
(2004) 07 JH CK 0072
In the Jharkhand High Court
Case No : Criminal Appeal No. 179 of 1997

Doman Munda and Another	Vs	APPELLANT
State of Bihar (Now Jharkhand)		RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (2004) 3 BLJR 2172

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : G.P. Roy, for the Appellant; R.P. Gupta, APP, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—Both the appellants (accused) were charged for offences punishable under Sections 302/34 and 323/34, IPC for committing murder of Rani @ Sani Mundain, daughter of informant, Dimbu Devi (PW 2). The Trial Court while acquitted both the accused of the alleged charges u/s 323/34, IPC, convicted both the accused for the offence u/s 302/34, IPC and sentenced to undergo life imprisonment vide impugned judgment dated 30th June, 1997, passed by Sri Ravindra Nath Verma, Additional Judicial Commissioner- Khunti in Sessions Trial No. 673 of 1996/G.R. Case No. 257 of 1995. .

Before discussion of objections as have been raised by the learned counsel for the appellants, it will be convenient to discuss the case of prosecution and the evidence.

2. The case of prosecution, as per fardbeyan of Dimbu Devi (PW 2), mother of the deceased, Rani Mundain, recorded on 8th May, 1995 at 7 am is that the deceased Rani @ Sani Mundain was living alone in her sasural situated in Village-Bakarberadih under P.S. Arki, District-Ranchi since the death of her husband. She was issueless, informant, mother of deceased had gone to her (deceased) sasural on Tuesday to stay there. On Sunday, she (informant) and her daughter

(deceased) had gone to Hemrum hat for purchase and returned in the evening at about 7 pm. When they were busy in cooking fish, on the said Sunday (7th May, 1995) at about 7 pm both the accused persons, namely, Doman Munda and Bhanu Munda suddenly entered into the home of the deceased and started assaulting the deceased, Rani Mundain. When she (informant) intervened to save her daughter (deceased), the accused, Doman Munda also assaulted her on her back and she become senseless. When she regain sense, found her daughter, Rani Mundain lying dead on the place of occurrence. The informant alleged that the accused persons were earlier charging the deceased that she was a "Dyine" (witch).

In course of trial, prosecution examined seven witnesses in order to bring home the charges, framed against the appellants under Sections 302/34 and 323/34, IPC. PW 2, Dimbu Devi, mother of the deceased (informant) is the solitary eye-witness. Two of the independent witnesses, who are neighbours of the deceased, Rani Mundain, namely, PW 4, Budhu Munda and PW 5, Maisu Munda were declared hostile by the prosecution.

PW 1, Basant Munda is from another Village-Seranghatu and mukhiya of Musanga Panchayat but he has claimed to have learnt about the crime from PW 4, Budhu Munda, who was declared hostile. PW 3, Singrai Munda merely stated that he has seen the dead-body of Rani Mundain and proved his signature on the inquest report. PW 6, Dr. V.K. Prasad, Medical Officer conducted post-mortem on the dead-body of the deceased, Rani Mundain, PW 7, Deo Narain Saha, Officer-in-Charge was the I.O.

Learned 2nd Additional Judicial Commissioner, Khunti mainly relied on the evidence of solitary eye-witness, PW 2, Dimbu Devi, mother of the deceased. He also relied on the statement made u/s 161, Cr PC by two hostile witnesses namely, PW 4, Budhu Munda and PW 5, Maisu Munda and held that there is no legal bar upon such testimony, if corroborated by other reliable evidence. Though, there is major contradiction between the ocular evidence of PW 2, Dimbu Devi and medical evidence, he held that the ocular evidence will prevail over the medical evidence.

3. Challenging the judgment and order of conviction and sentence passed by the learned Court below, learned counsel for the appellants has submitted that there is no evidence in support of genesis of alleged occurrence. It has not been proved by the prosecution. Learned Court below has not properly assessed the ocular evidence and the medical evidence nor decided the question whether the evidence of solitary witness (PW 2), who is related to the deceased, can be relied upon or not in absence of any evidence to corroborate her testimony.

