

(2015) 07 JH CK 0099

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 1400 of 2005

Budhu Kumhar and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

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

Citation : (2015) 07 JH CK 0099

Hon'ble Judges : Rakesh Ranjan Prasad, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Pratik Sen and R.S. Mazumdar, Senior Advocate, for the Appellant;
Vijay Kumar Gupta, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. All the three appellants were put on trial for committing murder of one Man Singh Kumhar in furtherance of their common intention and also for causing disappearance of the evidence of murder. The Ist Additional Sessions Judge, Chaibasa, West Singhbhum, having found all the three appellants guilty for committing murder of the deceased, convicted them for the offence punishable under Section 302/34 as well as under Section 201 of the Indian Penal Code, vide its judgment dated 29.8.2005, passed in Sessions Trial No. 104 of 2005 and sentenced them to undergo imprisonment for life for the offence under Section 302/34 and further to undergo rigorous imprisonment for seven years for the offence under Section 201 of the Indian Penal Code vide order dated 30.8.2005.

2. The case of the prosecution as has been made out in the fardbeyan (Ext. 4) is that on 22.10.2004 the appellant-Budhu Kumhar came to the house of the deceased-Man Singh Kumhar at about 11 A.M. and took the deceased alongwith him across the river on the pretext that they will be having feast after puja which they will be offering Man Singh Kumhar, the father of the informant-Rashun Kumhar, (P.W.-3) did not return home in that night. Thereupon the informant-

Rashun Kumhar informed to the village Munda, who, alongwith others, started searching Man Singh Kumhar. On 23.10.2004 they did not get any trace of him but on 24.10.2004, when they came near the bank of the river in search of him, they did find blood mark on the earth in the field which was near the river. There they also did find a piece of stone over which blood mark was there. While they were searching, some villagers told them that they had also seen the other appellants Gura Kumhar and Kolay Hessa going alongwith Man Singh Kumhar. Upon coming to know, when they did ask from the appellants about Man Singh Kumhar, they did not give satisfactory reply. Thereupon, it was claimed by the informant that the appellants on account of previous enmity took the deceased alongwith them and then made him to eat chicken and drink liquor and then killed in the field belonging to Bahasundi upon which they hid the dead-body.

Thereupon, on 24.10.2004 Parsuram Sundi (P.W. 1) the village Munda informed all about it to Ajay Kumar, (P.W. 8) the then, Officer In-charge of Tonto Police Station who came to village Dundchu Tola Banganabasa and recorded the Fardbeyan of Rasun Kumhar (P.W. 3) who has narrated about the incident as has been stated above. On the basis of the Fardbeyan, a formal FIR (exhibit-5) was drawn. P.W.-8 himself took the investigation. During investigation, he apprehended the appellants - Budhu Kumhar and recorded his confessional statement wherein the appellant did narrate the manner and place where deceased was killed and also disclosed about the place where the dead-body had been hid.

According to Investigating Officer (P.W. 8), the dead-body was recovered and also earth smeared with blood was seized from the field of Bahasundi under seizure list (exhibit-7). The Investigating Officer also seized earth smeared with blood and piece of stone from the place where the dead-body was recovered under seizure list exhibit-8 and exhibit-9 respectively. The Investigating Officer thereupon held inquest on the dead-body and prepared an inquest report (exhibit-6). Thereafter, he sent the dead-body for post-mortem examination, which was conducted by Dr. B.K. Singh (P.W. 7) who, upon holding autopsy, did find following injuries on the person of the deceased:-

- (i) Black colour abrasion over the face of the deceased of size 4" x 3".
- (ii) A lacerated wound on scalp causing fracture of maxilla, mandible and frontal bone of scalp, cranial cavity was exposed.
- (iii) Multiple incised wound over the back of right thigh and knee joint, lower end of femur exposed 4 in number in the area of size 7.5 C.M. X 2 C.M. X bone deep.
- (iv) Incised wound on back of the left knee, femur bone of lower end exposed.

On dissection

Frontal, parietal and temporal (right side) was found fractured. Lungs and heart were lacerated.

The doctor issued the post-mortem examination report (exhibit-3) with an opinion that the death was caused due to hemorrhage, on account of the aforesaid injuries caused by hard and blunt object.

Meanwhile the Investigating Officer also recorded the statements of the witnesses. On completion of the investigation, when the charge-sheet was submitted, cognizance of the offence was taken against the appellants. When the case was committed to the court of sessions the appellants were put on trial during which the prosecution examined eight (8) witnesses. Of them, P.W. 1-Parsuram Sundi, the village Munda did depose that Rashun Kumhar (P.W. 3) told him that these appellants had come to his house and took his father alongwith them but he has not returned home and thereby he alongwith others started searching him. During that course when they came near the bank of a river they found stone which had blood mark and then the matter was informed to the police who arrested the appellant-Budhu Kumhar. On being interrogated, he disclosed that the dead-body has been hided in Suraniya forest. On his disclosure it was recovered. Similar is the testimony of P.W. 2 (Bagun Kumhar) on the point of recovery of the dead-body in whose presence dead-body has been recovered. P.W. 3-Rashun Kumhar did depose that on 22.10.2004, he was not in the house but his sister-Durgui Kumharin told him that the appellants had come to the house and had taken the father and then he alongwith the village Munda, and other person started searching his father whose dead-body was recovered on 24.10.2004. P.W. 4 Durgui Kumharin has testified that it were the appellants, who took her father alongwith them on the pretext that they would be worshipping at the river bank. P.W. 5-Man Singh appears to be the hearsay witness on the point of taking the deceased by the appellants from the house. He had also testified regarding recovery of the dead-body at the instance of the appellants. P.W. 6-Raj Munni, the wife of the deceased is also on the point that the accused person had come to the house from where they took the deceased alongwith them who never returned but on search being made the dead-body was recovered from the forest at the instance of the appellants.

