
(2010) 04 JH CK 0040
In the Jharkhand High Court

Budhu Kumhar and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2010) 04 JH CK 0040

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This appeal is directed against the judgment of conviction and order of sentence dated 30.11.2002 and 4.12.2002 respectively passed by the Additional Sessions Judge, F.T.C.-V Giridih, in S.T. No. 100 of 1989, whereby and whereunder, appellants were convicted under Sections 147, 452, 304 and 149 of the Indian Penal Code and sentenced to undergo R.I. for 5 years for the offence under Sections 304/149 of the Indian Penal Code. Appellants are further sentenced to undergo R.I. for 1 year, for the offence u/s 147 of the Indian Penal Code and undergo R.I. for 2 years, for the offence under Sections 452 of the Indian Penal Code.

2. It is submitted by Shri T.R. Bajaj, learned senior advocate that during the pendency of this appeal, appellant No. 8 died. Therefore, this appeal abated, so far appellant No. 8 is concerned. However, Mr. Bajaj argued the case on behalf of other appellants.

3. The case of the prosecution, in brief, is that on 19.10.1988, at about 12 o'clock in the noon, while informant's husband was taking meal, appellants armed with lathi came and knocked the door of house and appellant No. 1, Budhu Kumhar called informant's husband. Whereupon informant came out her house. It is further stated that Budhu Kumhar asked as to why her husband was not going to attend duty. She replied that because of festival, her husband will not

attend work for 2-3 days. After saying so, informant returned to her house and closed the door. It is further alleged that appellants broke open the door and dragged informant's husband outside the house and then Budhu Kumhar gave a lathi blow on the head of informant's husband. Thereafter all the appellants assaulted him with lathi. It is further alleged that when the informant tried to rescue him, she was also assaulted by the appellants. It is further alleged that on hulla, other villagers arrived. Thereafter appellants fled away. It is further stated that daughter and daughter-in-law of the informant, with the help of other villagers, took the informant's husband to Dumri Hospital for treatment.

4. It appears that fardbeyan of informant recorded in the Hospital and forwarded to Nimiaghat Police Station on 19.10.1988, as the occurrence took place within its jurisdiction. Thereafter Nimiaghat P.S. Case No. 113/88 under Sections 147/148/307/323/34 of Indian Penal Code instituted and police took up investigation.

5. It further appears that in course of investigation, informant's husband Janki Pandit died due to injuries sustained by him, accordingly, offence under Sections 302/34 of Indian Penal Code also added. After completing the investigation, police submitted charge-sheet against the appellants under Sections 147/148/323/307/341/302 of the Indian Penal Code. After cognizance, case committed to the court of sessions, as the offence u/s 302 of Indian Penal Code is exclusively triable by the court of sessions.

6. It appears that initially, vide order dated 6th of January, 1990, charges framed against the appellants under Sections 302/34, 452 and 323 of the Indian Penal Code and explained to them, to which, they pleaded not guilty and claimed to be tried. Thereafter prosecution examined altogether 10 witnesses till 29th of February, 2001. The record further reveals that on 20th December, 2000, fresh charges under Sections 147, 302, 149 and 323 of the Indian Penal Code were framed against the appellants and a specific charge u/s 302 of the IPC was framed against the appellant No. 1 (Budhu Kumhar). Aforesaid amended charges explained to the appellants, to which, they pleaded not guilty and claimed to be tried. Thereafter, P.W.-1, P.W.-2 and P.W.-6 had been recalled on the request of defence and they have been further cross examined. After close of case of prosecution, statement of appellants recorded u/s 313 of Cr. P.C. in which their defence is of total denial. Case record further shows that defence has also examined 3 witnesses in support of its case. It further appears that learned court below after considering the evidences available on record, convicted and sentenced the appellants as stated above, against that present appeal filed.

7. Sri T.R. Bajaj, learned senior advocate, appearing for the appellants, submitted that it is not in dispute that deceased died due to some injuries. However he submits that there is absolutely no evidence on record to show that the appellants caused any injuries to the deceased, which resulted in his death. It is submitted that though P.W.-1, P.W.-2 and P.W.-6 at the first instance stated that appellants inflicted injury on the deceased, but on recall for further cross

examination, they categorically stated that they reached at the place of occurrence after receiving information that deceased was lying injured at that place. It is submitted that learned court below convicted the appellants only on the basis of examination-in-chief of aforesaid three witnesses, without taking into consideration their cross examination. It is submitted that aforesaid three witnesses disowned their earlier statement made in their examination- in-chief, therefore they are not reliable witnesses. Therefore on their statements, conviction of appellants not warranted.

