

(2019) 08 JH CK 0084

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No.336 Of 2001

Antoni Kandulna And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 01-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302

Citation : (2019) 08 JH CK 0084

Hon'ble Judges : Shree Chandrashekhar, J;Ratnaker Bhengra, J

Bench : Division Bench

Advocate : P.C. Tripathi, Nazia Rashid, V.K. Tiwary

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J

1. Four persons were implicated in Jaldega P.S. Case No. 02 of 1998 which was lodged on 29.01.1998 under section 302/34 IPC, on the basis of the fardbeyan of Kailash Kandulna. After the investigation, they were sent up for trial on the charge under section 302/34 IPC.

2. The appellants, namely, Antoni Kandulna and Sugar Kandulna have been granted bail vide order dated 13.08.2001 and the appellants, namely, Junul Kandulna and Nelan Kandulna have been granted bail vide order dated 25.01.2006 by this court.

3. During the trial, the prosecution has examined 18 witnesses; the informant is P.W.- 16 and the Investigating Officer of the later part of the investigation has been examined as P.W.-15.

4. Dr. C.N. Jha who has conducted the postmortem examination has found the following injuries on Bimal Kandulna:

"1. Lacerated wound- 2" x1/6" x scalp deep on left occipital frontal area of scalp.

2. Lacerated wound-1/2"x1/6 " x scalp deep on temporal area just. above right ear.
3. Lacerated wound 1" x1/6 " x skin deep on upper portion of right ear.
4. Ecchymosis of right lower eye-lid."
5. In his fardbeyan, the informant has alleged that on 27.01.1998, at about 12 a.m., when he and his brother, namely, Bimal Kandulna were standing at Tonia Bazartar, the accused persons came there and started a quarrel with his brother. Antoni Kandulna and Sugar Kandulna dragged his brother towards a Nala where Junul Kandulna and Nelan Kandulna assaulted him with Danda and stone on his head due to which he died on the spot. In his examination-in-chief, he has reiterated his story as narrated by him in the fardbeyan.
6. All other prosecution witnesses are formal and hearsay witnesses.
7. The Investigating Officer of this case who has conducted the initial investigation has not been examined during the trial.
8. Admittedly, there is only one eye-witness; the informant. He claims that he has seen two of the appellants dragging his brother towards a Nala and two others assaulting him on his head with Danda and stone. The incident, according to the informant, has occurred at about 12 a.m. on 27.01.1998, however, he gives his fardbeyan on 29.01.1998 at about 7.00 hrs. at the police station. According to the informant, a quarrel took place between his brother and the accused persons for labour charges.
9. According to the doctor, the death was caused due to head injuries.
10. During his cross-examination, the doctor has said that large amount of Haria (intoxicant) was found in the stomach of the deceased. The doctor has also stated that the head injuries found on Bimal Kandulna can be caused by a fall on a hard substance, particularly when one is intoxicated.
11. The defence set up by the accused persons is that the deceased used to collect Rangdari from the labourers and there was an altercation between Bimal Kandulna and others, due to which he fell on a stone and died.
12. The delay in lodging the First Information Report has not been explained by the prosecution. The deceased was none else but the brother of the informant and the informant claims that the accused persons have killed his brother within his sight. In these facts the delay in lodging the First Information Report becomes relevant for testing the veracity of the prosecution's case. A probable cause of death by a fall on hard substance and large amount of intoxicating drink found in the stomach of the deceased raise a serious doubt on the manner of occurrence, as narrated by the informant. The absence of the foundational facts constituting the offence, failure of the investigating officer to collect the incriminating articles which would have established commission of the offence and non-examination of the main Investigating Officer substantially erode the

foundation of the prosecution's case.

13. In the above state of affairs, we are of the opinion that the appellants are entitled for the benefit of doubt.

14. Accordingly, the judgment of conviction under section 302/34 IPC dated 12.06.2001 and the order of sentence dated 13.06.2001 inflicted upon the appellants by the 1st Additional Sessions Judge, Simdega in Sessions Trial No. 130 of 1998 are set aside.

15. The appellants, namely, Antoni Kandulna, Junul Kandulna, Sugar Kandulna and Nelan Kandulna are acquitted of the charges framed against them.

16. The appellants who are on bail are discharged from liability of the bail-bonds furnished by them.

17. Cr. Appeal (DB) No. 336 of 2001 is allowed.

18. Let lower court records be transmitted to the court concerned, forthwith.