
(2022) 09 JH CK 0047

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 499 Of 2010, 469 Of 2011

Bir Singh Champia And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2022) 09 JH CK 0047

Hon'ble Judges : Rongon Mukhopadhyay, J; Ambuj Nath, J

Bench : Division Bench

Advocate : R. P. Gupta, Satish Prasad

Final Decision : Dismissed

Judgement

1. Heard Mr. R. P. Gupta, learned counsel appearing for the appellants and Mr. Satish Prasad, learned Addl.P.P. for the State.

2. Both these appeals i.e. Criminal Appeal (D.B.) No.469 of 2011 and Criminal Appeal (D.B.) No.499 of 2010, arise out of the same impugned judgment of conviction and order of sentence and accordingly, both these appeals are being disposed of by this common judgment.

3. These appeals are directed against the Judgment of conviction and order of sentence dated 11.02.2010 (sentence passed on 18.02.2010) passed by Sri Uday Narayan Mishra, learned 1st Additional Sessions Judge, West Singhbhum at Chaibasa, in connection with Sessions Trial No.12 of 2008, holding the appellant, Bir Singh Champia in Cr. Appeal (D.B.) No.469 of 2011 and the appellants, Fulchand Champia and Jit Mohan Champia in Cr. Appeal (D.B.) No.499 of 2010, guilty of the offence under Sections 302/34 of the Indian Penal Code and thereby, sentencing them to undergo imprisonment for life along with a fine of Rs.10,000/- each for the aforesaid offences. No separate sentence was passed in case of non-payment of fine by the appellants.

4. The prosecution case was instituted on the basis of fardbeyan of the informant, Balima Champia, alleging therein that on 30.08.2007 at about 6:00 A.M, she and her husband, Jurendra Champia were working in their field. At about 12 Noon, she told her husband to go home and attend the cattle. Thereafter, her husband went home. After some time, while she was on the way back home, her daughter Sukarmani accosted her and told her that the appellants, Jit Mohan Champia, Fulchand Champia and Bir Singh Champia had murdered her father and brother Chandra Mohan Champia by inflicting Axe blows. Informant rushed home and found the dead body of her husband, lying on a cot. He was lying in the pool of blood and there was injury on his neck. The dead body of her son, Chandra Mohan Champia was also lying behind her house. There was injury on his neck. The genesis of the occurrence was the dispute between the informant and the appellants over tying of cattle by the appellants in the land of the deceased.

5. After investigation, police found the occurrence to be true and submitted charge-sheet against the appellants on 30.11.2007 under Sections 302/34 of the Indian Penal Code. After taking cognizance, the learned S.D.J.M., Porahat at Chaibasa committed this case to the Court of Sessions on 02.01.2008, as it was exclusively triable by the Sessions Court.

6. Charge was framed against the appellants on 30.01.2008 under Sections 302/34 of the Indian Penal Code. The contents of the charge were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

7. In order to prove its case, the prosecution has adduced both oral and documentary evidence.

Dr. D.K.Mishra (P.W.1) had performed the postmortem on the dead bodies of the deceased, Jurendra Champia and Chandra Mohan Champia.

He has proved the postmortem reports, which are Exhibits-1 & 1/1 respectively.

Balima Champia (P.W.2) is the informant of the case. She has supported the case as enunciated in her fardbeyan.

Moran Singh Champia (P.W.3) is the hearsay witness. He has proved his signature on the Fardbeyan, which is Exhibit-2. He has also proved his signature and that of Manu Champia on the inquest reports which are Exhibit-2 series. He has proved his signature and that of Manu Champia on the seizure list relating to seizure of bloodstained soil from the place of occurrence, which have also been marked as Exhibits-2/5 & 2/6 respectively. According to him, on the basis of confession of Bir Singh Champia, bloodstained trouser and T-Shirt were recovered from his house. Seizure list was prepared. He has proved his signature on the seizure list and that of witness Manu Champia, which are Exhibits-2/7 and 2/8 respectively. He has further stated that the bloodstained Axe was recovered on the basis of confession of Bir Singh Champia. Seizure list was prepared in his

presence. He has proved his signature and that of witness Manu Champia, which are Exhibits-2/7 and 2/8 respectively.

Subani Kora (P.W.4) is the hearsay witness.

Sukarmani Champia (P.W.5) is the daughter of the informant. She was aged about 5-6 years at the time of deposition. Learned court below had examined her on the point whether she was a suitable witness or not. Learned court below had found her competent enough to be examined as a witness. She has stated that all the three appellants had murdered her father. In her cross-examination, she has stated that she is an eyewitness to the occurrence.

Manu Champia (P.W.6) is another witness of inquest and seizure list relating to recoveries of bloodstained trousers & T-Shirt, bloodstained soil and Axe. He has identified his signature in all three documents which were marked as Exhibit-2 series.

