

(2005) 07 JH CK 0025

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 161 of 1989 (P)

Amin Soren and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2006) 1 Crimes 248 : (2005) 4 JCR 239

Hon'ble Judges : Altamas Kabir, C.J.;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : Jai Prakash Jha and Sudhanshu Shekhar Choudhary, for the Appellant; R.P. Gupta, APP, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The above named appellants have preferred this appeal against the judgment and order of conviction and sentence both dated 23rd February, 1989, passed by the learned Sessions Judge, Santhal Parganas, Dumka, in Sessions Case No. 198 of 1987, arising out G.R. Case No. 856 of 1985, whereby and whereunder, they have been convicted for the offence u/s 302/34 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. The case of the prosecution, which is based on the fardbeyan (Ext. 4) of the informant Misil Soren (PW 9), recorded on 17th December, 1985 at Masalia (Tongra) police Station, is that on 16th December, 1985 at about 3.00 a.m. his grand mother Thakuran Murmu (deceased) of Village-Baliajore, Police Station-Masilia (Tongra) had gone to the house of Dhan Hembram along with the wives of Sona Soren and Som Soren for drinking pochai (a kind of wine made of rice) on the occasion of settlement of marriage. When she did not return to her house in the night, the informant thought that she might have stayed in the house of Dhan Hembram. Next day on 17th December, 1985 at about 5.30 a.m. Mangal Besra, a neighbour of the informant, came and informed him that he had seen his grand-mother lying on the exit door of the bari, situated at southern portion

of his house. The informant Misil Soren, his father Dhena Soren (PW 2) and mother went there and found his grandmother dead. The informant also noticed abrasion on the left side of her neck and swelling on the left temporal region and it appeared to him that death of the deceased had been caused due to strangulation. The informant Misil Soren (PW 9) enquired from the wives of Sona Soren and Som Soren, who informed that they had gone to the house of Chhoto Hembram for drinking pochai, after taking pochai in the house of Dhan Hembram. They further informed that while they were taking pochai in the house of Chhoto Hembram, Maku Hembram (appellant No. 4), mother of Amin Soren (appellant No. 1) had taken them to her house. All the three had consumed too much pochai (liquor) in the house of Maku Hembram and when they became highly intoxicated, Pancham Hembram and his wife took away two of them from the house of Amin Soren (appellant No. 1) leaving informant's grand-mother in the house of Amin Soren (appellant No. 1) itself. In the morning of 17th December, 1985 when the informant enquired about the incident from Amin Soren (appellant No. 1), he (Amin Soren) told him that his grand-mother (Thakuran) had left his house in the evening itself. The informant has further stated that Loli Soren, sister of Amin Soren (appellant No. 1), had become insane two months -prior to the date of occurrence. Amin Soren (appellant No. 1) and his mother Maku Hembram (appellant No. 4) had complained him (informant) that his grand-mother had played witchcraft on Loli Soren. They had asked him (the informant) to have control over his grand-mother, otherwise they would kill her (Thakuran Murmu deceased). The informant suspected that Amin Soren (appellant No. 1), his mother Maku Hembram (appellant No. 4), brother of Amin Soren, appellant No. 1, namely, Kanhai Soren (appellant No. 3) had caused the death of Thakuran Murmu by pressing her neck and had kept her dead body at the door of his bari in the night itself.

At this juncture, it may be mentioned that appellant No. 3 Kanhai Soren is the brother of appellant No. 1 Amin Soren, appellant No. 4 Maku Hembram is the mother of appellant No. 1 and appellant No. 2 Paneshwar Hembram is the maternal uncle (mama) of appellant No. 1 i.e. brother of appellant No. 4 Maku Hembram. On the basis of the aforesaid fardbeyan, formal First Information Report was drawn up on 17th December, 1985 at 8.30 p.m. and Masalia (Tongra) P.S. Case No. 80 of 1985 was registered for the offence u/s 302/34 of the Indian Penal Code against the three named accused persons. After investigation, charge-sheet was submitted against the appellants for the offence u/s 302/34 of the Indian Penal Code and charge was framed accordingly, which was read over and explained to the appellants in Hindi, to which they pleaded not guilty and claimed to be tried.

