

(2012) 01 JH CK 0117

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 1116 of 2003

Boyo Bari and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Penal Code, 1860 (IPC) — Section 147, 148, 149, 201, 302

Citation : (2012) 01 JH CK 0117

Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the judgment of conviction and sentence dated 30th July, 2003 whereby and where under the appellants have been held guilty for the offences punishable u/s 147, 148, 302/149, 452 & 201 of the Indian Penal Code and each of them were sentenced to undergo R.I. for life u/s 302/149 I.P.C., R.I. for one year u/s 147 I.P.C., R.I. for 2 years u/s 148 I.P.C., R.I. for 3 years u/s 452 I.P.C. and R.I. for 2 years u/s 201 I.P.C. The appellants namely Kundiya Bari @Topandi and Bishnu Kurli have further been held guilty for the offence punishable u/s 376/149 I.P.C. and both of them were sentenced to undergo R.I. for 7 years u/s 376/149 I.P.C. All the sentences so passed against the appellants were directed to run concurrently. The First Information Report lodged on 05.04.1995 by one Chandu Bandia discloses the fact that on 03.04.1995 she was present with her parents, sisters and brothers in her house. At about 8 p.m. 15-16 persons reached to the place and compelled them to open the door and entered into the house. The informant could be able to identify six miscreants out of them who are named in the F.I.R. It is alleged that the accused persons branded parents of the informant as witch and forcibly took all the family members towards river side on the point of lethal weapon like lathi, sword etc. with which they were armed. The informant was taken towards bush by accused Kinkri Ho, Kundiya Bari Topandi and Bishnu Kurli who all committed rape on her

one after another. After being ravished the informant became senseless and after having sense she went to the house of Pasing Soi and disclosed about the incident to his wife. In the morning the informant along with wife of Pasing Soi returned home but on the way near the river bank they noticed blood stain at places. After seeing the blood she formed an opinion that her parents, brothers and sisters must have been killed by the accused persons who kidnapped them. The occurrence was brought to the notice of villagers, Munda and Sarpanch who made a search but could not succeed to find out" the dead bodies and the matter was reported to police. Thereafter, all dead bodies of six deceased namely, Srimatu Bandia (aged 45 years), mother of the informant, Sikra Bandia (aged 8 years, Hari Bandia aged 6 years, Jiten Bandia aged 8 years, Jinem Bandia aged 12 years and Jonga Bandia, aged 16 years were recovered from the river bed which were buried within the sand. The dead body of Pandu Bandia (father of the informant) was recovered from a place situated at a distance of three kilometer from the river bank.

2. That the investigation was proceeded and after its conclusion chargesheet against the appellants and other accused persons was submitted.

3. Altogether 8 accused persons namely Shyam Jojo, Boyo Bari, Dinu@ Tapu, Sau Bari"@ Ranchada, Kundia @ Topandi, Kinkri @ Govind @ Tapu, Mangru Bandia and Bishnu Kurli were put on trial after framing of the charges.

4. In course of trial one of accused namely Kinkri @ Govind @ Tapu had absconded and therefore, case of said accused was split up on 05.01.1998 from the remaining accused. At the conclusion of trial all the appellants have been held guilty as aforesaid but two of the accused namely Mangru Bandia and Dinu @ Tapu Ho were acquitted.

5. The prosecution, in order to substantiate the charges, had examined altogether six witnesses whereas Girdhari Tanti has been examined as CW-1 u/s 311 Cr.P.C. and he has proved carbon copy of seven inquest reports relating to the deceased and formal F.I.R.

6. Dr. B. Dayal, PW-1 had conducted post mortem on the dead bodies of all seven deceased on 07.04.1995 and described the ante mortem injuries appearing on the persons of the deceased. The death of all seven deceased was homicidal which has not been challenged.

7. Chandu Bandia PW-2 is the informant and key witness. She has stated that on 3rd July, 1995 she along with her parents, brothers and sisters had been to her house at village Tola Kolagutu within village Podaiya, P.S. Chakradharpur. At about 8 p.m. 15-16 miscreants reached to the place and knocked the door. After threatening mother of the informant opened the door. - No sooner the door was opened, 12 persons entered into the house out of whom the appellants and some of their associates were identified. They branded mother and father of the informant as witch and further caught hold each of the family members present in the house and took them towards river side on the point of weapons which

they had. The informant was caught by Kundiya Bari @ Topandi, Kinkri @ Govind and Bishnu Kurli who forcibly took her towards bush situated near the river bank and committed rape on her one after the another. She became senseless after being ravished. After becoming conscious she went to the house of Pasing Soi situated at village Piru Koncha and disclosed the incident to his wife. On the following morning the informant along with wife of Pasing Soi returned home and narrated the incident to other villagers. On way to- home she had noticed blood stain at places near the river bank. The villagers along with Sarpanch made a search to find out the parents, brothers and sisters of the informant but they could not succeed on that very day. On the next day i.e. on 05.04.1995 dead bodies of six deceased buried in the river bank were recovered and dead body of father of informant was recovered from a distance of three kilometer from the place from where dead bodies of six deceased were recovered. The informant has fully supported the prosecution case in her deposition before the Court. During cross-examination she has fairly conceded that name of Mangru Bandia was not disclosed in the F.I.R. and accused Dinu @Tapu was not identified in Court. She has also conceded the fact that actual assault caused to her parents, brothers and sisters was not witnessed by her.