Suman Anand (P.W.7) is the Investigating Officer of the case. He has proved the fardbeyan which has been marked as Exhibit-3. He has also proved the formal FIR which has been marked as Exhibit-4. He has further proved the inquest report, which has been marked as Exhibit-5 series. He has proved both the places of occurrence. The first place of occurrence is in front of the house of the informant and second place of occurrence is behind the house of the informant. He has further stated that he apprehended the accused, Bir Singh Champia and Fulchand Champia. He has proved the confessional statements of Bir Singh Champia and Fulchand Champia, which are marked as Exhibits-8 & 8/a. According to him, on the basis of their confession, bloodstained trouser and vest were recovered. He has proved the seizure list which is marked as Exhibit-7/a. He has further stated that on the basis of confession of accused persons, murder weapon which is an Axe, hidden in the field of Shankar Mahto was recovered. He has proved the seizure list, which is marked as Exhibit-7/b.

Shiv Narayan Kamat (P.W.8) is another Investigating Officer of the case who submitted charge-sheet.

8. The statements of the appellants were recorded under Section 313 of the Cr.P.C. Defence is general denial of the occurrence and false implication.

9. On the basis of the evidence both oral and documentary, learned court below held the appellants guilty and sentenced them accordingly.

10. Learned lawyer appearing on behalf of the appellants submitted that the learned court below has held the appellants guilty on the basis of the statement of Sukarmani Champia (P.W.5) who is a child witness. He has further stated that the informant, Balima Champia (P.W.2) in her fardbeyan has not claimed to be a witness to the occurrence, but she has improved her case in her deposition before the Court, claiming to be an eyewitness and as such, her evidence cannot be relied upon. On these grounds, it was prayed that the judgment of conviction and order of sentence passed by the learned Court below be set aside and this

appeal be allowed.

11. Learned Addl. P.P appearing on behalf of the State submitted that Sukarmani Champia (P.W.5) has specifically stated that all the three appellants had committed murder of her father. She has identified them in the dock. It was further submitted that the confession of the appellants, Bir Singh Champia and Jit Mohan Champia have led to the recoveries of bloodstained clothes and Axe used in commission of the occurrence. According to him, the prosecution has been able to prove its case against the appellants beyond all reasonable doubts. Accordingly, it was prayed that this appeal be dismissed.

12. Now it has to be ascertained whether the prosecution has been able to prove its case against the appellants beyond all reasonable doubts.

In order to come to the aforesaid findings, it has to be ascertained:

(i) Whether the deceased Jurendra Champia and Chandra Mohan Champia died a homicidal death ?

(ii) Whether the informant Balima Champia (P.W.2) is an eyewitness to the occurrence ?

(iii) Whether the appellants namely Bir Singh Champia, Fulchand Champia and Jit Mohan Champia have committed homicidal death of the deceased persons, Jurendra Champia and Chandra Mohan Champia ?

(iv) Whether the statement of Sukarmani Champia (P.W.5) can be relied upon ?

13. The case of the prosecution is that Jurendra Champia, the husband of the informant Balima Champia and her son, Chandra Mohan Champia were murdered in their house on 30.08.2007 at about 12 Noon.

The informant, Balima Champia (P.W.2) has stated that on the date of occurrence, while she was returning home, her daughter Sukarmani Champia met her on the way and told her that her father has been murdered by unknown persons.

Moran Singh Champia (P.W.3) has stated that on 30.08.2007, he came to know that Jurendra Champia has been murdered on which he went to his house and saw the dead body of Jurendra Champia, lying in the courtyard. There was injury on his neck. He also saw the dead body of Chandra Mohan Champia. He had also sustained injury on his neck. He is the witness of inquest and he has identified his signature and that of other witness, Manu Champia on the inquest report, which are marked as Exhibit-2 series.

Manu Champia is another witness of inquest. He has identified his signature on the inquest report. Suman Anand (P.W.7) is the Investigating Officer of the case. He has stated that on 30.08.2007, he went to the place of occurrence and prepared the inquest reports of both the deceased persons, which are marked as Exhibit -5 series. He has stated that the dead body of Jurendra Champia was

lying in the courtyard. There were injuries on his head and neck. He also found the dead body of Chandra Mohan Champia, lying behind the thatched house of the informant. The dead body of Chandra Mohan Champia was lying in a pool of blood. He seized the bloodstained soil from the place of occurrence. He has proved the seizure list, which is marked as Exhibit-7.

14. From perusal of the inquest report of Jurendra Champia (Exhibit-5), it transpires that the Investigating Officer has found sharp cut injury on the neck of the deceased. The cause of death was on account of assault by an Axe.

