
(2007) 01 JH CK 0040
In the Jharkhand High Court

Bindu Kumhar and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302, 323, 34

Citation : (2007) 3 EastCric 142 : AIR 2007 Jhar 417 : (2007) CriLJ 2810

Hon'ble Judges : Dhananjay Prasad Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the appellants against the judgment and order of sentence dated 9th September, 1998 passed by the Sessions Judge Singhbhum West at Chaibasa in S.T. No. 61 of 1996 whereby and whereunder the appellants have been convicted u/s 302 of the Indian Penal Code and have been sentenced to R.I. for life.

2. The prosecution case in short is that the informant P.W. 7 was cooking food for her deceased husband and son in the night of 3rd July, 1992 in her house situated in Mauza Tujur, P.S. Sonua, District Singhbhum west when one Mirgi Kumhar called out her husband. As further stated when she along with the deceased came out, all the appellants, named above, arrived suddenly and started assaulting her husband with Lathi. Further stated when her husband fell down, the appellant Birsa Kumhar picked up a stone and started assaulting the deceased on his head. When she protested she was also assaulted and threatened to be killed with her son. Thereafter she left the place of occurrence and hid herself along with her son nearby. In the morning she informed the village Munda P.W. 6 who arrived at the place of occurrence to find the Courtyard of house blood soaked and the husband of the informant missing. Thereafter the Villagers and village Munda informed the Manki P.W. 5 residing in another village who came next day in the village. According to the informant when the Munda

and Manki caught hold of the appellants, they confessed their guilt and further disclosed that they had disposed of the dead body after cutting in river Karo. Accordingly a search was made by the Munda and Manki along with villagers during which parts of the dead body were recovered from distant places in the river. The villagers brought parts of the dead body and sent a message to police situated at a distance of 40 k.m. Thereafter the police arrived on 7-7-1992 to record her statement. According to her this incident has occurred because the deceased has given the appellants, her two stepsons, some lands for cultivation and denied to further part with other properties meant for her.

3. The police registered Sonua P.S. Case No. 30 of 1992 under Sections 302, 201, 323/34 of the Indian Penal Code against four persons and finally submitted charge sheet. The case of the appellants were committed to the Court of sessions for trial. One of the accused Mirga Kumhar absconded. There fore charge was framed against these appellants by the trial Court on 6-8-1992. The appellants pleaded not guilty and claimed innocence. However, after considering, the evidence before it, the learned trial Court found and held all the appellants guilty u/s 302/34 of the Indian Penal Code and sentenced them as aforesaid.

4. The present appeal has been preferred on the ground that the learned trial Court has not considered the apparent fabrication and concoction of the prosecution case. It is also submitted that the trial Court has not appreciated the facts on record properly and did not explained the circumstances and evidence relied upon by it to the appellants u/s 313 of the Cr.P.C. The learned Counsel for the appellants also stressed before us that the identity of the dead body has not been established to hold the appellants guilty. The learned Counsel has further challenged the said confessional statement and resultant recovery of the parts of the body of Khambha Kumhar. The learned Counsel further submitted that the appellants have remained in custody from July 1992. Therefore they deserve to be acquitted of the charges.

5. We have considered the submissions along with evidence available on records. The prosecution has examined altogether eight witnesses in this case. The informant P.W. 7 Ghasni Devi has supported her versions before the police. She has received injuries on her head proved by P.W. 2 and the injury report has been marked as Ext.-2 for the prosecution. According to her version, she was married with the deceased as second wife and there was some dispute between the appellants and the deceased regarding partition of the lands. She has been cross examined by the defence but nothing has been brought on record to deny this allegation. P.W. 1 formally proved the FIR as Ext.-1 written by P.W. 8 A.S.I., O.J. Pardiya who was posted as officer-in-charge of Sonua police station in July, 1992. According to this witness P.W.8, he found blood spread at the place of occurrence in sufficient quantity, which was covered with fresh soil. He further asserted that headless dead body was seized by him and inquest report prepared as Ex.-5. He further asserted that the dead body being in bad condition could not be subjected to post-mortem report rather the skeletons were subjected to post-

mortem report by Court witness Dr. Y. Nath. The doctor has found skeletons having sharp cutting weapon injuries on vertebra, ribs, head bearing cut fractures, eight in numbers, over whole skeleton. According to him skeleton belong to a male of about 60 years of age. This report has been marked as Ext.-A, Therefore the skeleton examined-by Court witness Dr. Y. Nath indicates that it belonged to deceased Kham-bha Kumhar, husband of the informant.

