

(2006) 03 JH CK 0083

In the Jharkhand High Court

Case No : Criminal Appeal No. 54 of 1990

Damodar Pathak and Chandru Ghanshi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

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

Citation : (2006) 03 JH CK 0083

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Advocate : A.S. Dayal, for the Appellant; Arbind Kumar Jha, APP, for the Respondent

Final Decision : Allowed

Judgement

1. The appellants, two in numbers, who were arrayed as A-1 and A-2 before the Sessions Court; have challenged their conviction and sentence in this appeal.

2. The appellants were charged u/s 302 and 201 of the Indian Penal Code, on the allegation that at some time on 18.11.1983, they caused the death of Manoj Kumar @ Munna by strangling him and thereafter threw the dead body in village tank.

3. The learned Trial Judge finding the appellants guilty, as charged, sentenced each one of them to imprisonment for life for the offence u/s 302 of the Indian Penal Code and for the offence u/s 201 of the Indian Penal Code, they were sentenced to 7 years rigorous imprisonment. Hence, the appeal.

4. The facts, necessary to dispose of the appeal, are briefly stated thus:

PW-2, Rajeshwari Prasad, is the father of the deceased, Manoj Kumar @ Munna. It is the case of the prosecution that Manoj Kumar @ Munna was having illicit relationship with the niece of the 1st appellant, Damodar Pathak and that he also used to sleep in the house of the 1st appellant. According to the prosecution,

the deceased left his house to take his bed in the house of Damodar Pathak on 18.11.1983 and that thereafter he was not seen alive. On 28.11.1983, PW-5, Matni Devi saw a dead body floating in the village tank and she, in turn, went and informed PW-2, Rajeshwari Prasad. After the villagers gathered, the dead body was taken out of the tank and it was found to be the dead body of Manoj Kumar. PW-2 laid Fardbayan, Ext.6, on the basis of which a formal F.I.R. was registered. Investigation was taken up by the officer concerned and during the course of investigation inquest was conducted.

5. After the inquest, the body was sent to the hospital with a request to conduct autopsy. After receipt of the requisition, PW-10, Dr. N.K. Mishra, conducted post mortem on the dead body and he found the body in a decomposed state. Tongue was found to be protruding out of the mouth, swollen and teeth clinched over it. The skin surface was found scattered. Larynx and trachea were found to be congested. The lungs were also congested. The doctor did not find any trace of water in the stomach as it was found to be pale and empty. The doctor issued Ext.3, the post-mortem certificate, with his opinion that the death could have occurred on account of asphyxia due to strangulation and that the death was homicidal in nature.

6. After completion of the investigation, during which some more witnesses were examined, final report was filed against the appellants.

7. When the appellants were examined u/s 313 Cr.P.C. on the incriminating circumstances, appearing against them, they denied all the incriminating circumstances. No witness was examined on their side.

8. The learned counsel appearing for the appellants submits that in the absence of any legal evidence, connecting the appellants with the crime, the trial judge was not justified in convicting the appellants, mainly on the basis of P.W.3, whose evidence does not even remotely connect the appellant with the murder and that he carried the dead body of the deceased Manoj Kumar and then threw it into the village tank.

9. We have heard Mr. Arbind Kumar Jha, learned A.P.P., on the above contention and perused the evidence.

10. The case of the prosecution, which we have extracted, is to the effect that the deceased was having illicit relationship with the niece of the 1st appellant and he was in the habit of taking his bed in the house of the 1st appellant. It could be seen from the evidence of P.W. 2 that the deceased left the house for the house of the 1st appellant to take his bed and that thereafter, he was not seen alive. On 28.11.1983 a body was seen on the village tank by P.W. 5 and the villagers took out the body and identified it to be the body of the deceased. It was sent for postmortem by the Investigating Officer on which the post-mortem was conducted by P.W. 10, who issued Ext. 3, the Post-Mortem Report, with his opinion that the deceased died on account of homicidal violence. Though there can be no dispute and, in fact, it was not disputed by the appellants that the

deceased died on account of homicidal violence, the prosecution failed to establish that the appellants caused the death of the deceased.

11. The occurrence, admittedly, was not seen by anyone and, therefore, the prosecution preferred to rely upon the circumstantial evidence. It is well established principle of law that in a case where the prosecution relies upon the circumstantial evidence, the prosecution should establish all the links in the chain of circumstances and if any one link in the chain is missing in the chain of circumstances, the accused is entitled to acquittal. In this case, apart from the fact that the deceased left the house, as usual, to take his bed in the house of the 1st appellant, the prosecution did not succeed in establishing any of the circumstances leading to his murder. It is, no doubt, true that P.W. 3 gave evidence to the effect that he saw on one Saturday night the appellants carrying the dead body in a cycle but he did not even mention that the dead body, which the appellants were carrying, was the dead body of the deceased Manoj Kumar.

12. In the absence of any evidence that the appellants were seen carrying the dead body of the deceased and in view of the vague evidence of P.W. 3 that he saw the appellants carrying the dead body on a Saturday night, we are unable to accept the evidence of P.W. 3 to come to conclusion that the appellants were actually carrying the body of the deceased Manoj Kumar on the date of incident i.e. 18.11.1983.

13. In the absence of any other evidence, we find that the prosecution has failed to establish any of the links in the chain of circumstances. We, therefore, reject the case of the prosecution by setting aside the conviction and sentence, imposed upon the appellants. The appeal is allowed. The appellants are acquitted. It is reported that the appellants are on bail, they are discharged from the liabilities of their bail bonds.