

SUPREME COURT OF INDIA

Hansaram

Vs.

State of Chhattisgarh

Crl.A.No.341 of 2018

(L.Nageswara Rao and Mohan M.Shantanagoudar,JJ.,)

04.07.2018

JUDGMENT

L.Nageswara Rao,J.,

1. Dev Kumar Sahu (PW-6) lodged a First Information Report at 8.10 a.m. on 11th November, 2005. As per the FIR, the Appellant was running a kirana shop in Basantpur village. The informant and his brothers were also residing in the same village. There was a scuffle between the Appellant and Krishna Kumar Sahu (PW-3) on 10th November, 2005 regarding non-payment of an amount of Rs.130 by Krishna Kumar Sahu to the Appellant towards purchase of some material from the shop. The Appellant and his son Virendra Sahu assaulted Krishna Kumar Sahu (PW-3) later in the evening. On the next day i.e. 11th November, 2005, PW-6 and his brother Ram Kumar Sahu (Deceased) went towards the Nala side for answering the call of nature. The Appellant hit Ram Kumar Sahu on his head with a tangi near the field of Komal Singh. The sharp side of the tangi pierced the head of Ram Kumar Sahu who fell down. PW-6 threw a stick that hit the hand of the Appellant when he started running away. The tangi fell down from the hand of the Appellant. Ram Kumar Sahu was admitted in the District hospital. The tangi was produced at the police station. PW-6 stated that Preetam Lal Sahu (PW-8) also witnessed the incident. Ram Kumar Sahu was referred to CIMS, Bilaspur where he was admitted. However he died in the hospital during the course of treatment. A report for an offence under Section 307 IPC was initially registered in the Police Station- Janjgir and after the death of Ram Kumar Sahu, the offence was converted to Section 302 IPC. The bloodstained soil was seized and a spot map was prepared. The clothes of the deceased were also seized. The tangi was seized at the instance of Dev Kumar Sahu (PW-6). A spot map was prepared by the Patwari and the seized property was sent for chemical examination. The Accused was charged under Section 302 IPC for the offence of murder.

2. The trial Court convicted the Appellant under Section 302 IPC and sentenced him to imprisonment for life and also to pay a fine of Rs.5000/- . The High Court dismissed the appeal filed by the Appellant against the conviction and sentence awarded by the trial Court. Aggrieved, the above Appeal is filed before this Court.

3. The Appellant's case in defense is that on 11th November, 2005 at 6.30 a.m. he went to the Nala to answer call of nature with gudakhu and toothbrush. Ram Kumar Sahu (Deceased), Krishna Kumar Sahu (PW-3), Dev Kumar Sahu (PW-6) and Shail Kumar (PW-9) were standing near the fields of Komal Singh. PW-3 was holding a tangi and others were armed with lathis. The Appellant was afraid seeing them armed and pleaded that he should not be attacked. However, they started assaulting him from the back side. Krishna Kumar Sahu (PW-3) assaulted the Appellant with a tangi on his head. The Appellant tried to protect himself by raising his hands but the tangi hit his hand and head. In the scuffle, the tangi came to his hands and when he realized that he was going to be killed, he swung the tangi in his defense which hit the Ram Kumar Sahu(deceased) on his head. Thereafter, the tangi fell down from his hand and he became unconscious. He became conscious at 7.30 a.m. and he sent his son to report the matter in the police station. He was admitted in a local hospital and later taken to CMIS, Bilaspur for treatment. In the course of the treatment, he spent eight days in the hospital. He was admitted in the hospital for treatment and discharged after eight days.

4. Dr. Hulesh Mandley (PW-19), who conducted the post-mortem examination at 3.35 p.m. on 11th November, 2005, deposed that there was a lacerated wound on the centre part of the front head side which was 6.2 cms. in length and 1 cm. in width. According to him, the injury was caused by a sharp-edged weapon. There is sufficient evidence on record to show that there was a fight between the Deceased and his brothers on one side and the Accused on the other. The oral evidence which is in conformity with the medical evidence would show that Ram Kumar Sahu died due to the injury caused on his head. The Appellant who had examined himself as a witness also stated that he swung the tangi in self-defense when he was being attacked. There is no doubt in our mind that the Accused is responsible for the death of Ram Kumar Sahu.

5. The case of the Appellant is that he wielded the tangi in self-defense. The tangi came into his hand when he was trying to protect himself from being hit by Krishna Kumar Sahu. There is no dispute that the Appellant is also injured on the head during the incident. He was in the hospital for a period of eight days for treatment. Dr. O.P. Shrivastava (PW-13) examined the Appellant on 11th November, 2005 and found an incised wound about 2" long in the mid part of the head. He also found contusions at the bottom of the left thumb (about 1" x 2"), on the upper part of pelvic region (about 6") and below left the knee (about 1.5" x 0.5"). He opined that the incised injury could have been caused by the said tangi and the other contusions could have been caused by the seized danda. However, the prosecution failed to explain the injuries caused to the Appellant.

6. After considering the material on record, we are of the considered view that the Appellant is not liable for conviction under Section 302 IPC. There is no evidence to show that the murder of Ram Kumar Sahu was a premeditated one. We are convinced that the Appellant did not have any intention to kill Ram Kumar Sahu. However, Appellant swung the tangi which hit Ram Kumar Sahu on his head and due to the said injury Ram Kumar Sahu had died.

7. In conclusion, the Appellant's conviction under Section 302 IPC is set aside. The Appellant is, however, convicted under Section 304 (Part II) IPC and sentenced to undergo imprisonment for a period of seven years. In case, the Appellant has completed the sentence of seven years, he may be released forthwith.

8. The appeal is, accordingly, disposed of.