
(2018) 08 JH CK 0053

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 112 of 2004

Dinu Hembram

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 109, 302, 325
Code Of Criminal Procedure, 1973 — Section 313, 428

Citation : (2018) 08 JH CK 0053

Hon'ble Judges : KAILASH PRASAD DEO, J

Bench : Single Bench

Advocate : Divya Suman, Abhay Kr. Tiwary

Final Decision : Allowed

Judgement

1. The instant Criminal Appeal has been preferred against the judgment of conviction and order of sentence, both, dated 16.12.2003, passed by 12th

Additional Sessions Judge, Dhanbad, in Sessions Trial No. 53 of 1999, whereby out of seven charged accused persons, the aforesaid four appellants

have been convicted, while one of the appellant, Karma Murmu, appellant no. 4 has died during pendency of the appeal and the criminal appeal

preferred by appellant Karma Murmu has already been abated and as such, the present appeal is only with respect to appellant no. 1, Dinu Hembram,

appellant no. 2 Bhndra Tudu and appellant no. 3 Nunu Marandi. All these appellants have been convicted for the offence committed and punishable

under Section 325 of the Indian Penal Code and awarded simple imprisonment for two years and also a fine of Rs. 100/- each and in default of

payment of fine, to further undergo simple imprisonment for 15 days and the period already undergone will be set off under Section 428 Cr.P.C.Â

2. The prosecution case is based upon the fardbeyan of Sanu Soren (P.W. 2) recorded by S.I. Mahendra Singh Munda, Officer-in-charge of Rajganj

outpost, Dhanbad, on 12.08.1998 at 16.00 P.M. The informant has alleged that, on 09.08.1998 (Sunday), daughter of one Chhotu Hembram, aged

about three years, has died because of some disease but Chhotu Hembram called a panchayati, where it has been alleged, that his daughter has been

killed, because of some black magic. Subsequently, to ascertain that, who has played the black magic, the villagers went to ojha on 10.08.1998 namely

Shivlal Manjhi, who disclosed, that Sanu and his wife has played black magic, due to which the daughter of Chhotu Hembram died. Thereafter a

panchayati was convened and in the panchayati, it was decided that Sanu has to pay Rs. 1500/- to Chhotu, but the informant asked for time and

thereafter the informant went to his sasural to arrange the money. It is alleged that, on 12.08.1998 (Wednesday), the informant's son, Binod came

to the informant and disclosed, that yesterday on 11.08.1998, at around 04.00 P.M., while he along with his maternal grand-mother were in the

courtyard, the co-villagers Chhotu Hembram, Jaleshwar Hembram, Punnu Tudu, Nunu Marandi came with lathi, danda in their hands and asked the

mother-in-law of the informant, Tupli Devi about the whereabouts of the informant and his wife. When the mother-in-law of the informant has

disclosed, that both have gone to arrange the money, thereafter all the accused persons have alleged, that this old lady has allowed the accused

persons to flee away and they decided to assault Tupli Devi and thereafter Dinu Hembram, Karma Murmu and Bhandra Tudu having hot iron sickle

inflicted injury upon the back of Tupli Devi, mother-in-law of the informant. Chhotu Hembram hit the chest of the old lady by flunging a big stone, kept

in the courtyard, due to which the mother-in-law of the informant became seriously injured. She was taken inside the room and was put on a cot, who

died on 12.08.1998 at around 08.00 A.M. The informant was informed about the said occurrence by his son Binod Soren aged about 9-10 years at the

sasural of the informant, where the informant has gone for arranging the money. After hearing this, the informant along with his wife, son and brother-

in-laws Nunulal Kisku and Kistu Kisku, came to his village Seraidaha and saw the dead body of the old lady having injury of hot iron sickle on back,

arm, swelling on the chest and blood was oozing from the mouth. The informant has further alleged, that all eight accused persons namely Shivlal

Manjhi, Chhotu Hembram, Jaleshwar Hembram, Punu Tudu, Nunu Marandi, Dinu Hembram, Karma Murmu and Bhandra Tudu have entered into the

house of the informant, but the informant and his wife were not present and as such they have assaulted the mother-in-law of the informant Tupli Devi

by inflicting hot iron sickle and assaulted by flunging a big stone and also by lathi-danda.Â

3. On the basis of the fardbeyan of the informant, the police registered Katras (Rajganj) P.S. Case No. 265 of 1998 dated 13.08.1998, under Sections

302, 109/34 of the Indian Penal Code consequent to G.R. No. 2822 of 1998.

