
(2019) 12 JH CK 0068

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 533 Of 2010

Budhram Hembrom

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 450

Citation : (2019) 12 JH CK 0068

Hon'ble Judges : Shree Chandrashekhar, J;Ratnaker Bhengra, J

Bench : Divison Bench

Advocate : Rajendra Prasad Gupta, Nehala Sharmin

Final Decision : Allowed

Judgement

Chandrashekhar, J

1. The appellants, namely, Budhram Hembrom and Sona Ram Hembrom have challenged the judgment of conviction under sections 450, 302 and 201

r/w section 34 of the Indian Penal Code and the order of sentence dated 29.03.2010 of R.I for life and fine of Rs.5,000/- imposed upon each of the

appellants under section 302 of the Indian Penal Code, passed in Sessions Trial No.30 of 2009. No separate sentence for the offence under sections

450 and 201 of the Indian Penal Code has been passed against them.

2. On the basis of the fard-beyan of Shankar Hembrom, the husband of the deceased, namely, Guruwari Hembrom, which was recorded on

31.10.2008 at 12:15 hrs. at Shankarkocha forest, Manoharpur P.S Case No.46 of 2008 was registered against them. During the trial the prosecution

has examined 08 witnesses; the informant is P.W 2.

3. To prove its case against the appellants, the prosecution has examined

Mayanti Hembrom-P.W 1 and Shankar Hembrom-P.W 2 as eye-witness.

4. In his fard-beyan, Shankar Hembrom has stated that in the night at about 8:30 p.m. his brother-Budhram Hembrom and cousin-Sona Ram

Hembrom came to his house and dragged his wife in the courtyard. When he tried to intervene they pushed him and took her somewhere. He started

searching for his wife in the night, however, she could not be traced out and in the morning in course of search at about 10:00 a.m. dead body of his

wife was found lying in the forest. Her head was severed which was found lying about

100 feet from her body. According to the informant, Budhram Hembrom and his wife had a quarrel on some domestic issue and that is the reason she

was killed by them. In the court the informant has stated that the appellants have killed his wife in the night of Dipawali. He has stated that he had

gone to the house of Munda and when he came back his daughter informed him that Budhram Hembrom and Sona Ram Hembrom have forcibly

taken away her mother and next day the dead body of his wife was found in Shankarkocha forest. His daughter, namely, Mayanti Hembrom has

stated that at the time of the incident she was sleeping with her mother, father and sister. In the night, Budhram Hembrom and Sona Ram Hembrom

came to her house and thrashed her mother on the ground who was sleeping on the cot. When her father tried to intervene the accused persons

threatened him and thereafter her father had gone to the house of Munda.

5. In the first place, the village Munda has not been examined during the trial. Secondly, the other daughter of the deceased who according to P.W 1

was sleeping together in the night has not been produced during the trial. The testimony of P.W 1 and P.W 2 does not inspire confidence. P.W 1 has

stated that she was sleeping with her father, mother and sister and the appellants entered the house and started dragging her mother. She has stated

that after the appellants took away her mother her father had gone to the house of Munda, but from the testimony of P.W 2 it would appear that he

had first gone to the house of Munda and when he came back home his daughter informed him that the appellants have taken away her mother along

with them. In his deposition the informant has not claimed that after the accused persons took away his wife he started search for his wife. He has

stated that next day he had gone to Manoharpur police station to lodge a

complaint and at the instance of the accused persons the dead body of his wife was recovered from Shankarkocha forest. However, his daughter has deposed that next day her father had gone with the villagers in search of her mother and they found the dead body of her mother in the forest. And above all, in her cross-examination the daughter of the informant has admitted that it was a dark night and there was no light in the room in which the incident has happened at about 10:00 p.m. She has stated that there was no enmity between the appellants and her family. The informant has, however, denied a suggestion by the defence that on account of his enmity with the villagers his wife has been killed.

