
(2013) 01 JH CK 0185

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 668 of 2002

Bhola Turi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Evidence Act, 1872 — Section 26
Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 3 AJR 354 : (2013) 3 LJLR 221

Hon'ble Judges : S. Chandrashekhar, J; Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Pravir Chatterjee in 668 and Mr. Ganesh Pathak in 536, for the Appellant; Krishna Shankar, for the Respondent

Judgement

Dhirubhai Naranbhai Patel

1. The present appeals have been preferred by the appellants-accused against the judgment of conviction dated 26th August, 2002 and order of sentence dated 27th August, 2002 passed by the Additional Sessions Judge-III, Dhanbad in Sessions Trial No. 55 of 2000 whereby the present appellants have been mainly punished for an offence u/s 302 of the Indian Penal Code for life imprisonment. It is a case of the prosecution that on 13th October, 1998, at about 10.45 A.M., the informant Anuplal Yadav (P.W. 13) gave his statement before the police that he is running grocery shop at C Block, Bhuli at the quarter of BCCL in the city of Dhanbad. On 13th October, 1998, at about 10.15 A.M., while the informant was sitting in his grocery shop, the boys of Imperial School were raising hulla that one boy has been killed and he has been beheaded near Kali Mandir. Several people of the BCCL Colony were going at the scene of offence. The informant Anuplal Yadav (P.W. 13) also went there and he told his nephew Subodh Yadav to remain in the shop and the informant Anuplal Yadav went at the scene of offence where he saw that, between Community Hall and the Gas Godown, the neck of his elder son Akhilesh Kumar Yadav, aged about seven years, was cut. Then

informant alongwith one Subhash Chandra brought his son to the hospital where the Doctor declared him dead. Thereafter, he asked the people about the occurrence and he came to know that two sisters of one Sohan Rajak and one lady were performing Puja in the nearby temple at the time of occurrence and they had seen the occurrence. It has also been stated in the F.I.R. that son of the informant Akhilesh Kumar Yadav (deceased), Prahlad Mandal (P.W. 8) and Chhotu Turi @ Arjun Turi (P.W. 9) were playing together. Thereafter, Ranju Kumari (P.W. 10), who is a sister of Sohan Rajak, told the informant that one boy wearing yellow Baniyan, Jeans Pant and Shoes had cut the neck of the deceased and was running towards north but Ranju Kumari (P.W. 10) did not raise alarm. Then, Prahlad Mandal (P.W. 8) told the informant that he, Chhotu Turi (P.W. 9) and the deceased were playing near Kali Mandir and at that time, Bhola Turi (appellant of Criminal Appeal No. 668 of 2002), who is elder brother of Chhotu Turi came wearing Jeans Pant and yellow Baniyan and shoes. Thereafter, Chhotu Turi alias Arjun Turi, who is a brother of Bhola Turi, told the informant that his elder brother Bhola Turi was present near Kali Temple and Chhotu Turi, deceased and Prahlad Mandal were playing near Kali Temple and then Prahlad Mandal came to house and Chhotu Turi also came to his house upon the instruction from his brother Bhola Turi whereas son of the informant i.e. deceased remained there. It is also alleged by this P.W. 13 who is informant that he believes that his son has been murdered by Bhola Turi by sharp cutting instrument due to some enmity and on the basis of this statement before the police, the investigation was carried out. Several statements of the prosecution witnesses were recorded. Charge-sheet was filed against as many as five accused persons and on the basis of the prosecution witnesses P.W. 1 to P.W. 14, original accused No. 1 and original accused No. 2, in the Sessions Trial No. 55 of 2000 were convicted for the offence of murder of deceased and they were punished for life imprisonment and fine of Rs. 1,000/- (Rs. One Thousand) to each of the accused vide order dated 26/27 August, 2002. Against this judgment and order of conviction and sentence, the present appeals have been preferred by original accused No. 1 and original accused No. 2.