3. To substantiate the charge, levelled against the appellants, the prosecution has examined altogether eleven witnesses. Out of them. PW 1 Dr. Ram Sao is the doctor, who has conducted autopsy on the dead body of Thakuran Murmu (deceased); PW 10 Jagannath Ram has conducted part investigation whereas PW 11 Jugeshwar Singh is the main Investigating Officer. Out of rest eight witnesses,

PW 7 Rasni Marandi has been declared hostile by the prosecution whereas PW 8 Muni Kisku has been tendered by the prosecution. PW 3 Fani Bhushan Das is a formal witness on the inquest report. Out of rest five witnesses, PW 9 Misil Soren (the informant) is the grand-son of the deceased and PW 2 Dhen Soren is the son of deceased. Both of them can be termed to be interested witnesses. PW 6 Makhoni Tuddu is also related with the informant, as it appears from her evidence. There being no eye-witness of the alleged occurrence, the conviction is based on circumstantial evidence. Therefore, one of the important factor will be whether the prosecution has been able to complete the chain of evidence to bring home the charges against the appellants or not.

4. PW 1 Dr. Sitaram Sao, who has conducted autopsy on the dead body of Thakuran Murmu (deceased) has found the following ante-mortem injuries on her person :

(i) Multiple bruises over left side of neck in front of different size, such as 1/2" x 1/4", 1/4" x 1/4", 1/4" x 1/4" surrounding the neck, on dissection the underneath tissues were ecchymosed and on further dissection larynx and trachea were congested and swollen;

(ii) Hyoid bone was fractured. As per the opinion of the doctor, cause of death was due to asphyxia, caused by strangulation, which was sufficient to cause death in ordinary course of nature. He conducted the post-mortem examination on 18th December, 1985 at 2.00 p.m. As per his opinion, time elapsed since death was within 24 hours since the time of postmortem examination that means sometime in between 2.00 p.m. of 17th December, 1985 and 2.00 p.m. of 18th December, 1985.

5. Learned counsel of the appellants has highlighted this fact, as the fardbeyan (Ext. 4) seems to have been recorded on 17th December, 1985 at 9.00 a.m. but the First Information Report was registered on the same date at 8.30 p.m. As per the fardbeyan (Ext. 4) deceased had left her house at about 3.00 p.m. on 16th December, 1985 and her dead body was found at about 5.30 a.m. on 17th December, 1985. As such, prima facie it is evident that the death took place more than 32 hours prior to the time of post-mortem examination.

PW 2 Dhen Soren, who is son of the deceased, has stated that his mother Thakuran Murmu (deceased) had gone to drink haria (another name of pochai) in the house of Dhan Hembram and, thereafter, she went to the house of Makhoni Tuddu (PW 6), wife of Chhoto Hembram, and from there Makodi Hembram (appellant No. 4) took Thakuran Murmu (deceased) to her house. Thereafter, his mother did not return. He has further stated that the sister of Amin Soren, namely, Loli Soren, had become insane about two months prior to the incident and the accused had told him that his mother is a witch, who had made his sister Loli Soren mad. He has further stated that the appellants had told him that they would kill his mother.

Though PW 2 has made the aforesaid statement, he has neither given the date

nor time on which such threat was given and it appears that the alleged threat was not reported either to any person or the police. This witness (PW 2) has stated that he came to know from Makhoni Tuddu (PW 6) that the deceased had gone to drink haria in the house of Dhan Hembram along with her (Makhoni Tuddu). In the morning when he could see the dead body of his mother, he could come to know that his mother had gone to drink haria in the house of Makhoni Tuddu. However, in his cross-examination this witness has stated that he had seen his mother going to the house of Dhan Hembram along with Rajni and Sajni. Though this witness has taken the names of Rajni and Sajni, but none of them has been made witness by the prosecution. This witness (PW 2)¹ has neither stated that the deceased went to the house of the appellants nor has stated that he had seen the deceased with the appellants. Therefore, the prosecution cannot derive any advantage from the statement of his witness. It has already been stated that PW 3 Fani Bhuhan Das is a witness on the inquest report, who has proved his signature (Ext. 2) on the inquest report and has also proved the signature (Ext. 2/1) of Banu Ram Soren, another inquest report witness. Besides this, he has stated nothing.

