

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.839 OF 2020
(Arising out of Special Leave Petition (Crl.)Nos.966/2020)

PANCHANAN DUBEY & ORS.

Appellant(s)

VERSUS

STATE OF BIHAR (NOW JHARKHAND)

Respondent(s)

CRIMINAL APPEAL NO.840 OF 2020
(Arising out of Special Leave Petition (Crl.)Nos.10564/2019)

with

CRIMINAL APPEAL NO.841 OF 2020
(Arising out of Special Leave Petition (Crl.)Nos.4125/2020)

ORDER

Leave granted.

These appeals challenge the judgment and final order dated 23-04-2019 passed by the High Court of Jharkhand at Ranchi in CRADB No. 389/1993.

In Sessions case No.195 of 1992 on the file of the Third Additional District and Sessions Judge, District Deoghar, the appellants before this Court namely, (1) Panchanan Dubey, (2) Bala Nand Dubey, (3) Arun Kumar Dubey, (4) Nand

Kishor Tiwary, (5) Ramesh Chandra Dubey and (6) Narayan Tiwary were convicted under Section 302 read with 34 IPC and sentenced to suffer life imprisonment.

Their conviction and sentence having been affirmed by the High Court while dismissing common appeal filed by all six convicted accused, the instant appeals have been preferred in this Court.

According to the prosecution, on the night intervening 18/19th August, 1983, the appellants entered the house of one Nundhan Rawani and assaulted him with slaps and fists. The reporting was done by said Nundhan Rawani on 19.08.1983 at about 7.50 p.m. as under:

“I was sleeping in my house, suddenly some persons who were in anger, came and started beating me, lastly my family members raised hulla, then they fled away. Their names are being given below:

- (1) Panchanan Dubey S/o Prandhan Dubey,
- (2) Bala Nand Dubey S/o Prandhan Dubey,
- (3) Arun Kumar Dubey S/o Chambhit Dubey,
- (4) Nand Kishor Tiwary S/o Chambhit Chaudhary Tiwari
- (5) Ramesh Chandra Dubey S/o Ganga Dubey and
- (6) Narayan Tiwary S/o Thakur Tiwari”

According to the record, Nundhan Rawani was given medical attention by Dr. Ram Gopal Singh, (later examined as PW-4 in the trial) who deposed in the trial as under:

“1. On 19.08.1983, I was posted as C.A.S. at the State Dispensary Jasidih. On that day at 7 a.m. I examined Nundhan Rawani S/o Laxman Rawani of village Kolhahad Mouja Rajasar, P.S. Jasidih, Dist. Deoghar and found the following. No external injury on any part of the body. X-

Ray chest had been advised. Nature of Injury-Opinions reserved till x-ray report is made available.

2. This report is in my pen and signature. Marked Ext.2. I had examined the injured on police requisition.

XXX Cross -examination

3. My official residence is situated close to the out door of Jasidih State dispensary, the distance is hardly 50 yards. Whenever in 24 hours I get information about the deterioration in condition of an indoor patient I do attend him there and then Nundhan Rawani was admitted in the dispensary. Neither he nor his attendant at any time complained about any seriousness rather whenever I visited in the ward Nundhan Rawani quite well. He was taking normal food and was seen walking in the campus and sitting on his bed. On my repeated instruction no X-Ray was taken. Had he been serious I would have referred him to Sardar Hospital Deoghar but no seriousness was ever reported.

4. Nundhan Rawani was an old man. He complained pain in chest. Generally pain chest is reported also due to cough and in that case too I use to advise X ray of chest. There is no provision of x-ray in the State dispensary. At the time of my examination Nundhan did not complain to me having pain so I have not mentioned the same in Ex.2.

5. Had the ribs been fractured there would be severe pain and same could also be detected by clinical examination too. If I would had detected fracture of the ribs of Nundan Rawani I would have referred to him to Deoghar Sardar Hospital.

6. I had admitted Nundhan Rawani at his request to facilitate further investigation although there was no urgency for his admittance.”

Three days after the incident, said Nundhan Rawani died. Thereafter, post mortem on his body was conducted by Dr. Satya Saran Sen, Dy. Superintendent of Sardar Hospital, Deoghar (Examined as PW-5), who found

the following ante mortem injuries:

“There was no mark of any external injury on the dead body. On opening the chest and abdomen blood stained liquid was present in the rt. Plural cavity. There was fracture of rt. Side of the ribs of 5th, 6th and 7th rib at two places with punctured wound in the plural and middle lobe of the rt lung causing a lacerated wound 1”x 1/2” x 1/2” Other portion on or the rt. Lung was completely adherent to chest walve and was completely pale. Left lung was also pale.