4. After investigation, the police submitted chargesheet against all eight accused persons vide chargesheet No. 322 of 1998 dated 19.11.1998, under

Sections 302, 109/34 of the Indian Penal Code.Â

5. The cognizance of the offence has been taken vide order dated 21.11.1998 and the case has been committed to the court of Sessions vide order

dated 18.03.1999.Â

6. The charge has been framed against five accused persons namely Chhotu Hembram, Jaleshwar Hembram, Nunu Marandi, Karma Murmu and

Shivlal Manjhi on 20.06.2002, under Sections 109 and 302/34 of the Indian Penal Code, to which they have pleaded their innocence and thus they have

been put under trial. Subsequently, charge has been framed against Dinu Hembram on 22.05.2003, under Sections 109 and 302/34 of the Indian Penal

Code, to which the appellant has pleaded his innocence and thus, he has been put under trial and further the charge has been framed against Bhandra

Tudu on 21.06.2003, under Sections 109 and 302/34 of the Indian Penal Code, to which the appellant has pleaded his innocence and thus, he has been

put under trial.

7. The prosecution has examined altogether ten witnesses, apart from documentary evidence to prove the case beyond all reasonable doubts.Â

8. Kistu Kisku has been examinedÂ as P.W. 1, he is a seizure witness of the big stone, recovered and seized from the courtyard of the informant and

his signature on the seizure list has been proved and marked as Exhibit- 1; Sanu Soren, the informant of the case, has been examined as P.W. 2, who

has been informed about the occurrence by his son, Binod Soren (P.W. 9) and as such, the informant is a hearsay witness; Heno Murmu has been

examined as P.W. 3, he is also a hearsay witness; Danto Kisku has been

examined as P.W. 4, he is the son of the deceased and also a hearsay witness; Saniya Devi @ Sani Devi, being the wife of the informant and daughter of the deceased, has been examined as P.W. 5, she is a hearsay witness; Lakhi Ram Kishku has been examined as P.W. 6, he is also a hearsay witness and the maternal grandson of the deceased, Tupli Devi, Chotu Kishku, nephew of the deceased and a hearsay witness, has been examined as P.W. 7; Nunulal Kisku, another seizure witness, has been examined as P.W.8, he has proved his signature on the seizure list, of the big stone, which has been marked as Exhibit- 2; Binod Soren, being the sole eye-witness of the occurrence and on the basis of disclosure made by him, the entire case revolves, has been examined as P.W. 9; Dr. Shailendra Kumar, Medical Officer, has been examined as P.W. 10, he is the doctor, who has conducted the autopsy of the deceased and proved the post-mortem report, which has been marked as Exhibit-3.

9. After closure of the prosecution evidence, the statement of the appellants have been recorded under Section 313 Cr.P.C. on 17.09.2003, to which the appellants have denied the allegations levelled against them. The defence has not examined any witness nor has adduced any documentary evidence.

10. After hearing the parties, the learned Trial Court has convicted the appellants under Section 325 of the Indian Penal Code and passed the impugned judgment of conviction and order of sentence.Â

Â Â Â Being aggrieved and dissatisfied with the impugned judgment of conviction and order of sentence passed in S.T. No. 53 of 1999, the present criminal appeal has been preferred before this Honâ??ble Court.

11. Heard, Ms. Divya Suman, learned Amicus Curiae appointed in this case, on behalf of the appellants. Learned Amicus Curiae has submitted, that

the entire prosecution case revolves around the evidence of P.W. 9, Binod Soren and P.W. 10, Dr. Shailendra Kumar, Medical Officer and other

witnesses from P.W. 1 to P.W. 8 are hearsay witnesses, who have been informed by Binod Soren (P.W. 9). Learned Amicus Curiae has submitted,

that there is a vital contradictions in the depositions of P.W. 1 to P.W. 8 with respect to the time of death of the deceased, information given to the

police and the manner of occurrence, as alleged by the prosecution, which has been initiated, on the basis of the fardbeyan of Sanu Soren (P.W. 2),

who is the father of the eye-witness, Binod Soren (P.W. 9). Learned Amicus Curiae has further submitted that, if the evidence of Binod Soren (P.W.