6. PW 4 Mangal Besra, a neighbour of the deceased, has merely stated that he saw the dead body and informed it to the informant. In fact, the informant (PW 9) took the name of this witness Mangal Besra (PW 4) to the extent that he had informed him (informant) and when he came out of his house, he saw the dead body in the bari, south of his house. The evidence of this witness is of no much importance, except that he supports the version of the informant to the extent that the informant was informed by him (PW 4).

7. PW 5 Pancha Hembram also claimed to have gone to the house of Chhoto Hembram along with his wife Raghumani to take liquor. He has stated that after sometime three old ladies came to the house of Dhan Hembram. They were Rajni Murmu, Sajni Murmu and Thakuran Murmu (deceased). Thereafter, wife of Chhoto Hembram, namely, Masni Tuddu, and Topani Hembram also came in the house of Dhan Hembram. All the old ladies took liquor and came to the house of Chhoto Hembram. Mako Hembram (appellant No. 4) also came there and called him (PW 5) and all the old ladies went to her house. All of them, including Pancha Hembram (PW 5), are stated to have gone to the house of Mako Hembram (appellant No. 4) and took drinks there. All the old ladies were heavily intoxicated. All of them, except the old lady Thakuran (deceased), who remained there in the house of Mako Hembram, returned back. Next day, the dead body of old lady Thakuran was seen. In his cross-examination, he has accepted that the house of Mako (appellant No. 4) is situated in different area (tola), While he has given the details of the house of Mako Hembram (appellant No. 4), has also stated that he and his wife took liquor at two places whereas the old ladies took liquor at three places. When he came to the house of Chhoto, he could know that the three old ladies had taken drinks at three places, including the house of Mako Hembram (appellant No. 4). The aforesaid statement, given by PW 5 during his cross-examination, contradicts his own statement, made during the examination-

in-chief. In his cross-examination he has stated that in the house of Chhoto Hembram when he came, he could know that the old ladies had already taken drinks at three places, including the house of Mako Hembram (appellant No. 4), whereas in his examination-in-chief, he has stated that after taking drink in the house of Chhoto Hembram, they had gone to take drinks in the house of Mako (appellant No. 4). This contradiction in the statement of PW 5 raises doubt regarding his presence in the house of Mako Hembram, when allegedly the old lady Thakuran (deceased) is stated to have remained in the house of Mako Hembram, while the others left the house of Mako Hembram (appellant No. 4). This witness (PW 5) has not made any statement with regard to other three accused, namely, appellant No. 1 Amin Soren, appellant No. 2 Paneshwar Hembram and appellant No. 3 Kanhai Soren, who are sons and brother of appellant No. 4 Mako Hembram. Therefore, PW 5 Pancha Hembram cannot be said to be trustworthy to rely on his evidence.

8. PW 6 Makhoni Tuddu is the wife of Chhoto Hembram. This witness has stated that about two years and five months back on a Monday at 3.00-4.00 p.m. she had gone to take liquor (haria) in the house of Dhan. There she found Thakuran (deceased), Rasni (PW 7) and Rajni taking liquor (haria). In the house of Dhan, all five of them took liquor (haria) and thereafter, all (five) of them came to her (Makhoni's) house and again took liquor (haria). Thereafter, Mako @ Maklu (appellant No. 4) came to her house and told them to come to her residence for the purposes of drinking haria. So, they proceeded to the house of Maklu alias Mako and took haria. Maklu alias Mako (appellant No. 4), Ami @ Amin (appellant No. 1), Paneshwar (appellant No. 2) and Kanhai (appellant No. 3) were also present there. Thereafter, Maklu @ Mako (appellant No. 4) called her daughter Loli and asked her as to who amongst the five is the witch. Loli pointed out towards Thakuran and told that she is the witch. Thakuran denied that she is a witch. Paneshwar (appellant No. 2), Maklu (appellant No. 4), Amin (appellant No. 1) and Kanhai (appellant No. 3) told Thakuran that they will not allow her to go and will finish her. While this witness (PW 6) identified Paneshwar (appellant No. 2) and Amin (appellant No. 1) in the dock, stated the Maklu (appellant No. 4) and Kanhai (appellant No. 3) are not present, but also knows them. She has further stated that she had seen the dead body on the next day and when she had gone to take drink in the house of Maklu (appellant No. 4), Thakuran (deceased) remained there in the house of Maklu @ Mako (appellant No. 4) and rest four of them returned back. In her cross-examination, this witness has accepted that she along with others took liquor (haria) in the house of Dhan, whereinafter, they took liquor in the house of Maklu @ Mako (appellant No. 4) and Thakuran also took haria in her house along with them. She has stated that except five of them, none was there in her house. In the house of Dhan Hembram also, there was none, except three of them. She has further stated that Maklu @ Mako (appellant No. 4) had not gone to take liquor in the house of Dhan Hembram. During her cross-examination, this witness has further accepted that neither she disclosed anything with regard to the altercation, as taken place