6. The other prosecution witnesses â?" Madhusudan Mundari-P.W 3 and Rai Das Hembrom-P.W 6 â?" have been declared hostile. P.W 3 has stated that fard-beyan of Shankar Hembrom was recorded by the police in his presence. The inquest report also bears his thumb impression, however, he has denied that he has seen the dead body of Guruwari Hembrom. In his examination-in-chief, he says that the appellants are co-sharers of the informant. He has denied that in the night when Shankar Hembrom had raised hullah he had gone to his house. P.W 6 has stated that his house is at about 50 meters of the house of informant. P.W 5-Durga Mundari has stated that the dead body of Guruwari Hembrom was found at the foot of the hillock. He has said that the informant had informed him about the incident of 31.10.2008. He is staying about 50-60 feet away from the house of the informant.

7. From the aforesaid evidence of the prosecution witnesses, we find that the appellants have entered the house of the informant at about 8:30 p.m. in the night and there was a scuffle between the appellants and the informant. The appellants have dragged out wife of the informant, however, the informant and his daughter have not raised alarm. It has also not come on record that at that time Guruwari Hembrom had raised cries. Atleast two prosecution witnesses â?" P.W 5 and P.W 6 â?" are residing in the near vicinity, but they or any one from the village has not come forward to say that he has seen the appellants dragging Guruwari Hembrom from her house. No one has seen where the appellants have taken her. How, when and in what manner Guruwari Hembrom has been done to death have not been disclosed by the prosecution and how the dead body of Guruwari

Hembrom is recovered next day morning from a forest, an open space, is not proved. The evidence of the informant that on a disclosure made by the appellants dead body of his wife was recovered from the forest is not supported by other evidence; the seizure-memo witness has stated that he has not seen the dead body of Guruwari Hembrom. Evidently, the prosecution has failed to establish the place where Guruwari Hembrom was done to death and how her dead body was recovered. The motive for the crime as alleged by the prosecution "a quarrel between the Budhram Hembrom and the wife of the informant" is also not proved as it is not stated by the informant himself when he was examined in the court.

8. It is well-settled that if the prosecution comes with a definite case, it must establish its case beyond all reasonable doubt. In "Mohinder Singh Vs.

The State" reported in AIR 1953 SC 415, the Supreme Court has observed that it is elementary that where the prosecution has a definite or positive case, it must prove the whole of its case.

9. The medical evidence does not support the prosecution story that Guruwari Hembrom was done to death in the night of 30.10.2008. The doctor,

namely, Dr. Sheo Lal Kunkal-P.W 7, who has conducted post-mortem examination has found one lacerated wound around neck of Guruwari

Hembrom; her neck was separated from trunk. The doctor has rendered an opinion that the time elapsed since death was 6:00-48:00 hrs.; post-

mortem examination was conducted on 01.11.2008 at 2:30 p.m. The prosecution has thus failed to establish the time of death of Guruwari Hembrom.

10. The above being the factual scenario; (i) serious doubt on P.W 1 and P.W 2 being eye-witness, (ii) seizure-list witnesses not supporting the

prosecution case, (iii) no one from the vicinity is examined to corroborate the testimony of P.W 1 and P.W 2, (iv) medical evidence not corroborating

the prosecution case, and (v) failure of the investigating officer to collect the bloodstained soil, bloodstained clothes of the deceased and to recover the

crime weapon, we see serious doubt on complicity of the appellants in the crime.

11. In the aforesaid facts and circumstances, we are of the opinion that the appellants are entitled for the benefit of doubt.

12. Therefore, the judgment of conviction dated 25.03.2010 under sections 450, 302 and 201 r/w section 34 of the Indian Penal Code and the order of

sentence dated 29.03.2010 of R.I for life and fine of Rs.5,000/- imposed upon

each of the appellants under section 302 of the Indian Penal Code,
passed in Sessions Trial No.30 of 2009 are set-aside.

13. The appellants are acquitted of the charges framed against them.

14. Accordingly, the appellants, namely, Budhram Hembrom and Sona Ram Hembrom, who are in custody, shall be set free forthwith, if not required
in connection to any other criminal case.

15. In the result, Criminal Appeal (D.B) No.533 of 2010 is allowed.

16. Let a copy of the judgment be transmitted to the court concerned through
'Fax'.

17. Let lower-court records be sent to the court concerned forthwith.