
(2014) 02 JH CK 0027

In the Jharkhand High Court

Case No : Cr. Appeal (DB) No. 1028 of 2003

Bokla Sheikh and Charka Sheik

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (2014) 2 AJR 642

Hon'ble Judges : P.P. Bhatt, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Pankaj Kumar, Advocate for the Appellant; Pankaj Kumar, A.P.P, Advocate for the Respondent

Final Decision : Allowed

Judgement

D.N. Patel, J.—This appeal has been preferred against the judgment and order of conviction and sentence passed by the Additional Sessions Judge, Fast Track Court-V, Deoghar, in Sessions Case No. 96 of 2002, whereby these two appellants have been convicted for the offence punishable u/s 302 of the I.P.C. to be read with Section 34 thereof for life imprisonment and they are also made liable to pay a fine of Rs. 50,000/- each and in case of default, further rigorous imprisonment of two years have been awarded. These two appellants have also been convicted for 10 years rigorous imprisonment for the offence punishable u/s 364 of the I.P.C. to be read with Section 34 thereof and fine of Rs. 10,000/- and in case of default, further rigorous imprisonment for six months have been awarded. These two appellants have also been punished for the offence punishable u/s 201 of the I.P.C. to be read with Section 34 thereof for two years rigorous imprisonment. The case of the prosecution is, that-

On 15.01.2002 at 10.45 A.M., the informant Ranendra Kumar Anthony (P.W.-9) gave written report to police that his son Virendra Anthony @ Babu aged about

15 years old was missing from his house since 5.01.2002 and information to which is already been given to the police. It is further alleged that on 13.01.2002 one Safique Sheikh of village - Dorhi, informed him, that on 5.01.2002 he had seen Bokhal Sheikh and Charka Sheikh of village - Dorhi taking his son on Riksha from Mina Bazar to Pathakhathi. On this information, the informant started searching. It was further alleged that the informant daughter was married with Nasruddin of village Dorhi and on 8.01.2002, the informant send his son-in-law and one Rahim Sheikh to Delhi in search of his son. Then informant recalled Rahim Sheikh from there and intimated Nasruddin to remain in Delhi to search his son. Thereafter on 14.01.2002, Safique Sheikh came to the house of the informant and informed him that his villager Bokla Sheikh and Charka Sheikh were talking to the villagers Rosan Bibi, Jahida Bibi, Asima Bibi etc. that Nasruddin is uselessly searching him at Delhi as they have already murdered him and concealed his dead body in the agricultural field and they have also threatened them not to disclose this fact to anybody else. This fact was also supported by the informant daughter Baby. It was further alleged by the informant that he is under full confident that accused Bokhla Sheikh and Charka Sheikh had kidnapped his son to commit his murder and concealed his dead body.

2. Twelve witnesses were examined by the prosecution:

One witness was examined by the Defence:

3. It is submitted by the counsel appearing for the appellants that the learned trial court has not properly appreciated the major omissions, contradictions and improvements in the depositions of the prosecution witnesses. Moreover, it is submitted by the counsel for the appellants that there is no eye witness of the whole incident. All the witnesses are the hearsay witnesses. The so called incident has taken place on 5th January, 2002, whereas the F.I.R. was lodged on 15th January, 2002. It is further submitted by the counsel for the appellants that the case of the prosecution is based on extra judicial confession, but, that is also not proved by the prosecution witnesses, even otherwise also, it is a weakest piece of evidence. There is enmity between the P.W.-3 and the accused-1 as stated in Paragraph-6 of his deposition. Not a single prosecution witness ever stated in the Court that on which date, these accused had made extra judicial confession. Looking to the depositions of the prosecution witnesses, it appears that these two appellants, after committing the murder, had announced in the village that they have committed the murder of the deceased and all the prosecution witnesses and other persons were also informed by these two appellants that they shall not give this information to any one. This is the highest case of the prosecution, whereas, otherwise, there is no link established between these two accused and the murder. No weapon has been recovered, even the "last seen together theory" has also not been established. There is no proximity between the "last seen together" and the murder. The statement made before the learned Magistrate u/s 164 of the Cr.P.C. by the witnesses and the depositions in the Court are quite different and there is a material improvement