8. PW-3 Hari Charan Bandia, PW-4 Pantar Gagrai and P W-6 Amar Singh Gagrai are the hearsay witnesses and they have corroborated the incident which they heard. PW-5 Pasing Soi is a witness in whose house the informant had taken shelter after being relieved from the clutches of the accused. This witness has corroborated the fact that his wife told him that Chandu Bandia (informant) had visited her house during night and she was provided clothe.

9. Learned counsel appearing for the appellants has challenged the impugned judgment on the ground that no eye witness has come forward to support the prosecution case. The appellants have been held guilty for the offence like murder and sentenced to undergo R.I. for life only on the evidence of PW-2 whose testimony cannot be considered wholly truthful and trustworthy. She has deviated from her previous statement given in the First Information Report. She has failed to identify one of the accused in Court though she has named him in the F.I.R. Not only that she has given name of another accused Mangru Bandia for the first time in Court. The informant has given contradictory statement which could not be relied upon and the conviction and sentence passed against the appellants cannot be upheld on her sole testimony. It is beyond imagination that all the family members of the informant were killed but she was spared to make such statement. Furthermore, the wife of Pasing Soi-PW-5 to whom the informant first narrated the incident, did not bother to support the version of the informant and sine did not come to Court. The police has also recorded extra judicial confession of accused Shyam Jojo but the same is not corroborating the incident as placed by the informant. Learned counsel has further raised a point that two of the accused who were jointly charged with these appellants have been acquitted and therefore, the appellants also deserve same benefit. The Investigating Officer has not been examined and therefore, places of occurrence

have not been established. Non-examination of I.O. has also caused prejudice to the appellants and therefore, the impugned judgment is liable to be set aside.

10. On the other hand, learned counsel appearing for the State has vehemently opposed the argument advanced on behalf of the appellants and supported the impugned judgment.

11. We have carefully gone through the evidence on record and the documents proved during trial. The gist of the prosecution case is that the appellants, with their associates, armed with deadly weapons like sword, lathi etc. had committed house trespass during night and forcibly kidnapped the informant and her family members who were then present in the house. They were taken towards the river situated at about one kilometer from the village. The informant was segregated from her family members by three accused namely, Kinkri @ Govind @ Tapu, Bishnu Kurli and Kundia @ Topandi and she was subjected to gang rape. After being ravished she became senseless and when she became conscious she took shelter in the house of Pasing Soi during night. On the following morning the informant accompanied by wife of Pasing Soi returned home but on the way near river bank she had noticed blood stain which put her under believe that her parents, brothers and sisters must have been killed by the miscreants. Blood stain was also detected in the house. We do not find any contradictions on this point in the statement of informant and it remained consistent. We do not agree with the view that since two of the accused were acquitted, the remaining accused are also entitled for the same benefit if the charge is framed with the aid of Section 149 I.P.C. It is settled law that each and every case is to be decided on its own merit as well as facts and circumstances. Here, in the instant case two of the accused were acquitted on the ground that one out of them was named for the first time in Court and another accused was not identified by the informant. The ground of acquittal of these two accused was not that the statement of the informant was found unbelievable or contradictory. We are of the considered view that judgment of conviction can be passed on the solitary testimony if the evidence of such witness is trustworthy, reliable, unblemished and uninfluenced. The informant is an innocent girl in whose presence each and every member of her family including the parents were kidnapped by the appellants and their associates and she too was not spared by them. After covering distance- of one kilometer from their house the informant was segregated by three accused namely, Kinkri @ Govind @ Tapu, Bishnu Kurli and Kundia @ Topandi out of whom Bishnu Kurli and Kundia @ Topandi are the appellants in this appeal whereas accused Kinkri @ Govind @ Tapu absconded during trial. The informant was taken towards bush and she was subjected to rape by those three accused. After the incident the informant went to the house of Pasing Soi which fact stood corroborated from the evidence of PW-5 Pasing Soi and if the wife of said witness is not examined, it would not make any difference. The blood stain near the river bank was detected and the dead bodies were also recovered from the river bed, buried within sand. The doctor has found ante mortem injuries on the person of all seven deceased and the inquest reports have also been proved. We do not

find any reason to disbelieve the statement of PW-2, the informant. Since no material contradiction has been elicited, non-examination of I.O. could not be considered fatal. In view of the discussions made above and the evidences available on record, we do not find any merit in this appeal. Accordingly, this appeal stands dismissed. The judgment of conviction and sentence passed against the appellants stands upheld.