The solitary eye-witness of the occurrence, Dimbu Devi (PW 2) who is the mother of the deceased, stated that the accused persons were carrying "danda" in their hands and attacked her and her daughter with "danda" causing death of her daughter, Rani Mundain. But PW 6, Dr. V.K. Prasad who held autopsy on the

dead-body of the deceased, Rani Mundain, found "one vertical sharp cut injury" on occipital region and fracture of right lower limb at middle apart from internal injury as mentioned hereunder:-

(i) Sharp cut injury vertical 5".x 2 1/2" x 1 1/2" on occipital region cutting the soft tissue bone and brain matters.

(ii) Fracture of right lower limb at middle,

(iii) Internal injury-cutting of brain matter at occipital region.

PW 6, further stated that the injury No. 1, was caused by one heavy sharp cutting weapon and injury No. 2 was caused by hard and blunt substance, injury No, 1, was sufficient to cause death in ordinary course of nature.

Thus, it will be evident that there is major contradiction in the medical evidence and ocular evidence of solitary eye-witness. PW 2, Dimbu-Devi, mother of the deceased. In her testimony, though PW 2 deposed that both the accused were armed with danda and attacked them (informant and deceased) with danda but she did not mention that any of the accused persons was armed with heavy sharp cutting weapon.

In the case of "Sadhu Ram v. State of Rajasthan" reported in 2003 (2) Cri 183 the Apex Court while held that an accused can be convicted on the basis of testimony of a solitary witness, observed that in such a case, the Court must be satisfied that implicit reliance can be placed on the testimony of such a witness. The testimony should be so free of blemish that it can be acted upon without insisting upon corroboration. It should inspire confidence and should not leave any doubt in the mind of the Court about the truthfulness of the witness.

In the case of "State of Rajasthan v. Magni Rani" reported in 2001 (2) Cri 30 (: (2001) 9 SCC 589, the Supreme Court found the testimony of eye-witnesses in consistent with medical evidence. The conduct of eye-witnesses was also found to be unnatural. In such a circumstance, the High Court having acquitted the accused the Supreme Court refused to interfere.

4. Admittedly, the informant, Dimbu Devi (PW 2), is the mother of the deceased. She is interested witness. There is a major contradiction with her evidence and medical evidence. There is no any evidence to corroborate her statement. There is no evidence to prove the geneses of occurrence, no pre-meditation on the part of the accused persons or serious enmity between the parties alleged.

So far as PW 7, I.O. is concerned, in his testimony though he stated that he prepared injury report of the informant and sent her to the doctor for treatment but the PW 2-informant did not utter any word regarding her examination by a doctor. Not only this, no injury report of the informant was produced by the prosecution.

According to I.O. (PW 7), the place of occurrence was the house of the deceased, Rani Mundain situated in Village-Bakebaridih. He found huge quantity of blood on

the P.O. and also found mark of dragging on the P.O. He stated that the deceased was dragged in course of assault by the accused persons and then killed. On the other hand, according to the eye-witness, PW 2, when she and the deceased were cooling fish, the accused persons attacked them as a result of which Rani Mundain died. In the inquest report, it was shown that the body of deceased was lying in the verandah of the house of Rani Mundain.

5. In the aforesaid circumstances, the testimony of solitary eye-witness being inconsistent with the medical evidence, there being major contradiction in her statement and the statement of I.O., she being mother of the deceased and thereby interested witness, her testimony cannot be stated to be trustworthy and reliable.

Similarly, there being major contradiction between the medical evidence and the statement of two hostile witnesses (PWs 4 and 5) u/s 161, Cr PC, it is not safe to rely on such statement made u/s 161, Cr PC. Learned Court below has not considered meticulously all the aforesaid aspect resulting erroneous finding of conviction and sentence, passed against both the appellants, therefore, they cannot be sustained in view of reasoning given above.

6. In the result, there being merit in this criminal appeal, it is allowed. The impugned judgment and order of conviction and sentence, passed by Sri Ravindra Nath Verma, learned Additional Judicial Commissioner-II, Khunti in Sessions Trial No. 673 of 1996/G.R. No. 257 of 1995 is hereby set aside, as the appellants, namely, Doman Munda and Bhanu Munda are in custody, they are ordered to be released, forthwith if not required in any other case.

Lakshman Uraon, J.

7. I agree.