9) and evidence of Dr. Shailendra Kumar (P.W. 10-medical officer, who has conducted the autopsy of the deceased) are scrutinized, there are vital

contradictions in the prosecution case. The injury no. 1, found on the dead body of the deceased, Tupli Devi with respect to superficial burn, as on the

middle of forehead like a cross-mark, in an area of 2" x 2", has never been alleged by P.W. 9, Binod Soren or any of the prosecution witnesses, who

have been examined as P.W. 1 to P.W. 8. Subsequently, the injury, which has alleged to be caused by thrashing a stone, on the deceased, was never

supported by the medical officer, in his post-mortem report, which has been proved and marked as Exhibit- 3. Learned Amicus Curiae has further

submitted, that P.W. 9 (Binod Soren) has claimed himself to be an eyewitness to the occurrence, as he has claimed, that deceased was inflicted

injuries on different parts of her body by a hot iron sickle or iron rod, such as leg and other parts of the body, but such injuries were not found on the

leg of the deceased by the medical officer, which is evident from perusal of Exhibit- 3. Learned Amicus Curiae has further submitted, that from the

evidence of P.W. 9, it appears that, he is not an eye-witness to the occurrence, rather because of ulterior motive, he has claimed himself to be an eye-

witness to the occurrence and the entire prosecution case is based upon the testimony of the solitary witness Binod Soren, who cannot be an eye-

witness to the occurrence. Learned Amicus Curiae has further submitted, that Binod Soren (P.W. 9) has alleged, that Karma has assaulted the

deceased with lathi, Punu has assaulted the deceased with lathi, Bhandra has assaulted the deceased with lathi and Chhotu has assaulted the deceased

with big stone, but the doctor has found only one abrasion injury, which is injury no. 2, on the person of the deceased. If four persons have assaulted

the victim by means of lathi, at least four injuries would have been found on the person of the deceased. Learned Amicus Curiae has further

submitted, that from the evidence of P.W. 9, it appears that his credential is highly doubtful and cannot be accepted to be an eye-witness to the

occurrence for convicting the appellants and learned Trial Court without scrutinizing the evidence with respect to P.W. 9, Binod Soren and P.W. 10,

Dr. Shailendra Kumar, the medical officer, has convicted the appellants wrongly, under Section 325 of the Indian Penal Code, which cannot be

sustained, both on the ground of law as well as fact of the case.Â

Â Â Â Learned Amicus Curiae has further submitted, that the impugned judgment of conviction and order of sentence is not sustainable in the eyes

of law, as the same is perverse and contrary to the material available on record. Learned Amicus Curiae has further submitted, that half of the

prosecution case has been disbelieved by the learned Trial Court by acquitting the other co-accused persons, against which the State has not preferred

any Acquittal Appeal. Learned Amicus Curiae has further submitted, that the investigating officer of the case has not been examined and these

appellants have not been given opportunity to cross-examine the investigating officer with respect to the place of occurrence and manner of

occurrence to elucidate the contradictions amongst the prosecution witnesses. Learned Amicus Curiae, Ms. Divya Suman has further submitted, that

the appellants may be acquitted by giving benefit of doubt as the prosecution has miserably failed to prove its case beyond all reasonable doubts.Â

12. Heard, learned counsel for the State, Mr. Abhay Kumar Tiwari, Additional Public Prosecutor. Learned counsel for the State has vehemently

argued the case and has supported the impugned judgment of conviction and order of sentence. Learned counsel for the appellant has further

submitted, that deceased died because of assault made by these appellants and she has been inflicted injury by means of hot iron sickle and iron rod.