8. On the other hand, Md. Hatim learned Additional PP submits that P.W.-1, P.W.-2 and P.W.-6 categorically stated in their depositions that appellants inflicted injuries on the body of deceased which resulted in his death. Post mortem report, as well as injury report corroborates their testimonies, therefore learned court below rightly convicted the appellants for the charges levelled against them.

9. Having heard the submissions, I have scrutinized the evidences available on record. From perusal of record, I find that homicidal death of Janki Pandit (husband of the informant) is not in dispute. Thus question arose for determination in this appeal is whether the appellants have any hand in the commission of present crime? This brings me to consider the statement of witnesses. In the instant case, altogether 10 witnesses examined by the prosecution. Out of them, P.W.-1, P.W.-2 and P.W.-6 claimed themselves to be the eye witnesses of the occurrence. P.W.-3 is a formal witness who proved the first information report. P.W.-4 is hearsay witness. P.W.-5 and P.W. 8 have been declared hostile. P.W. 7 and P.W. 9 are doctors. P.W. 10 is also a formal witness; Thus in the instant case, evidences of P.W. 1, P.W. 2 and P.W. 6 are essential for consideration.

10. P.W.-1 is the informant cum wife of deceased. In examination-in-chief she supported the case of prosecution, as stated in the fardbeyan. However she was recalled and further cross examined on 27.03.2001. During her further cross examination she disowned her earlier statement made in the fardbeyan, as well as in her examination-in-chief. On recall, she stated that Budhu Kumhar had come to her house at about 12 O' clock and asked as to why her husband was not going on work. When her husband replied that during festival he will not do work, Budhu Kumhar returned to his house. She then deposed that thereafter her husband fled away from the house. She then states that after some time, Janki Pandit (Son of Uttim Pandit) and Khem Narain Pandit came and informed that her husband is lying injured in the bari of Guja Sah. Thereafter she along with appellant Budhu Pandit and others went there and saw that her husband was lying injured in the bari of Guja Sah. Thus from the aforesaid statement, it is clear that she did not witness the occurrence. She also ruled out involvement of Budhu Pandit in the present occurrence, because Budhu Pandit (Kumhar) and others accompanied her to the bari of Guja Sah for seeing her injured husband. Thus I find that P.W.-1 is giving different statement at different stages, hence she is not reliable witness.

11. P.W.-2 and P.W.-6 have also supported the case of prosecution in their examination-in-chief, but from perusal of their cross examination, I find that they stated that they went to the place of occurrence on receiving information that their uncle (phupha) was lying injured in the bari of Guja Sah. They further deposed that when they reached at the bari of Guja Sah, they found that their uncle is lying injured. Thereafter they took him to Dumri Hospital for treatment. They further deposed that later on their uncle died. Thus from perusal of evidences of P.W.-2 and P.W.-6, I find that they are also making different statement at different stages. Thus in my view, they are also not reliable witnesses.

12. It is worth mentioning that P.W.-1 in her fardbeyan as well as in her deposition has stated that her daughter and daughter-in-law also witnessed the occurrence, as they were present in the house. P.W.-1 had also stated that Mahabir Kumhar, Punit Kumhar and Din Dayal Kumhar also arrived at the place of occurrence at the time of commission of occurrence. But surprisingly, aforesaid witnesses not examined by the prosecution. It is not out of place to mention that Punit Kumhar, Din Dayal Kumhar and Mahabir Kumhar examined as defence witnesses. They stated in their depositions that they did not know about the occurrence. Therefore, in my view, evidences of P.W. 1, 2 and 3 cannot become sole basis for convicting the appellants. Thus, I find that impugned order suffers from material illegality and irregularity and therefore the same cannot be sustained in this appeal.

13. In the result, this appeal is allowed. Impugned judgment of the court below is set aside. All the appellants are acquitted from the charges levelled against them. They are also discharged from the liabilities of bail bonds furnished by them.