in their deposition. Thus, the whole case of the prosecution is based upon only the hearsay witnesses and the prosecution has not proved the offence of murder beyond reasonable doubt. So far as the motive is concerned, it is also not established by the prosecution whatsoever. No motive is mentioned in the F.I.R. nor the statement u/s 164 of the Cr.P.C. is made by the witnesses before the Magistrate. Neither any money was demanded by these two appellants, nor the prosecution witnesses are saying that they had seen on some day that these two appellants are quarreling with each other about some money. One of the witnesses has also stated in cross examination that P.W.-5 has narrated that Rupees Two Lakhs were deposited in the name of the deceased, and therefore, these two appellants have committed the murder of the deceased. There is no head and tail match in this case by the prosecution because the father, mother, brother and sister, everybody is alive of the deceased and if at all there is any deposit in the name of the deceased, how it can be obtained by these two appellants. It appears that absolutely a false, bogus and concocted case has been lodged against these two appellants. There is no direct evidence whatsoever against these two appellants and the case is based upon the circumstances and no circumstance has been proved beyond reasonable doubt nor the chain of circumstance has also been completed by the prosecution, and hence, the judgment and order of conviction and sentence passed by the learned trial court deserves to be quashed and set aside.

4. It is submitted by the A.P.P. that the case of the prosecution has been proved beyond reasonable doubt and these two appellants have committed murder of the deceased and the dead body was recovered at the behest of these two appellants from the field of appellant No. 1. It is also submitted by the A.P.P. that there are several prosecution witnesses, who have stated before the trial court that these two appellants were fighting with each other in the village and these witnesses has heard them that they have committed murder of the deceased, to that effect, there is a statement u/s 164 Cr.P.C. before the P.W.-12 also, which are at Ext. 5 to Ext. 5/3. Moreover, the depositions given by P.W.-11 - Investigating Officer, is corroborative to the depositions of other prosecution witnesses. This aspect of the matter has been properly appreciated by the learned trial court and hence, this appeal may not be entertained by this Court.

5. Having heard the counsels for both the sides and looking to the evidences on record and the judgment delivered by the learned trial court, we, hereby, quash and set aside the judgment and order of conviction and sentence passed by the Additional Sessions Judge, Fast Track Court-V, Deoghar, in Sessions Case No. 96 of 2002 dated 31st May, 2003, mainly for the following facts, reasons and evidences on record:-

(i) P.W.-9 gave information to the Madhupur Police Station on 15.1.2002 in writing that his son Virendra Anthony @ Babu, aged about 15 years was missing from his house from 5th January, 2002 and now P.W.-9 is informed by P.W.-2, P.W.-3 and P.W.-5 that these two appellants have committed murder of his son.

There are other witnesses also before whom these two appellants have made confession of the murder of his son. This ferdbeyan was recorded by the Madhupur Police Station, the F.I.R. was lodged, investigation was carried out, statement of several witnesses were recorded and the charge sheet was filed and the case was committed to sessions court being S.C. No. 96 of 2002 and on the basis of the evidences of P.W.-1 to P.W. 12 and Defence witness No. 1 and on the basis of other evidence on record, Ext. 1 to Ext. 5/3 these two appellants have been convicted for the offence u/s 302 of the I.P.C. to be read with Section 34 thereof for the offence punishable u/s 364 of the I.P.C. to be read with Section 34 thereof as well as u/s 201 of the I.P.C., as stated hereinabove. All the sentences have been ordered to run concurrently with the life imprisonment. Against this judgment and order of conviction and sentence, this Appeal has been preferred. Thus, it appears that P.W.-1, P.W.-2, P.W.-3, P.W.-4, P.W.-5 and P.W.-9 are the important witnesses and the P.W.-7 is the Inquest Panchanama witness. The P.W.-10 is a doctor. P.W.-11 is the Investigating Officer. P.W.-12 is Sub Divisional Judicial Magistrate, Madhupur, District-Deoghar, who has recorded the statements u/s 164 of the Cr.P.C.

(ii) Looking to the depositions given by the P.W.-1, who is a hearsay witnesses, it appears that she stayed at the village, where these two appellants accused were residing. She is the mother of P.W. 2. Looking to the depositions of P.W.-1, it appears that she is a hearsay witness and she has heard from the P.W.-2 that these two appellants were talking on some day about the murder of this deceased. Thus, there is no evidentiary value of P.W.-1. She is absolutely a hearsay witness. She has never heard directly about the accused persons, but, she was informed by her daughter. She has also stated in her deposition before the Court that the mother of the accused had informed this P.W.-1 that the appellants have committed murder. Thus, she is a hearsay witness and she has no personal knowledge of the murder at all committed by these two appellants.