in the house of Maklu (appellant No. 4), nor met the son or any other relative of Thakuran (deceased). In her cross-examination, she has also accepted that when she along with others was taking liquor (haria) in the house of Dhan, what was discussed between them is not known to her. She also could not recollect as to what they discussed while they took drink in her house. She has accepted that the informant Misil Soren (PW 9) is related with her.

While this witness (PW 6) has stated that Thakuran (deceased) was taking drink with Rasni (PW 7) and Rajni in the house of Dhan, PW 5, Pancha Hembram, has stated that three old ladies, namely, Rajni Murmu, Sajni Murmu and Thakuran Murmu (deceased) came to the house of Chhoto Hembram and thereafter, they went to the house of Dhan Hembram. As per the evidence of PW 5 Pancha Hembram, he had gone along with his wife Raghumani to the house of Chhoto Hembram, where three old ladies i.e. Rajni Murmu, Sajni Murmu and Thakuran Murmu (deceased) were already taking drinks. On the other hand, PW 6 in her deposition has stated that there were only five persons i.e. Thakuran (deceased), Rasni (PW 7), Rajni, herself and one another, when they were taking drinks in the house of Dhan. She has specifically stated that except those five, none else was there. Thereby, a doubt casts as to whether PW 5 Pancha Hembram with his wife Raghumani and Rajni or Rasni (PW 7) was actually there or not. If the version of both the witnesses i.e. PW 5 Pancha Hembram and PW 6 Makhoni Tuddu are taken together, it will appear that at least eight persons were there, such as, Thakuran (deceased), Rasni (PW 7), Rajni, Sajni, Pancha (PW 5), Raghumani, Makodi @ Mako (appellant No. 4) and Makhoni Tuddu (PW 6). This raises doubt regarding credibility of the evidence of PW 6 Makhoni Tuddu, who has accepted that she did not disclose any fact relating to the altercation between Makodi @ Mako (appellant No. 4) and Thakuran (deceased) to anyone, which she has stated for the first time during her deposition.

9. PW 7 Rasni Marandi has specifically stated that Makodi @ Mako (appellant No. 4) had not gone to the house of Dhan. PW 7 Rasni has stated that about two years and five months back in the month of agraahan in the forenoon, she along with Thakuran (deceased) and Rajni had gone to the house of Dhan to taken liquor (haria). There all of them took liquor (haria) and from there they went to the house of Chhoto, where Mako @ Makodi (appellant No. 4), Rajni and Badni were already there. From the house of Chhoto, they went to the house of Makodi @ Mako (appellant No. 4) where Rajni and Thakuran (deceased) had also gone and all of them took liquor there. She has stated that the daughter of Makodi (appellant No. 4) told Thakuran (deceased) that she is a witch, whereinafter, all of them left the house. This witness (PW 7) has been declared hostile by the prosecution. After cross-examination by the prosecution, defence has also cross-examined PW 7 Rasni. During her cross-examination by the defence, she has stated that Makodi @ Mako had not gone to the house of Dhan for drink. If this version is accepted, one may doubt the credibility of the evidence of PW 5 and PW 6, who have stated that Makodi (appellant No. 4) was present in the house of Dhan and they also went to the house of Makodi (appellant No. 4) along with her.