From perusal of inquest report of Chandra Mohan Champia (Exhibit-5/a), it also transpires that sharp cut injury was found on the neck of the deceased, Chandra Mohan Champia. The cause of death has been stated to be the injuries caused by an Axe.

15. Dr. Dhananjay Kumar Mishra (P.W.1) has performed the postmortem on the dead bodies of Jurendra Champia and Chandra Mohan Champia and he has found following injuries on the dead body of Jurendra Champia :

External Injury

(i) Laceration on scalp on occipital region measuring 3" x 2"x 2" of occipital bone and brain viscera protruded out of occipital bone.

(ii) Fracture of atlas and axis vertebra.

(iii) Laceration on the left side of neck measuring 4"x4"x4" cutting of left sided scalene muscles, sternocleidomastoid muscle, common carotid artery of left side, vertebral artery of left side, trachea and oesophagus found cut from left lateral side.

(iv) Laceration of right side of neck measuring 3" x 3" (linear). Margin of the wound: sharp, colour of the Wound-Blackish red.

According to this witness, death was caused due to shock and haemorrhage due to the abovementioned external injuries.

He has further stated that the aforesaid injuries may be caused by Tangi.

He has proved the postmortem report of Jurendera Champia, which is marked as Exhibit-1.

Dr. Dhananjay Kumar Mishra (P.W.1) has further stated that on the same day, he performed the postmortem on the dead body of Chandra Mohan Champia and found the following external injuries :-

External Injury

(i) Large laceration on the anterior aspect of neck measuring 3"x2"x2". Margin of the laceration sharp.

(ii) Trachea cut, oesophagus cut, common carotid artery left and right cut,

sternocleidomastoid muscles of both left and right side cut.

According to this witness, death was caused due to cardio respiratory failure due to shock and haemorrhage due to the aforementioned external injuries.

According to him, the aforesaid injuries can be caused by Tangi. He has proved the postmortem report of the deceased, Chandra Mohan Champia which is marked as Exhibit-1/1.

16. From the aforesaid oral and documentary evidence, it is evident that the prosecution witnesses have stated that they found injuries on the neck of both the deceased. The inquest reports also reveals that the deceased, Jurendra Champia and Chandra Mohan Champia had sustained sharp cut injuries on their neck, which was caused by an Axe. The aforesaid oral and documentary evidence on the point of the injuries sustained by the deceased persons is corroborated by the medical evidence. Dr. Dhananjay Kumar Mishra, P.W.1, who has specifically stated that he found the injuries on the person of both the deceased which can be caused by Axe.

17. Accordingly, we come to the finding that the deceased, Jurendra Champia and Chandra Mohan Champia died homicidal death.

18. It is the further case of the prosecution that the appellants, Bir Singh Champia, Fulchand Champia and Jit Mohan Champia had committed homicidal death of the deceased.

In order to prove its case on this point, the prosecution has relied on the statements of Balima Champia (P.W.2) who is the informant of the case and Sukarmani Champia (P.W.5) who is the daughter of the informant.

19. Balima Champia (P.W.2) has stated in her Fardbeyan (Ext.-3) that on 30.08.2007 at about 12 Noon, she was working in the field with her husband and at about 12 Noon, she asked him to return home and attend to the cattle. After some time, when her husband did not return, she left for home. On the way, she met her daughter, Sukarmani Champia (P.W.5) who told her that the appellants Bir Singh Champia, Fulchand Champia and Jit Mohan Champia had murdered her father and brother. When she reached home, she found the dead body of her husband Jurendra Champia, lying on a cot. There was injury on his neck. She also found the dead body of her son, Chandra Mohan Champia, lying behind the house with sustained injury on his neck.

In her evidence before the Court as P.W.2, she has supported the fact that she had sent her husband back home for attending the cattle but when he did not return, she went to look for him. On the way, her daughter Sukarmani met her and told her that the accused persons had murdered her husband by Axe. When she reached at the place of occurrence, she saw the accused persons, assaulting her husband. Thereafter, they fled away with the Axe.

In her cross-examination, she has denied that she is not the eyewitness. From

perusal of the statement of the witness, Balima Champia (P.W.2) which has been recorded in her Fardbeyan, it appears that she has not claimed to be an eyewitness, while from her statement recorded in the Court, it is evident that she has stated that she saw the appellants, assaulting her husband.

From the aforesaid facts, it transpires that there is a vital contradictions in the statement of Balima Champia (P.W.2), vis-a-vis, her statement in the Fardbeyan and her statement recorded during trial regarding the fact that she is an eyewitness. Accordingly, her statement to the extent that she saw the appellants, assaulting her husband cannot be relied upon.