On closure of the prosecution case when the appellants were questioned about the incriminating circumstances appearing against them under Section 313 of the Criminal Procedure Code, they denied.

Thereupon the court on the basis of the evidences adduced by the prosecution did record that the appellants had taken deceased alongwith them and then killed him and the dead-body was recovered at the instance of one of the appellants-Budhu Kumhar and thereby recorded the judgment of conviction and order of sentence, which is under challenge.

3. Mr. Pratik Sen, learned counsel appearing for the appellants submits that though the court while convicting the appellants have used two circumstances, first the deceased-Man Singh Kumhar was taken by the appellants from his house and then the deceased was found killed and the second are is that the confession made by the appellants led to recovery of the dead-body but the

prosecution has failed to establish the aforesaid circumstances and thereby the court committed illegality in placing reliance on the aforesaid two circumstances and hence judgment of conviction and order of sentence is fit to be set aside.

4. As against this, learned counsel appearing for the state submits that the prosecution has been able to establish the fact that it were the appellants who had taken the deceased, who was subsequently found murdered and the dead-body was recovered at the instance of the appellants and thereby these two circumstances are sufficient enough to establish the guilt of the appellants and thereby the trial court has rightly recorded the judgment of conviction and order of sentence as aforesaid.

5. Having heard learned counsel for the parties and on perusal of the records, we do find that two circumstances have been taken by the trial court to be incriminating against the appellants; (i) while the deceased-Man Singh Kumhar was at his home he was taken by the appellants alongwith them who was found murdered and (ii) the dead-body was recovered at the instance of the appellants. The question does arise as to whether the prosecution has been able to establish those two circumstances taken to be incriminating against the appellants?

Coming to the first circumstance we do find that as per the case of the prosecution as has been made out by the informant P.W. 3-Rashun Kumhar in the Fardbayan that the informant-Rashun Kumhar saw the appellant-Budhu Kumhar taking the deceased alongwith them on the pretext of having meal at the occasion of the worship but he in course of the evidence candidly testified that on the day of occurrence he was not at home. However, P.W. 4-Durgui Kumharin-the sister of the informant has said that while she was in the house, she saw all the three appellants coming to her house and then took the deceased alongwith them on the pretext that they will be having feast after performing of puja at the river side. According to her (P.W. 4), the appellants had come at 11.00 O'clock on 22.10.2004. But Raj Munni-P.W. 6 the wife of the deceased, who had also testified about the deceased being taken by the appellants, speaks about the time in her cross examination as evening. Thus, it appears from the testimonies of P.W. 4-Durgui Kumharin and P.W. 6-Raj Munni that there has been contradiction on the point of time of taking the deceased by the appellants. So far other circumstance relating to discovery of the dead-body at the instance of appellants is concerned, all the witnesses P.W. 1-Parsuram Sundi, P.W. 2-Bagun Kumhar and P.W. 5-Man Singh have testified that the dead-body was recovered at the instance of the appellants and one of them i.e. Budhu Kumhar had made confession which led to recovery of the dead-body but it is strange to note that the part of the confession leading to recovery of the dead-body has not been proved by the prosecution, only the signature appearing on the confessional statement seems to have been proved by the prosecution and thereby the prosecution cannot be said to have established the fact that confession made by these appellants led to recovery of the dead-body. Furthermore the statement made by the informant in his fardbayan relating to manner in which the deceased

was done to death sufficiently indicate that the fardbayan was recorded only when the police had taken the confessional statement of the accused person. It would be worthwhile to note that the prosecution had come forward to make out a case that it was the appellant-Budhu Kumhar who had confessed his guilt and the confession had led to recovery of the dead-body but as per the witnesses, referred to above, the dead-body has been recovered at the instance of all the three appellants which does not find support from the records of the case which does speak that the other two appellants had been arrested two days after recording of the confession made by Budhu Kumhar.

Thereby, we do find that the prosecution has failed to establish that the confession made by the appellants led to recovery of the dead-body of the deceased.

6. Thus, we do find that the trial court did not consider the case in right perspective and thereby committed illegality in recording the order of conviction and sentence and hence it is hereby set aside. Consequently, the appellants are acquitted of all the charges. The appellants, who are in custody, are directed to be released forthwith, if not wanted in any other case.

7. In the result, this appeal stands allowed.