

Ramchandra Ohdar

Vs.

State of Bihar

Criminal Appeal No. 554 of 1988

(G.T. Nanavati, N. Santosh Hegde JJ)

04.02.1999

JUDGMENT

G.T. Nanavati J.

1. The appellant has been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. He was tried along with two others for commission of that offence. The Trial Court convicted all the three persons but the High Court acquitted the other two. The grievance of the learned counsel for the appellant is that the High Court having acquitted the other two accused, conviction of the appellant under Section 302 read with Section 34 Indian Penal Code is not legal and proper.

2. On the basis of the evidence of Bailu Devi - P.W. 1, the Trial Court held that there was a dispute between her husband deceased Ram Prasad and the appellant Ram Chandra as regards partition of their joint property. Therefore, while she was returning with her husband on 8.6.1992 at 7.00 p.m. from another village to their own village the appellant, Fago Sao and Aghnu Sao attacked her husband and killed him. The Trial Court also held that the evidence of P.W. 1 that the three accused had assaulted her husband was corroborated by the evidence of P.W. 8 Pandu Munda P.W. 3 - Ganesh Ohdar and P.W. 5 - Prabhu Sahay. P.Ws. 3 and 5 had stated that after the incident she had informed them that the three accused had killed her husband.

3. The High Court on reappraisal of the evidence held that Pandu Munda - P.W. 8 cannot be believed as he had not given names of the three accused in his police statement. As regards the evidence of P.W. 1, the High Court held that as she had not given names of all the three accused to Pandu Munda even though accused Aghnu Sao and Fago Sao were known to her, it was doubtful if the other two accused were really involved in commission of the offence. Considering her evidence on probabilities, the High court held that it was not likely that she remained at the place of the incidence after her husband was attacked by Ram Chandra. According to the finding recorded by the High Court in all probability she fled away from that place as soon as Ram Chandra had assaulted her husband. The High Court has thus not relied upon her evidence as regards presence and involvement of the other two accused. Though the learned counsel for the respondent has challenged the appreciation of her evidence by the High Court we are not inclined to take a different view in view of the infirmities and omissions pointed out by the High Court. Thus what stands proved in this case is that Ram Chandra, that is the appellant, attacked her husband and gave one blow. The prosecution has failed to prove that the other two accused were also with the appellant and had participated in commission of the offence. In absence of any reliable evidence whether any one else was with the appellant and under what circumstances and by whom further blows were given to the deceased it cannot be said that the appellant had killed the deceased in furtherance of

common intention of himself and some others. Therefore, in view of the facts and circumstances of the case, it was not proper and legal to confirm the conviction of the appellant under Section 302 read with Section 34 IPC.

4. The appellant had given one blow with a sharp-edged weapon on the neck of the deceased. The medical evidence is silent about the nature of the injury caused by the appellant. But considering the nature of the weapon, the part of the body on which the blow was given and the size of injury it can be said that the injury caused had endangered his life. Therefore, the appellant can be convicted for the offence punishable under Section 326 IPC. We, therefore, allow this appeal, alter the conviction of the appellant from that under Section 302 read with Section 34 to Section 326 IPC. The order of sentence is modified, the sentence of 'life' imprisonment awarded to the appellant is set aside and instead the appellant is ordered to suffer imprisonment for five years. The appellant is ordered to surrender to custody for serving out the remaining part of his sentence.