20. Sukarmani Champia (P.W.5) is a child witness. Before recording her evidence, learned Trial Court had examined her competency and found her to be a competent witness. She has stated that the accused persons had murdered her father by assaulting him by Axe. She could not name the accused persons but she has identified them in the dock. In her cross-examination, she has specifically stated that she had seen the occurrence. She has further stated that Bir Singh Champia was holding Axe and the other appellants namely Fulchand Champia and Jit Mohan Champia were empty handed. The fact that appellant Bir Singh Champia was holding Axe was reiterated by her in her cross examination.

This witness has withstood the test of cross-examination. Though she has not stated anything about the fact that she saw the appellants, murdering her brother, but she has clearly stated that she saw them murdering her father. Had she been tutored witness as she would have stated about seeing the murder of her brother Chandra Mohan Champia. Accordingly, the evidence of this witness, Sukarmani Champia (P.W.5) can be safely relied upon.

21. As far as the appellant, Bir Singh Champia and Fulchand Champia are concerned, it is the case of the prosecution that bloodstained Axe was recovered on the basis of their confession.

Suman Anand (P.W.7) has stated that he had apprehended Bir Singh Champia and Fulchand Champia and recorded their confessions. He has proved their confessions, which were marked as Exhibits-8 & 8/a. He has further stated that on the basis of their confessions, bloodstained trouser and vest were recovered. Seizure list was prepared and he has proved the seizure list which is marked as Exhibit-7/a. He has further stated that on the pointing out by both the appellants, Bir Singh Champia and Fulchand Champia, the Axe used in the murder of the deceased persons was recovered from the field of Shankar Mahto. He has proved the seizure list which is marked as Exhibit-7/b.

The seized Axe was sent for forensic examination. The forensic report has been adduced in evidence as Exhibit-9. According to the forensic report, human blood was found on the Axe.

22. As far as the appellant, Jit Mohan Champia is concerned, Sukarmani Champia (P.W.5) has specifically stated that the appellant, Jit Mohan Champia was present

at the place of occurrence alongwith appellants Bir Singh Champia and Fulchand Champia. Appellant, Bir Singh Champia was armed with an Axe and all the three appellants had murdered her father. She has not been cross-examined on the point of the appellant, Jit Mohan Champia's presence at the place of occurrence alongwith other accused persons at the time of occurrence and Sukarmani Champia (P.W.5) has specifically stated that he was one of the assailants.

On 30.08.2007 at about 12 Noon, Jurendra Champia was murdered in the courtyard of the house, whereas his son Chandra Mohan Champia was murdered behind his house.

23. As far as the offence relating to murder of Chandra Mohan Champia is concerned, there is no eyewitness of the occurrence. The sole eyewitness, Sukarmani Champia (P.W.5) has stated that she had seen all the three appellants, murdering her father.

24. From the evidence of Dr. Dhananjay Kumar Mishra (P.W.1), it transpires that the time of death of Jurendra Champia was 12 to 48 hours from the time of his postmortem. His postmortem was performed at 11:40 A.M on 31.08.2007. This witness has further stated that on the same day at about 11:30 A.M, he had performed the postmortem of Chandra Mohan Champia, a six years old male child and the time of his death was within

12 to 48 hours. Both the deceased have sustained injuries mainly on their neck by an Axe, resulting in their death.

From the aforesaid facts, it can be safely concluded that both Jurendra Champia and Chandra Mohan Champia were murdered at the same time. Jurendra Champia was murdered in the courtyard of his house and Chandra Mohan Champia was murdered behind his house.

25. Murder of both Jurendra Champia and Chandra Mohan Champia are connected with one another reflecting the state of things under which murder of both the deceased happened and the same points out towards the fact that all the three appellants were present at the place of occurrence and were seen for committing murder of Jurendra Champia by an Axe. Murder of Chandra Mohan Champia was committed more or less at the same place, at the same time and also the manner of assault was same. So, the entire circumstances leading to murder of Chandra Mohan Champia points out towards the fact that it was the appellants, Bir Singh Champia, Fulchand Champia and Jit Mohan Champia who had caused the homicidal death of Chandra Mohan Champia.

From the aforesaid facts and circumstances, we come to the finding that the prosecution has been able to prove that the appellants, Bir Singh Champia, Fulchand Champia and Jit Mohan Champia have caused homicidal death of the deceased Jurendra Champia and Chandra Mohan Champia.

26. Learned court below while holding the appellants guilty of the murder of Jurendra Champia and Chandra Mohan Champia for the offence under Sections

302/34 of the Indian Penal Code has considered all the evidences both oral and documentary on record.

Accordingly, we do not find any infirmity in the judgment of the learned Court below to require any interference.

27. As such, these appeals stand dismissed.

28. Pending interlocutory application, if any, also stands disposed off.