2. We have heard Shri Pravir Chatterjee and Shri Ganesh Pathak, counsel appearing for the appellants at length. They have mainly submitted that the prosecution have failed to prove the offence of murder beyond all reasonable doubts which have been committed by these appellants. There are major omissions and contradictions in the deposition of the prosecution witnesses. This aspect of the matter has not been properly appreciated by the learned Trial Court. Moreover, there is no eye witness of the incident. Neither Test Identification Parade has been conducted by the prosecution. It is also submitted by counsel for both the appellants that neither P.W. 8 nor P.W. 9, who are the boys who were present with the deceased, have given the deposition that the present appellants have committed murder of the deceased. Similarly, neither P.W. 6 nor PW. 10 have stated before the learned Trial Court that the appellant Bhola Turi was wearing yellow T-Shirt and Blue Jeans Pant. The whole case of the

prosecution is based upon so-called recovery of Yellow T-shirt and blue Jeans Pant at the behest of the appellant accused. It is also submitted by the learned counsel for the appellants that for the recovery of yellow T-Shirt and Blue Jeans Pant, there are several contradictions in the depositions of the prosecution witnesses. P.W. 1 says that there was a recovery of a half pant. Thus, nothing is there about pant or half pant. As per the deposition of the prosecution witness it is also submitted by the learned counsel for both the appellants that P.W. 11 has never stated before the learned Trial Court that the knife, which was seized by the prosecution, was recovered at the behest of the appellant-accused. Whether accused were present or not at the time of recovery of knife, that is also neither conveyed by the P.W. 11 before the learned Trial Court. Much less it has not been stated by P.W. 11 whether the recovery of the knife was because of original accused No. 1 or because of original accused No. 2. Thus, neither the recovery can be connected, nor the recovery of Half Pant or Blue Jeans Pant is connected with the accused nor the recovery of knife is also connected with accused and, therefore, the confession before Police about the guilt of the offence is hit by Section 26 of the Indian Evidence Act, 1872. This aspect of the matter has not been properly appreciated by the learned Trial Court and hence, the judgment or order of conviction and sentence passed by the learned Trial Court deserves to be quashed and set aside.

3. We have heard the learned A.P.P. appearing for the State Shri Krishna Shankar. He has submitted that the prosecution has proved the offence of murder of Akhilesh Kumar Yadav by these appellants beyond all reasonable doubts. It is submitted by learned A.P.P. that the case of the prosecution is mainly based upon the depositions of two children P.W. 8 and P.W. 9 who were playing with the deceased near Kali Temple and at the time of occurrence at Kali Temple, two ladies, who are P.W. 6 and P.W. 10, were performing some Puja and they have also seen a boy wearing yellow T-Shirt and Blue Jeans Pant was running out from the place of occurrence. It is submitted by learned A.P.P. that they have given clear deposition before the learned Trial Court and the learned Trial Court has committed no error in appreciating the depositions of these witnesses. It is also submitted by the learned A.P.P. that there is recovery of yellow T-Shirt and Blue Jeans Pant at the behest of appellant-accused. As per the deposition given by P.W. 1 and P.W. 3 and other prosecution witnesses likewise, there is also recovery of bloodstained knife at the behest of these appellants-accused. This fact is also proved by the deposition of P.W. 8 and P.W. 4 as well as by the deposition of P.W. 11 and looking to the deposition of other prosecution witnesses, it has been proved beyond all reasonable doubts that these two appellants have committed murder of the deceased. This aspect of the matter has been properly appreciated by the learned Trial Court and hence this court may not interfere with these criminal appeals preferred by these appellants-accused.

4. Having heard the counsel for both the sides and looking to the evidence on record, it appears that P.W. 13 is father of the deceased Akhilesh Kumar Yadav,

who is hearsay witness. So far as the incident is concerned, the incident has taken place on 13th of October, 1998 at about 10.15 A.M., the statement of the informant was recorded on 13th October, 1998 at about 10.45 A.M. It has been stated in the statement of the informant (P.W. 13) that he heard alarm from the boys of Imperial School on the date of incident, when he was in grocery shop and his nephew Subodh Yadav (P.W. 5) was also with him at the shop. He left the shop for place of scene of offence, there he saw that his son was murdered, he immediately took him to the hospital, where the Doctor declared him dead. It is stated in the First Information Report that thereafter the informant got further information that P.W. 8 and P.W. 9, were playing with his son near Kali Temple and appellant Bhola Turi came there wearing Yellow Baniyan, Blue Jeans with shoes. Thereafter, P.W. 8 and P.W. 9 had gone at their house leaving the deceased nearby Kali Temple and there he has doubted that Bhola Turi has committed murder.

5. Thus looking to the First Information Report, it appears that informant is not an eyewitness nor the two boys P.W. 8 and P.W. 9 have conveyed to him that they have seen Bhola Turi committing murder of the deceased. It has also been stated in the First Information Report that some ladies were performing Puja at Kali Temple and they have been examined as P.W. 6 and P.W. 10. Looking to the deposition of P.W. 9 Manju Devi, who is a tendered witness, and he has not proved the case of prosecution. Looking to the deposition of P.W. 8, he has clearly stated that he does not know Akhilesh Yadav. He has also not supported the case of prosecution. Looking to the deposition of P.W. 6 Manju Devi, she has also not stated before the Trial Court that she has seen these appellants causing murder of the deceased. She has only stated that she has seen a boy wearing yellow T-Shirt and Jeans pant and running away from the scene of offence. We have perused the examination-in-chief and the cross-examination given by P.W. 6. She has not identified any of the appellant-accused who was wearing yellow T-Shirt and Blue Jeans. Nor there is any Test Identification Parade conducted by the prosecution.