3. Death in my opinion was due to shock and hemorrhage due to injury on the lung. Time lapsed since death within 24 hours. If fist is violently used in assault ribs can be fractured in such case the condition may deteriorate slowly.”

The prosecution principally relied upon the eye witness account through PWs 1 & 2 namely daughter-in-law and son of the deceased.

According to PW-2, the incident had occurred in the following manner:

“Panchanand Dubey, Bala Nand Dubey, Ramesh Dubey, Varun Dubey, Nand Kishor Tiwari and Narayan Tiwari entered into the eastern side room and started to ask from my father that where is Suresh. My father spoke nothing then the accused persons started beat him with slap and fist. Ramesh assaulted my father on his chest and belly by pressing my father chest with his knees. Blood started to snooze from the mouth and nose of my father. The accused persons fled always by assaulting.”

We have heard Mr. Nikhil Goel, learned Advocate for the appellants and Mr. Vishnu Sharma, learned Standing Counsel for the State.

Having gone through the record, we see no reason to doubt or discard the testimony of PWs 1 & 2. However, even while accepting their testimony, the

following features emerge from the record:

- (a) None of the appellants was armed with any weapon.
- (b) The blows were dealt with slaps, fists and kicks.
- (c) Even at the initial stage when the deceased was given medical attention, no complaint of any pain in the chest was reported.
- (d) According to PW4, the medical condition of the deceased was quite well and he was up and about.

The fact that six persons gave blows on the body of a man of advanced age, it must be taken that the assailants were aware and could well be attributed with the knowledge that their actions would result in the death of that man. The matter must therefore come under clause fourthly of Section 300 IPC.

However, in our considered view, the offence will not come under Section 302 IPC but it would be one which can be categorized as culpable homicide not amounting to murder. The appropriate conviction therefore has to be one under Section 304 Part II IPC and not under Section 302 IPC.

Considering the fact that the incident occurred way back in 1983 and the fact that most of the appellants are now in the advanced age bracket, in our view, ends of justice would be met if they are sentenced to suffer imprisonment for five years.

We accordingly allow these appeals and alter their conviction from that under Section 302 IPC to one under Section 304 Part-II IPC and sentence

them to suffer imprisonment for five years.

It must be recorded that because of his advanced age and precarious medical condition, one of the appellants namely Arun Dubey, has already been released on interim bail, the period of which is to expire on 25.04.2021.

In the circumstances, we direct the authorities to consider the matter from the perspective of the advanced age and the medical condition of the appellants and consider whether any appropriate relief can be granted in favour of the appellants. The matter is left completely to the discretion of the concerned authorities who may consider the issues purely on merits.

Pending such consideration, the benefit and effect of the interim bail granted by this Court to Arun Dubey shall continue to operate.

The appeals are allowed to the aforesaid extent.

.....J.
[Uday Umesh Lalit]

.....J.
[Vineet Saran]

.....J.
[S. Ravindra Bhat]

New Delhi;
December 8, 2020.

ITEM NO.6 Court 4 (Video Conferencing) SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 966/2020

(Arising out of impugned final judgment and order dated 23-04-2019 in CRADB No. 389/1993 passed by the High Court Of Jharkhand At Ranchi)

PANCHANAN DUBEY & ORS.

Petitioner(s)

VERSUS

STATE OF BIHAR (NOW JHARKHAND)

Respondent(s)

(IA No. 174771/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 174772/2019 - EXEMPTION FROM FILING O.T.)

WITH

SLP(Cr1) No. 10564/2019 (II-A)

(IA No. 53519/2020 - EARLY HEARING APPLICATION

IA No. 66291/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 53524/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 48632/2020 - EXEMPTION FROM FILING O.T.

IA No. 129706/2019 - EXEMPTION FROM FILING O.T.

IA No. 129704/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/ FACTS/ ANNEXURES

IA No. 48630/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/ FACTS/ ANNEXURES)

SLP(Cr1) No. 4125/2020 (II-A)

(IA No. 28700/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 28701/2020 - EXEMPTION FROM FILING O.T.

IA No. 82346/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/ FACTS/ ANNEXURES)

Date : 08-12-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT

HON'BLE MR. JUSTICE VINEET SARAN

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. Nikhil Goel, Adv.
Mr. Ashiwin Katemath, Adv.
Mr. Anup Kumar, AOR

For Respondent(s) Mr. Rajiv Singh, AAG
Ms. Pragya Baghel, Adv.
Ms. Tulika Mukherjee, AOR

Mr. Vishnu Sharma, Adv.
Mr. Abhishek, AOR
Mr. Anuj Kumar, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

Leave granted.

The appeals are allowed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

**(INDU MARWAH)
COURT MASTER (SH)**

**(PRADEEP KUMAR)
BRANCH OFFICER**

(SIGNED ORDER IS PLACED ON THE FILE)