6. The identity of skeleton as of Khambha Kumhar has been supported by P.W. 3- Mangal Barjo Munda of the village and P.W. 5 Manohar Manki, Manki of the area and P.W. 4 Chamra Kumhar son of the deceased. P.W. 4 was a child when examined on 23rd August, 1995 has supported the informant in details. P.W. 3 the Munda of the village has stated that next day he was informed by Jay Masih Munda regarding, the incident then he arrived at the place of occurrence along with villagers to find blood spread all over the place and the appellants disclosed, their involvement and confessed their guilt, before the Manki P.W. 5 who came next day. According to him when they inquired from the appellants where the dead body was concealed they disclosed that the dead body was cut into pieces and thrown in river karo. He further asserted that then the "villagers along with appellants went in search of the dead body could manage to recover parts of the dead body, which was brought in village and next day produced before the police. Manohar Manki P.W. 5 has supported this version in details, He further asserted that in his presence and other villagers, the appellants have confessed their guilt and the manner in which the dead body was disposed of. He gave details how the parts of the dead body were recovered by the villagers in his presence from different places of river Karo. The defence has not cross examined these two witnesses on the manner in which confession was made and further recovery of the parts of the dead body. P.W. 6 Jay Masih Barjo is another eyewitness who supports these two witnesses and the prosecution case in details. According to him the appellants disclosed to them that the dead body has been thrown in river, Karo after cutting into pieces after which they could recover the parts of the dead body from different places of river Karo. He is also a witness on the fard beyan along with P.W. 4. During cross examination this witness has admitted that he did not witness any dispute or, panchayati regarding the partition of the lands between the deceased and the appellants. He further asserted that the parts of the dead body were identified with the cloths.

7. The learned defence counsel has criticized this witness on the ground that they were taking part along with informant P.W. 7 to falsely implicate the appellants. It is also suggested that the appellants were being implicated in this case just to grab their share of the land.

8. We have anxiously considered the submissions made by the counsel for the appellants. The informant was second wife of the deceased. The appellants Birsa and Bindu are admittedly stepsons of the deceased. The supporting witnesses P.W. 3, 5 and 6 are independent and they had no motive to implicate falsely the appellants. These witnesses have consistently supported the prosecution case

that they found the deceased Khambha Kumhar missing from his house and the Courtyard blood soaked. The Manki P.W. 5 has stated specifically that in his presence the appellants have confessed their guilt and on their disclosure parts of the dead body were recovered at distant places from river Karo. The identity of those parts of the dead body which belonged to a male of about 60 years of age has been established by Court witness Dr. Y. Nath. The Ext.-A further shows that the skeletons have got cut fractures, which fits with the confessional statement of the appellants that they had pieced the dead body of their father and thrown it in river Karo. The statement of P.W. 4 and 7 further shows that the deceased was assaulted by these appellants resulting in his death. The circumstantial evidence stand proved by all the witnesses. Thereafter finding blood in the Courtyard and blood stained stone further supports the prosecution case.

9. Having considered the above mentioned facts and circumstances of the case, we are of the view that the prosecution in the present case has been able to prove the charges beyond all reasonable doubts u/s 302 of the Indian Penal Code against all the appellants. Accordingly this appeal has got no merit in it and deserves to be dismissed. It is accordingly, dismissed. The impugned judgment and order of conviction and sentence passed by the trial Court against the appellants is hereby confirmed.