6. Similarly, looking to the deposition of P.W. 10, she is also not an eye witness of the incident. She has also stated that a boy wearing yellow T-Shirt and Blue Jeans Pant was running away from the place of scene of offence. She has also not stated before the Trial Court that anyone of the appellants-accused was wearing yellow T-Shirt and Blue Jeans Pant. Thus, she has also not supported the case of prosecution that who has committed the murder.

7. Looking to the deposition of P.W. 1 he has stated before the Trial Court that yellow T-Shirt and one half pant was recovered by the police and he has proved his signature as Exhibits-1, 1/1 & 1/2 upon the seizure list.

8. Looking to the case of other prosecution witnesses as stated hereinabove, the boy, who was running, was wearing yellow T-Shirt and Blue Jeans Pant, but there is recovery of half pant. Thus, narration of the boy who was running away is not matching with the recovery made by the police. Other witnesses who are P.W. 2

and P.W. 3, they are saying about Jeans Pant, which was recovered, but, as stated hereinabove, P.W. 1 is giving deposition about half-pant. Thus, prosecution has failed to prove the offence beyond all reasonable doubts. This aspect of the matter has not been properly appreciated by the learned Trial Court. The whole case of the prosecution is based upon only recovery of yellow T-Shirt and Blue Jeans Pant and bloodstained knife.

9. So far as the recovery of knife is concerned, P.W. 11, Ramdeo Yadav has stated before the learned Trial Court that police has found out the knife but he has never stated before the Trial Court that at whose behest bloodstained knife was recovered, nor this P.W. 11 has stated before the learned Trial Court that whether appellants-accused were present when there was a recovery of knife. Thus, the recovery of knife at the behest of appellants-accused is also doubtful.

10. P.W. 7 is hearsay witness. P.W. 13 is also hearsay witness. The bloodstained knife and bloodstained cloths which were recovered, were sent to the F.S.L. but police has not produced the report of the F.S.L. before the learned Trial Court as to whether the bloodstained clothes and the bloodstained knife was having any human blood or whether it was blood of the deceased by matching blood-group.

11. The whole case of the prosecution is only based upon the recovery and there is also different narrations given by different prosecution witnesses. In this set of circumstances, the prosecution has failed to prove the offence of murder to have been committed by these two appellants beyond all reasonable doubts.

12. Moreover, so-called recovery of bloodstained clothes of the accused is also a joint recovery. Whether the said recovery was made from the appellant of Criminal Appeal No. 668 of 2002 or from the appellant in Criminal Appeal No. 536 of 2002, is not known. It is also not known yellow T-shirt and blue jeans pant belonged to which one of the accused. There is no evidence before the learned Trial Court who is the said accused who was wearing yellow T-Shirt and Blue Jeans Pant. This matching is required to be done by the prosecution. In the deposition of the prosecution witnesses, there is not a single witness who has identified any of these two accused, who was wearing yellow T-Shirt and Blue Jeans Pant and, therefore, both cannot be the accused who were wearing same yellow T-Shirt and Blue Jeans Pant. This aspect of the matter has not been properly appreciated by the learned Trial Court. Hence, we hereby quash and set aside the conviction and sentence passed by the learned Trial Court in Sessions Trial No. 55 of 2000 dated 26/27 of August, 2002 of the accused Bhola Turi, appellant in Criminal Appeal No. 668 of 2002 and Resham Bahadur Srestha @ Kale in Criminal Appeal No. 536 of 2002. In the facts and circumstances discussed above, these criminal appeals are allowed and the impugned judgment of conviction and order of sentence passed by the 3rd Additional Sessions Judge, Dhanbad in Sessions Trial No. 55 of 2000 are quashed and set aside. All the appellants are acquitted from the charges levelled against them. Since the accused-appellant, namely Resham Bahadur Srestha @ Kale, is on bail, he is discharged from the liability of his respective bail bond and his sureties are also

discharged from liability. Since the appellant, namely Bhola Turi, is in judicial custody, he is directed to be released forthwith, if not wanted in any other case.