
(2018) 12 JH CK 0114

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 552 Of 2015

Basudeo Manjhi @ Dulu Majhi

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 20-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 12 JH CK 0114

Hon'ble Judges : Pramath Patnaik, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : D.C. Mishra, G.S. Prasad

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment of conviction dated 05.12.2013 and order of sentence dated 07.12.2013 passed by the 8th District & Additional Sessions Judge, Hazaribagh in Sessions Trial No. 123 of 2005 whereby and whereunder the court having found the appellant guilty for committing murder of Most. Lacho Kamin, convicted him for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo R.I. for life and to pay a fine of Rs.10,000/-.

2. The prosecution case, as has been projected on the basis of fardbeyan (Exbt-2) by one Srimati Devi is that she was married to the present appellant, who was working as Mazdoor and from their marriage they are blessed with one son and one daughter. In her fardbeyan she stated that couple of years ago they settled in the village Thakurgora, where her husband after consuming liquor used to abuse and assault her and the children. Fed up with the behavior and attitude of her husband, she along with children came to her mother's house at Dumerbeda. She further alleged that her husband often came to her mother's house but continued with the same behavior. She further stated that her husband at present is a tractor driver. On last Thursday before the occurrence at about

9.30 p.m., the husband of the informant forcibly took her to his home at Thakurgora where she was confined in a room, but somehow she managed to flee from there and reached to her mother's house. On 28.03.2004 while she was sleeping along with other members of the family she heard a noise on the roof but she again fell asleep. At about 3.00 a.m being called up by her maternal uncle she woke up and moved outside where she saw that her husband was sitting upon her mother and pressing her neck and the face of her mother was covered with bedsheet and blanket. She started shouting for help to save her mother, meanwhile her husband killed her mother. Blood was oozing from nostril, mouth and ear and also a wound mark over the left ear. Thereafter her husband ran towards tractor where 2 to 3 persons were already there with whom he fled away. It has further been stated that the occurrence was seen by the informant and her maternal uncle in the light of an electric bulb. Upon hearing the noise many people gathered there.

3. On the basis of said fardbeyan, a formal F.I.R. was drawn. Thereupon, the I.O after holding inquest of the dead body, sent the dead body for post mortem which was conducted by Dr. Shiv Prasad Sinha - P.W-3. On holding autopsy the doctor did find the following injuries: Abrasion $\frac{1}{2}$ " x $\frac{1}{2}$ " over left chick near left ear, dried blood from left ear and nostril.

4. The doctor issued the post mortem report (Exbt-1) with an opinion that death was caused due to shock and haemorrhage on account of the above noted injuries.

5. Meanwhile, I.O. recorded the statement of the witnesses. On completion of the investigation when charge sheet was submitted, cognizance of the offence was taken against the appellant. When the case was committed to the court of Sessions, the appellant was put on trial. During which the prosecution examined altogether 7 witnesses. Of them, P.W-1-Sohan Lal Manjhi is the brother of the informant. P.W-2-Ashim Manjhi is the hearsay witness. P.W-4-Srimati Devi is the informant. P.W-5- Ali Hasan and P.W-6-Md. Rabani are the hostile witnesses. P.W-7-Sudhir Kumar Singh, the Constable who identified the handwriting and signature of the then S.I.

6. On closure of the prosecution case, when the incriminating evidences appearing against the appellant were put to the appellant under Section 313 of the Cr.P.C, he denied the same.

7. Thereupon, the learned trial court having placed its implicit reliance on the testimonies of the witnesses, finding corroboration with the medical evidence, did find the appellant guilty for committing murder of the deceased-Most Lacho Kamin and thereby recorded the order of conviction and sentence which is under challenge.