(iii) So far as deposition of P.W.-2 is concerned, she is daughter of P.W.-1. She is also staying in the village where these two appellants were staying. In a cross examination, she stated that though she is married, she has never gone at the house of her husband, but, she is staying with her mother and she has never stated before the trial court in her deposition that she heard these two appellants talking with each other about the murder of the deceased. Looking to her examination in chief and cross examination, it appears that she has over-heard the talk between these two appellants. Thus, this P.W.-2 is not inspiring any confidence. Moreover, as also stated that these two accused persons were also quarreling with each other for some money. It is not a case of the prosecution that the ransom was ever demanded from the informant nor it is a case of the informant that after kidnapping of his son anybody has ever demanded ransom. The prosecution witnesses are not walking on the same line, but, all the witnesses are narrating differently the motive. Looking to the statement of this P.W.-2 before the concerned Magistrate u/s 164 Cr.P.C., there is a vast difference between two. There is a lot of improvement in her deposition and we see no

reason to believe this witness also.

(iv) Looking to the depositions given by P.W.-3, Md. Safique Sheikh, it appears that he had seen these two accused appellants in the company of the deceased, but, on which date and at what time, nothing is mentioned. Thus, the crucial aspect of the principle of law "last seen together" is missing and that crucial ingredient is a proximity. This witness has not stated that on which date, he has seen the deceased in the company of these two appellants. The deceased - boy was missing from 5th January, 2002 and the F.I.R. was lodged on 15th January, 2002. Moreover, this witness has stated that these two appellants were shouting in the village that they have committed murder of the deceased. This is how this witness came to know. Looking to the totality of the evidences on record, this witness is untrustworthy and unreliable, because after committing murder it is very difficult to believe that they will shout in the village that they have committed the murder. Moreover, this witness has never informed immediately to the informant P.W.-9, who is the father of the deceased, about the day "last seen together" and on which date these two appellants were shouting because the occurrence has taken place from 5th January, 2002 to 13th January, 2002 at any time. Looking to the statement of this witness before the concerned Magistrate u/s 164 of the Cr.P.C., it appears that there is a material improvement in the deposition given by this witness before the learned trial court.

(v) Looking to the statements u/s 164 Cr.P.C. of this witness it appears that on 5th January, 2002, he had seen these two accused in the company of the deceased, but, he had never informed the informant at any time before lodging the F.I.R. and the facts, which have been stated before the learned trial court u/s 164 Cr.P.C. that 5th January is not stated in the deposition before the learned trial court in the sessions trial. He has stated that on 15th January, 2002, he had seen last together and thereafter he never informed to the informant. Thus, it appears that there is no proximity of last seen together and the murder. Moreover, looking to the cross examination of this witness in Paragraph No. 6, he has stated that this witness - P.W.-3, has lodged the complaint against the appellant No. 1 and ten others. The case is going on in the trial court and the date on which he has given deposition in the sessions trial was also the date of that case. Thus, there is an enmity between the P.W.-3 and the appellant No. 1. In fact, this witness in examination in chief has suppressed the fact that there is no enmity between the accused and the P.W.-3, but, in cross examination, he has pointed out about the criminal case lodged by him against appellant No. 1. Looking to the overall depositions given by this witness, it is untrustworthy and unreliable.

(vi) Looking to the deposition given by P.W.-4, who is the sister of the deceased and daughter of P.W.-9 and she is also a hearsay witness. It appears that she has heard from the village that these two appellants have committed murder of the deceased.

