

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (S.J.) No.16 of 2022

[Against the judgment of conviction dated 08.09.2021 and the order of sentence dated 09.09.2021 passed by the learned Additional Sessions Judge-II, Ghatshila, East Singhbhum in Sessions Trial No.12 of 2020]

Kishun Tudu @ Kishun Kr. Tudu, aged about 30 years, son of Late Meghrai Tudu, resident of Panchanangora, P.S.-Gunabanda, District – East Singhbhum.

.... **Appellant(s)**

Versus

The State of Jharkhand

.... **Respondent(s)**

PRESENT

HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant(s)

: Mr. Pran Pranay, Adv.

For the State

: Mrs. Vandana Bharti, A.P.P.

By Court:

1. Heard the learned counsel for the appellant(s) and learned counsel for the State.

2. The present appeal has been filed against the judgment of conviction dated 08.09.2021 and the order of sentence dated 09.09.2021 passed by the learned Additional Sessions Judge-II, Ghatshila, East Singhbhum in Sessions Trial No. 12 of 2020, arising out of Gurabanda P.S. Case No. 24 of 2019, corresponding to G.R. No. 239 of 2019, whereby the appellant has been held guilty and convicted for the offence under Section 307 of the IPC and has been sentenced to undergo rigorous imprisonment for seven years along with a fine of Rs. 5,000/-, and in default of payment of fine, to further undergo simple imprisonment for three months.

3. The prosecution case, in brief, is that on 15.09.2019 at about 02:00 o'clock, the informant had gone to take a bath in a pit near her *maika* (parental home). In the meantime, her husband, namely Kishun Tudu (the appellant), arrived there and started abusing her, alleging that she was having an illicit relationship. It is further alleged that he caught hold of her hair and forcibly submerged her head into the water. However, she managed

to free herself and attempted to flee, whereupon the appellant again caught hold of her and assaulted her on the neck by a sharp blade, causing a cut injury on the front side of the neck. Upon her raising alarm, her mother, cousin Ranjeet Soren, and Suklal Soren reached the place of occurrence and rescued her.

4. On the basis of the *fardbeyan*, the present criminal case has been put into motion by lodging an FIR being Gurabanda P.S. Case No.24 of 2019 dated 16.09.2019 under Section 307 IPC against the appellant.

5. The police after investigation had filed charge-sheet on 05.11.2019 and the trial court had framed charges against the appellant for the offence under Section 307 IPC on 16.01.2020, to which the accused pleaded not guilty and claimed to be tried.

6. To substantiate the allegation, altogether nine witnesses have been examined.

P.W.1 Saraswati Tudu, who is the informant as well as the victim of the case, she has supported the F.I.R. and stated that at the time of taking bath in the pit, no one else was present there. She further stated that at the time of taking bath in the pit, no one else was present there. According to her, at about 02:00 o'clock, her husband assaulted her with a blade. She has further deposed that Dulhan Hansda (P.W.3), Ramjit Soren (P.W.2) and Sukhlal Soren (P.W.6) are her relatives. She also stated that the place where she was taking bath is situated at a distance of about 50 meters from her house and about 30 meters from the houses of other villagers, and that no one came near the place of occurrence. She has proved her signature which has been marked as Exhibit-1. In her cross-examination, she deposed that she was married to the appellant about six years prior to the occurrence.

P.W.2 Ramjit Soren, who is the brother of the informant, has deposed that upon hearing hulla and quarrel raised by

his sister (the informant), he reached the place of occurrence. In his cross-examination, he has stated that the informant was married to the appellant and had been residing in her *sasural* for a long time. He further deposed that at the time of occurrence, he was at his house and, upon hearing the alarm raised by the informant, rushed to the spot. However, in paragraph 9 of his cross-examination, he has categorically stated that he had not witnessed the occurrence.

P.W.3 Dulhan Hasnda, who is the mother of the informant, has deposed in her examination-in-chief that the informant is her daughter and the appellant is her son-in-law, and that due to certain differences between them, the informant had been residing with her. In her cross-examination, this witness has further stated that she found her daughter floating on the water.

P.W.4 Bikram Hansda, who is an independent witness, has deposed in his examination-in-chief that on the date of occurrence, upon hearing the cries of a girl, he reached the place of occurrence and found blood oozing from the neck of the victim girl. He has further stated that subsequently he came to know that the appellant had assaulted the victim with a blade. However, in his cross-examination, he has categorically deposed that he had not witnessed the occurrence.