10. It has already been stated earlier that PW 8 Muni Kisku has been tendered by the prosecution.

11. PW 9 Misil Soren (informant) is the grandson of Thakuran (deceased). In his deposition, he has stated that his grand-mother Thakuran Murmu (deceased) at about 3.00-4.00 p.m. went to the house of Dhan Hembram to take liquor (pochai) along with Rajni and Rasni, Pooja having taken place after the marriage. Thereafter, his grandmother also took liquor in the house of Chhoto Hembra, whose wife is Makoni Tuddu. From there, Makodi Hembram @ Mako (appellant No. 4) called them to take drink at her house where everybody took drinks. Thereafter, his grand-mother did not return from the house of Makodi @ Mako (appellant No. 4). While he has supported the version, as made by him in the fardbeyan (Ext. 4), in his cross-examination, he has stated that he had neither disclosed anybody regarding the threat, given by accused, that they will kill Thakuran, nor any panchayati took place nor any case was lodged by him. He has further accepted that he had not seen Thakuran taking liquor in the house of Mako @ Makodi (appellant No. 4), which he came to know from Rajni and Rasni. Curiously enough, Rajni has not been produced as prosecution witness, who is stated to be present and Rasni (PW 7), having not supported the prosecution version, has been declared hostile.

12. While PW 10 Jagannath Ram has conducted part of investigation PW 11 Jugeshwar Singh has made the detail investigation and has given the details of the place of occurrence. He (PW 11) has stated that he had taken the evidence of the witnesses, including Rasni wife of Sona Soren, who told that Kanhai (appellant No. 3), Amin (appellant No. 1) and Paneshwar (appellant No. 2) had told Thakuran that they will not allow her to go and will kill her. In his evidence, the Investigating Officer (PW 11) has accepted that there was no blood, found near the place the dead body of the deceased was laying. He has further stated that nothing was seized during the investigation. As such, no specific inference can be drawn from the statement of this witness (PW 11), except the place of occurrence.

13. It has already been observed that PW 5 and PW 6 are not reliable witnesses, their statements not being found trustworthy. There is a contradiction in the statements of PW 5 and PW 6 as also the deposition, as was made by the informant Misil Soren (PW 9). The testimony of these witnesses, as such, are not only doubtful but I find that there is no chain to connect the circumstances to establish the charges against the appellants beyond all shadow of reasonable doubts. There is a doubt as to whether the witnesses i.e. PW 5, PW 6 and PW 7 were at all present in the house of appellant No. 4 Mako @ Makodi. Thereby no inference can be drawn to hold the accused/appellants guilty for the offence u/s 302/34 of the Indian Penal Code for committing the murder of Thakuran. That apart, the ocular evidence of the prosecution witnesses also do not corroborate the time of occurrence, as shown in the medical evidence and as discussed above. It has already been noticed that PW 1 Dr. Sitaram Sao in his evidence has

stated that the death took place within 24 hours. The post-mortem examination having been conducted at 2.00 p.m. on 18th December, 1985, as per the medical evidence, the death must have taken place on or after 2.00 p.m. on 17th December, 1985, though as per the fardbeyan (Ext. 4), death had taken place prior to 5.30 a.m. of 17th December, 1985.

14. When considered all the pros and cons of the case, I find that in absence of chain of circumstance, the accused/appellants cannot be held guilty on the basis of mere presumptions and probabilities. Thus, I am of the view that the prosecution has miserably failed to prove the charges levelled against all the appellants for the offence u/s 302 read with Section 34 of the Indian Penal Code, beyond all shadow of reasonable doubts. Hence the appellants deserve benefit of doubt.

15. In the result I find merit in this Criminals Appeal, which succeeds and is hereby allowed. The impugned judgment and order of conviction and sentence both dated 23rd February, 1989, passed by the learned Sessions Judge Santhal Parganas, Dumka, in Sessions Case No. 198 of 1987 are hereby set aside. As all the appellants are on bail, they are discharged from the liabilities of their respective bail bonds.

Altamas Kabir, C.J.

16. I agree.