercation Indu Devi assaulted her mother-in-law with iron rod.

11. P.W. 3 Satrugan Chauhan is the son of the deceased. He stated that at the relevant time, he was present in his house. He found Indu Devi abusing his mother Sumitra Devi, leading to altercation. Indu Devi picked a Khanti and assaulted her mother, which wounded her head.

12. P.W.5 Parittam Chauhan is a neighbour and has also claimed to be an eye witness.

13. The defence has not been able to extract any material contradiction to render their evidence unworthy of reliance.

14. We find that these three witnesses stand fully corroborated by the post-mortem report (Ext.-2), prepared by Dr. Amit Ranjan (P.W.4). The doctor in his evidence stated that there was wound in the back portion of the head 2"x 1" x skin deep and one



more wound below the right eye 1½”x 1” x skin deep. He stated that the injuries on the head was the cause of the death

15. In the light of the consistent evidence of P.W.2, P.W.3 and P.W.5 with regard to time of occurrence, place of occurrence and manner of occurrence coupled with the post-mortem report, we have no hesitation in holding that the appellant committed death of the deceased Sumitra Devi.

16. Mr. Neeraj Kumar @ Sanidh, learned Amicus Curiae, submits that even assuming the prosecution case to be true, the case of the appellant would not come within the purview of Section 302 of the Indian Penal Code, but would come under Section 304 Part-I of the Indian Penal Code. He contended that the occurrence took place in the heat of the moment without any premeditation and the appellant hurled one Khanti blow, which accidentally hit the head of the deceased.

17. We would broadly agree with the submission of the learned counsel appearing for the appellant, as none of the witnesses stated that the appellant repeated the blow. It rather appears from the evidence of the witnesses that the appellant was pressing her mother-in-law (deceased) to transfer landed property in her name and for that matter there was quarrel and in the heat of the moment, the appellant picked up a Khanti and hurled one blow at Sumitra Devi, which accidentally hit her head. There was no repetition of the blow, as such



we are of the considered view that the case of the appellant would fall under Section 304 Part-I of the Indian Penal Code and we accordingly alter the conviction from Section 302 of the Indian Penal Code to Section 304 Part-I of the Indian Penal Code. Now, that we have held the appellant guilty for the offence under Section 304 Part-I of the Indian Penal Code, we also alter the sentence from life imprisonment to ten years. The appellant is already in custody, she is directed to remain in custody to serve the remaining period of sentence.

18. The appeal is dismissed with the aforesaid modification in conviction and sentence.

19. The Patna High Court Legal Services Authority is directed to pay the fixed remuneration to Mr. Neeraj Kumar @ Sanidh, who is appearing in this appeal, as Amicus Curiae.

20. Let the 1st and last page of the judgment be handed over to Mr. Neeraj Kumar @ Sanidh, who appears as Amicus Curiae in this appeal, for obtaining his prescribed fees.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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