P.W.5 Dr. Shyam Soren, who was posted as a Medical Officer at P.H.C., Dumaria, has deposed in his examination-in-chief that he examined and treated the informant and found the following injuries on her person:

- (i) 8 cm × 1/2cm × skin deep,
- (ii) 4 cm × 1/2cm × skin deep,

(iii) 4 cm × 1/2cm × skin deep, and

(iv) 5 cm × 1/2cm × skin deep —

He further deposed that no oozing blood was present at the time of examination. The informant was conscious and well-oriented, and upon inquiry, she did not make any complaint relating to the respiratory system. According to this witness, the injuries were caused by a sharp object and were simple in nature. His injury report has been marked as Exhibit-3.

In his cross-examination, this witness has stated that he cannot say at what time, by whom, or in what manner the informant was brought before him for treatment. In paragraph 6 of his cross-examination, he has further deposed that he cannot say with certainty whether the informant herself had come for treatment or whether some other person had appeared. In paragraph 7, he has admitted that the age and colour of the injuries were not mentioned in the report. Further, in paragraph 8 of his deposition, he has stated that he cannot say what type of weapon was used to inflict such injuries.

P.W.6 Suklal Soren, who is the brother of the informant, has deposed that he has identified his signature on the memo of arrest as well as on the seizure list, which have been marked as Exhibits-4 and 4/1 respectively. In his cross-examination, this witness has further stated that upon hearing hulla, he reached the place of occurrence.

P.W.7 Santosh Soren, is a hearsay witness, and he has categorically deposed that he had not witnessed the incident.

P.W.8 Ram Charan Sah, who was posted as an Assistant Sub-Inspector at Gurabanda Police Station, has deposed

that he produced the seized blade before the Court, which has been marked as Material Exhibit-I.

P.W.9 Kangoi Murmu, who is the Investigating Officer in the present case, has proved the relevant documents, which have been marked as exhibits. In his cross-examination, this witness has deposed that he received information about the occurrence on the same day and proceeded to the place of occurrence. He has further stated that at that time, accused was not having blade in his hand rather, the same was recovered on the basis of the appellant's indication. This witness has also deposed that the water in the pit was not suitable for bathing.

7. After concluding the evidence of the prosecution, the statement of the accused was recorded under Section 313 Cr.P.C., wherein the allegations were denied.

8. By referring to the injury report, as discussed hereinabove, learned counsel for the appellant has argued that the essential ingredients of Section 307 IPC are not made out in the present case. It has been contended that, at best, the case would fall under Section 308 IPC, inasmuch as there was neither any intention to cause death nor were the injuries of such a nature as would be sufficient, in the ordinary course of nature, to cause death.

9. On the aforesaid basis, it has been submitted that the conviction of the appellant under Section 307 IPC is not sustainable in the eyes of law and the same is liable to be altered to one under Section 308 IPC which relates to culpable homicide not amounting to murder. It has further been submitted that the appellant has already remained in custody for about five years, which may also be taken into consideration while determining the question of sentence.

10. On the other hand, learned counsel for the State has opposed the prayer of the appellant and has submitted that since a vital part of the body was targeted, the ingredients of Section 307 IPC are fully attracted in the present case.

11. Having heard the learned counsel for the parties and upon perusal of the records, this Court finds that the injuries sustained by the victim are simple in nature and it is established that in the occurrence nobody had died. The nature of injuries, as well as the manner in which the assault is alleged to have been made, do not indicate the requisite intention to cause death. The medical evidence also does not support the prosecution case to the extent of attracting the offence under Section 307 IPC. In such circumstances, this Court is of the considered view that, at best, the case would fall under Section 308 IPC.

12. In view of above discussion, the conviction of the appellant under Section 307 IPC is hereby altered to one under Section 308 IPC (Now Section 110 of BNS, 2023). It is noted that the maximum punishment prescribed under Section 308 IPC is imprisonment for seven years where hurt is caused. The appellant has already remained in custody for more than five years.

13. Considering the aforesaid facts and circumstances, the sentencing part is modified to the period already undergone.

14. With the aforesaid modification of the sentencing part, the present criminal appeal stands allowed and disposed of. The appellant is on bail and as such he is discharged from the liability of his bail bonds.

15. Pending I.A., if any, also stands disposed of.

16. Let the Trial Court Records be sent to the court concerned forthwith, along with the copy of this judgment.

(Rajesh Kumar, J.)

The Jharkhand High Court at Ranchi

Dated: 16th March, 2026

Amar/NAFR

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