(vii) Looking to the deposition given by P.W.-5 it appears that she has stated

before the learned trial court that these two appellants accused were quarreling with each other in the village for some money and they were talking with each other that they had killed this deceased. Thus, she has overheard the talk between these two appellants. Looking to her further deposition in the court, it appears that there is a theory of rupees two lakhs in the name of the deceased which were going to be obtained by these two appellants; this deceased is murdered. We are unable to understand this theory of the prosecution and this theory of rupees two lakhs has been stated by this witness in examination in chief, meaning thereby too, it is the case of the prosecution. Nothing is brought on record about rupees two lakhs deposit in the name of the deceased by the prosecution nor anything has been brought on record that how rupees two lakhs in the name of the deceased would have been obtained by these two appellants, if the deceased would have been murdered because the father, mother, brother and sister all are alive. Moreover, this theory of rupees two lakhs have been stated by any other witnesses. Thus, a novice theory has been adopted by the prosecution through this witness before the learned trial court. Moreover, looking to the Paragraph No. 3 of the deposition of this witness, she has stated that the mother of the appellant No. 1 has stated that she will pay rupees fifty thousand if she will not give proper deposition in the court about these accused. We are also unable to believe how this rupees fifty thousand theory has been developed by this witness. No other witnesses has stated like this. Both these appellants are rickshaw puller. Rupees fifty thousand will be paid by the mother of the appellant No. 1 to this witness, if she is not giving proper deposition in the court. Looking to the overall deposition of this witness, she is also an untrustworthy and unreliable.

(viii) Looking to the deposition of P.W.-6, she is also a hearsay witness and she is a daughter of the informant aged about 15 years. She has never stated before the court that these two appellants have conveyed to her that they have committed murder of the deceased. This witness has stated that P.W.-3 informed the P.W.-6 and P.W.-9 about the incident. Thus, P.W.-6 is also a hearsay witness.

(ix) P.W.-7, Rahim Sheikh, is a witness in the Inquest Panchnama, but this witness has never used the word inquest panchnama at all in the deposition. This witness has never referred from where the dead body was recovered and seven times he has referred the word "Delhi". This witness has not referred a word "dead body" at all in his deposition. This is how he is examined as inquest panchnama witness, who has signed on the inquest report prepared by the Investigating Officer which is at Ext.-4. He has also no personal knowledge.

(x) Looking to the depositions given by P.W.-8 and P.W.-9, they are also hearsay witnesses. P.W.-8 is mother of the deceased and P.W.-9 is father of the deceased. Looking to their depositions before the learned trial court it appears that they are also hearsay witnesses. They were informed by others that these two appellants have committed murder. Thus, all these prosecution witnesses are hearsay witnesses. Nobody has seen the murder committed by these two appellants nor

any incriminating article has been recovered at the behest of these two appellants. Even the dead body was not recovered at the behest of these two appellants. P.W.-7, who is an inquest panchnama witness, is referring consistently the city of Delhi seven times, but, not a single time the word "dead body" has been referred by him. Looking to the deposition of the Investigating Officer, P.W.-11, it appears that he has proved the Ferdbeyan, F.I.R. and Inquest Report. This Investigating Officer has also not stated in the deposition that the dead body was recovered because these two appellants have showed it and pointed out it. Thus, there is no recovery of the dead body from the field of the appellant No. 1 because of the same contention made before the police. Section 27 of the Indian Evidence Act, 1872, is, therefore, not attracted. Thus, looking to the depositions of the prosecution witnesses, it appears that neither the motive is proved by the prosecution nor the theory of last seen together with proximity has been proved by the prosecution nor the prosecution is proved that the dead body was recovered at the behest of these two appellants. Except the hearsay witnesses, there is no other witness before the learned trial court. This aspect of the matter has not been properly appreciated by the learned trial court. It appears that the learned trial court has committed grave error in believing the hearsay witness, if proved the offence of murder committed by these two appellants is beyond reasonable doubt. On the contrary, the prosecution has miserably failed to prove the offence of murder of the deceased committed by these two appellants. None of the prosecution witnesses have ever stated before the learned trial court in their deposition that on which date, these two appellants have confessed the offence of murder. There is a general shifting statement by the prosecution witnesses that these two appellants were either shouting that they have committed murder in village or they were fighting for some money. It appears that the Investigating Officer has not properly investigated this case. There is no iota of evidence against these two appellants.

6. In view of these evidences on record, we, hereby, quash and set aside the judgment and order of conviction and sentence passed by the Additional Sessions Judge, Fast Track Court-V, Deoghar in Sessions Case No. 96 of 2002 dated 31st May, 2003. Both these appellants shall be released forthwith from the judicial custody. They have remained in jail since 18.1.2002 and they have spent approximately twelve years in jail. If their presence in jail is not required in any other case, they shall be released forthwith. The appeal is allowed and disposed of.