8. Learned counsel appearing for the appellant submits that the evidences are not so clinching to convict the appellant under Section 302 IPC because on hearing the distress alarm when the informant came out of the house, she saw

the appellant assaulting the deceased and could see the appellant in an electric bulb. In her fardbeyan she has stated that the occurrence was seen by her along with the maternal uncle but the maternal uncle who was the material witness has not been examined, therefore, it is quite doubtful whether the informant could see the appellant assaulting the deceased at 3.00 a.m in the night. Learned counsel further submits that the evidences/testimonies of P.W.4-informant and her brother P.W-1 with regard to assault by the appellant are not so inspiring so as to fasten guilt on the appellant. Apart from that there are contradictions in the deposition of the witnesses which do not find corroboration with the post mortem report. The learned trial court by relying on the testimonies of P.Ws-1 and 4, committed illegality in recording the judgment of conviction and order of sentence, hence it is fit to be set aside.

9. As against this, the learned counsel appearing for the State submits that from the statement made by the informant- P.W.4 (Srimati Devi) in her fardbeyan (Ext-2) and also in the examination- in-chief, which does appear that she had occasion to see the occurrence in the night at about 3.00 a.m with the help of electric bulb. Her statement has been fully corroborated by the statement of her brother-P.W-1 (Sohan Lal Manjhi) and the same has been found corroboration in the post mortem report of the doctor-P.W-3. Therefore, the learned trial court was absolutely justified in recording the judgment of conviction and order of sentence which never warrants to be interfered with.

10. We have carefully examined the evidence of prosecution witnesses and the material exhibits. Only the P.W-4-Informant claimed to have seen the appellant committing murder of her mother. Nothing has been brought on record except the bald statement in the fardbeyan that the place of occurrence could be visible by illuminating of the light and the statement of P.W-4 could have been corroborated by her maternal uncle as has been mentioned in the fardbeyan that the occurrence was seen by her maternal uncle, but the reasons best known to the prosecution, the maternal uncle has not been examined. Therefore, the contradiction in the evidence of witnesses and lacuna of the prosecution case when examined independently and separately may appear minor contradictions but when effect of such contradiction and lacuna is viewed together, it may cast such doubt upon the prosecution case which would entitle the accused the benefit of doubt, and that is where the absence of motive becomes relevant. In "Nachhittar Singh vs. State of Punjab" reported in (1975) 3 SCC 266, it has been observed that when the prosecution fails to establish motive for the crime it casts a duty on the Court to scrutinize the other evidence, particularly of the eye witnesses, with greater care. In the present case the care and caution which the trial court should have exercised in scrutinizing and evaluating the evidence of eye witnesses, apparently, are missing.

11. The prosecution evidence on the manner of occurrence is bereft of necessary details. Apart from that we find that the learned trial court fell into serious error at the time of recording of the statement of the appellant under Section 313

Cr.P.C. Only cryptic questions were posed to the accused and on that count the appellant has suffered serious prejudice for non-compliance of the mandate under section 313 Cr.P.C.

12. To sum up; in a case like the present one, where there are serious contradictions in the evidence of the prosecution witnesses and the prosecution witnesses have contradicted each other on the material aspects, there is doubt on the place of occurrence and ocular testimony of P.W-4 and the material witness has not been examined, in our opinion the evidence of P.Ws-1 and 4 coupled with the autopsy of doctor P.W-3 cannot be sufficient to convict the appellant for an offence punishable under section 302 I.P.C.

13. In the facts and circumstances which have been proved by the prosecution in the sessions trial, it would be apposite to refer to the observation of the Hon'ble Apex Court reported in (1974) 3 SCC 277 (State of Punjab vs. Jagir Singh, Baljit Singh and Karam Singh) :

"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures".

14. In the light of the yardstick for scrutinizing and evaluating the evidence as indicated in Jagir Singh case, when we examine the evidence led by the prosecution for sustaining the charge u/s 302 I.P.C against the appellant, we conclude that the appellant is entitled for benefit of doubt. Accordingly, it is held that the prosecution has failed to prove charge u/s 302 I.P.C against the appellant.

15. In the result, judgment of conviction dated 05.12.2013 and order of sentence dated 07.12.2013 passed by the 8th District & Additional Sessions Judge, Hazaribagh in Sessions Trial No. 123 of 2005 are set aside. The appellant-Basudeo Manjhi @ Dulu Majhi is directed to be released from custody forthwith, if not wanted in any other case.

16. The present criminal appeal stands allowed.