
(2010) 12 JH CK 0020

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 893 of 2003

Bijay Bandla

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2011) 1 JCR 323 : (2011) 8 RCR(Criminal) 1617

Hon'ble Judges : Sushil Harkauli, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The present appeal has been preferred against the judgment of conviction and order of sentence passed by learned 3rd Additional Sessions Judge, Chaibasa dated 8.5.2003 in Sessions Trial No. 236 of 2001, whereby the present Appellant is punished for the offences punishable u/s 302 to be read with Section 34 of the Indian Penal Code for life imprisonment and also he is punished u/s 201 of the Indian Penal Code to undergo rigorous imprisonment for five years. Both the sentences have been directed to run concurrently.

2. If the case of the prosecution is unfolded, the same is as under:

It is the case of the prosecution that on 18th December. 2000 at 10:30 a.m. one Sri Chaitu Samad (P.W. 4) informed the police of Goilkera, district-Chaibasa that he is the son-in-law of deceased Sangl Gagrai and he saw that the house of deceased Sangi Gagrai was locked and the ox was tied outside the house. The cock and hen are inside the house. This fact was spread over in the village and the villagers began to search father-in-law, mother-in-law and brother-in-law of the informant. The matter was also reported to Village Munda (head of the village) namely, Saroj Kumar Nayak (P.W. 1), who held a sitting in the village and the villagers started searching out them. The villagers raised suspicion on Sao Gagrai @ Sahu Gagrai [original accused No. 1 and Appellant in Criminal Appeal

(DB) No. 904 of 2003] and on interrogation by Village Munda local chowkidar and the villagers present there, the present Appellant has State that he has committed murder of all the three persons namely, Sangi Gagrai, Balma Kui and Shib Gagrai. This murder was committed with the help of one Bijay Bandia of village Ghoradubha, who is original accused No. 2 and the Appellant in this criminal appeal. It is also stated by the informant (P.W. 4) that the Sao Gagrai @ Sahu Gagrai [Appellant in Criminal Appeal (DB) No. 904 of 2003] has stated before the villagers that at night hours of Friday at 10:00-11:00 when Sangi Gagrai was taking Haria (a type of alcohol), Sao Gagrai @ Sahu Gagrai along with his brother-in-law, namely Bijay Bandia (original accused No. 2-Appellant in this criminal appeal) came there with a weapon (chhura) and killed all the three persons and after committing murder, both of them took the dead bodies of all the three deceased at a distance of 500 yards in West direction from the house and in the paddy field, they buried the dead bodies. This has been done with a view to get landed property from the deceased. Upon the registration of the F.I.R., investigation was carried out, dead bodies of all the three deceased were recovered, statements of several witnesses were recorded and the charge-sheet has been filed against both the accused and upon evidence of the witnesses and other documentary evidences. both the accused were punished for the offences punishable u/s 302 to be read with Section 34 of the Indian Penal Code as well as for the offences u/s 201 of the Indian Penal Code and against this judgment of conviction and order of sentence, original accused No. 2-present Appellant has preferred the present appeal.

3. Looking to the evidences on record, it appears that the original accused No. 1 namely Sao Gagrai @ Sahu Gagrai was suspected by the villagers. A panchayati was called by Munda of village Ghoradubha (P.W. 1) and in panchayati, Sao Gagrai @ Sahu Gagrai (original accused No. 1) has confessed the offence and he has given the name of Bijay Bandia-present Appellant.

4. It further appears that original accused No. 1 Sao Gagrai @ Sahu Gagrai was taken up to the police station, where also he has confessed his offence. Thus, looking to the depositions of the witnesses examined by the prosecution, nothing is coming out on record except the fact that the present Appellant-accused was arrested only upon confessional statement of original accused No. 1-Sao Gagrai @ Sahu Gagrai. In fact there is no evidence against the present Appellant-accused that he has committed murder of the deceased or any of the deceased.

5. It has been stated by learned A.P.P. that the dead bodies were recovered at the behest of the present Appellant-accused and, therefore, he was arrested and. therefore also, he was punished by the learned trial Court. Looking closely to the evidences of the prosecution witnesses, it appears that original accused No. 1-Sao Gagrai @ Sahu Gagrai has confessed his offence before the villagers and in the panchayati present Appellant was not present. Thus, the present Appellant-accused has not made any confession before panchayati Similarly, the present Appellant-accused has also never confessed his offence at the police station.

Moreover, original accused No. 1 i.e. Sao Gagrai @ Sahu Gagrai has already disclosed the fact that he has buried the dead bodies nearby the house of deceased Sangi Gagrai i.e. in the field of Bacha Nidhi Nayak. Thus, the offence was also disclosed by P.W. 1 and the information, where the dead-bodies were concealed was also supplied by original accused No. 1. Therefore, it cannot be said that the present Appellant, who is original accused No. 2 had further disclosed the place where the dead bodies were buried. Thus, there is no admissible evidence against the present Appellant-accused. The prosecution has failed to prove the offence committed by the present Appellant-accused. This aspect of the matter has not been properly appreciated by the learned trial Court.

6. Looking to the overall depositions of the prosecution witnesses, it appears that the present Appellant-accused, who is original accused No. 2 has not made any confession and as the place of dead bodies was already pointed out by the original accused No. 1, it cannot be said that the dead bodies were recovered by the information supplied by the present Appellant-accused. Thus, even with the help of Section 34 of the Indian Penal Code, nothing has been proved by the prosecution against the present Appellant. This matter has also not been properly appreciated by learned trial Court. There ought to be corroborative evidences. Looking to the evidences on record, we are of the opinion that prosecution has failed to prove the offence against the present Appellant-accused punishable u/s 302 of the Indian Penal Code to be read with Section 34 of the Indian Penal Code as well as State has failed to prove the offence punishable u/s 201 of the Indian Penal Code. In view of the fact that there is no evidence against this Appellant-accused, we hereby quash and set aside the judgment of conviction and order of sentence passed by learned 3rd Additional Sessions Judge, Chaibasa dated 8.5.2003 in Sessions Trial No. 236 of 2001, so far as present Appellant-original accused No. 2. namely, Bijay Bandia is concerned. If he is not required to be detained in any other offence, we hereby direct the Respondent-State to release him forthwith from the judicial custody.