Learned counsel for the State has further submitted, that the impugned judgment of conviction and order of sentence has been rightly passed by the

learned Trial Court, on the basis of the testimony of the solitary eye-witness Binod Soren (P.W. 9). Learned Additional Public Prosecutor has further

submitted, that the stone has been recovered at the place of occurrence and the signature of the seizure witnesses have been proved and marked as

Exhibits- 1 and 2 and as such, learned counsel for the State has submitted that the impugned judgment of conviction and order of sentence does not

require interference by this Honâ??ble Court.

13. Heard, Learned Amicus Curiae, Divya Suman, appearing for the appellants and Mr. Abhay Kumar Tiwari, Additional Public Prosecutor appearing

for the State and from perusal of the record including the First Information Report, framing of the charge, evidence of ten prosecution witnesses,

Exhibits- 1 to 3 and the statement of the appellants recorded under Section 313

Cr.P.C., this court is of the opinion, that P.W. 1 to P.W. 8 are hearsay witnesses, whose evidence are based upon the disclosure made by P.W. 9, Binod Soren, after death of the deceased, Tupli Devi, as such this Court does not requires to deal with the evidence of P.W. 1 to P.W. 8. Binod Soren (P.W. 9) claims himself to be an eye-witness to the occurrence, his evidence has been recorded by the learned Trial Court, where he has alleged, that his maternal grand-mother has been assaulted by the appellants by means of lathi and inflicted injury by means of hot iron sickle and hot iron rod, on different parts of the body including the leg. This witness has never stated, that any injury, by hot iron sickle or hot iron rod, has been inflicted on the head of the deceased, Tupli Devi. Dr. Shailendra Kumar, who has been examined as P.W. 10, Medical Officer, has conducted the autopsy of the deceased and has proved and marked the post-mortem report as Exhibit- 3, has found a cross-mark 2" x 2" superficial burn, on the middle of forehead and no mark of burn injury was found on the leg, as the same has been stated in paragraphs- 3, 10, 11, 12, 13, 15 and 18 during his (P.W. 10) examination. Further the non-examination of the investigating officer has certainly caused prejudice to the appellants as the appellants could not get an opportunity to cross-examine the investigating officer with respect to the place of occurrence and manner of occurrence.Â

14. Under the aforesaid circumstances, since, the injury no. 1 superficial burn injury, on the middle of the forehead like cross mark, in an area 2" x 2", has not been explained by the prosecution nor the injury alleged by P.W. 9, Binod Soren, on the leg of the deceased has been found by the doctor.

This court is of the opinion, that prosecution has miserably failed to prove its case beyond all reasonable doubts. It is true that a lady has died but the evidence, which has been adduced by the prosecution is not a clinging evidence against the appellants, that these appellants are only responsible for committing the murder of the lady and as such, the vital discrepancies found in the evidence of P.W. 9 Binod Soren with respect to the injuries caused on different parts of the body of the old lady, has not been found by the doctor (P.W. 10) in Exhibit- 3. This Court is of the opinion, that prosecution has miserably failed to prove its case beyond all reasonable doubts against the appellants themselves.Â

15. Considering all these above facts and circumstances, this court is of the

opinion, that the appellants deserve benefit of doubt.Â Â Â Â Â

16. Thus, the impugned judgment of conviction and order of sentence, both, dated 16.12.2003, passed by 12th Additional Sessions Judge, Dhanbad, in

Sessions Trial No. 53 of 1999, in connection with Katras (Rajganj) P.S. Case No. 265 of 1998, consequent to G.R. No. 2822 of 1998, is hereby set

aside and the appellants named above are acquitted of the charge under Section 325 of the Indian Penal Code by giving benefit of doubt.

17. The present criminal appeal is allowed.Â Â Â

18. The appellants, who are on bail, are discharged from liability of their bail bonds.

19. Before parting with the judgment, this Court appreciates the valuable contributions rendered by Ms. Divya Suman, learned Amicus Curiae, in

assisting this Court. The Secretary, JHALSA is directed to pay remuneration to learned Amicus Curiae for rendering her service in assisting this

Court, within four weeks from the date of production of a copy of this judgment.Â Â Â

20. Let the lower court record be sent along with a copy of this judgment to the court concerned and JHALSA, at once for necessary action.Â