
(2012) 09 JH CK 0201
In the Jharkhand High Court
Case No : Criminal Appeal No. 356 of 2002

Fagu Oraon and Charku Oraon	Vs	APPELLANT
The State of Jharkhand		RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2013) 1 JLJR 354

Hon'ble Judges : Prashant Kumar, J; Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Shekhar Sinha, A.C, for the Appellant; D.K. Chakraverty, APP, for the Respondent

Judgement

D.N. Patel, J.—Present appeal has been preferred against the judgment of conviction dated 10.05.2002 and order of sentence dated 13.05.2002, passed by 2nd Additional Sessions Judge, Gumla, in Sessions Trial No. 41 of 1999, whereby appellants (who are original accused No. 2 and 3) have been convicted for the offence punishable under Sections 302/201/34 of the Indian Penal Code for life imprisonment. No separate sentence has been awarded u/s 201 of the Indian Penal Code. We have appointed Sri Shekhar Sinha as amicus curiae, because, counsel for the appellants is not present when the matter is called out. Counsel for the appellants has pointed out that prosecution has not properly appreciated the major omissions and contradictions in the depositions of prosecution witnesses. This aspect of the matter has not been properly appreciated by the learned trial court and, hence, the judgment of conviction and order of sentence passed by learned trial court deserves to be quashed and set aside. Moreover, it has been submitted by counsel for the appellants that P.W.-1, P.W.-2 and P.W.-3 are hearsay witnesses. All these witnesses have stated before the court that they were conveyed by the wife of one Bandhana Oraon about the incident. Thus, neither P.W.-1, nor P.W.-2 and P.W.-3 are the witnesses of the incident in question. Incident has taken place on 5.7.1998, and, son of informant (P.W.-7), namely Nazmul Ansari, has been murdered by the appellants, but the charges

have not been proved by the prosecution witnesses beyond reasonable doubts. It is further submitted by learned counsel for the appellants that so far P.W.-4 is concerned, who is witness of seizure panchnama, has stated that one bicycle recovered from the well and a knife was also recovered from the field of appellant No. 1 (original accused No. 2), whereas, Investigating Officer who is P.W.-9 has stated that knife was recovered from the field of appellant No. 1 (original accused No. 2) and there was water in the field. There is no confessional statement of original accused No. 1 namely Desha Oraon. P.W.-4 has never stated that recovery of bicycle and knife was made on the behest of original accused No. 1 or original accused No. 2. Looking to the deposition of P.W.-4, bicycle and knife were already kept ready and panchnama was also prepared which was signed by this witness. Thus, recovery is not connected with the statement of any of the accused and, therefore, recovery alone is not sufficient for conviction of the appellants. Moreover, so called confessional statement of appellant No. 1 (original accused No. 2) has also not been proved. The I.O. has not stated in his deposition as P.W.-9 about the signature of Fagu Oraon. Thus, his simple statement made before the police about the incident is not admissible as per Indian Evidence Act. This aspect of the matter has also not been properly appreciated by the learned trial court, hence, judgment of conviction and order of sentence passed by the learned trial court deserves to be quashed and set aside. There is no eye witness of the incident. The whole case of the prosecution is based upon presumptions and surmises.

2. We have heard learned A.P.P. appearing for the State, who has vehemently submitted that incident has taken place on 5th July 1998 and the F.I.R. was lodged on 6.7.1998. Appellants were named in the F.I.R. In fact, there were three accused, but, original accused No. 1 has been acquitted by learned trial court. Rest accused No. 2 and 3 have been convicted, who have preferred this appeal. Informant, who is P.W.-7, has sold she buffalo to the accused and the money was to be recovered from them and, therefore, informant P.W.-7 sent his son namely Nazmul Ansari for recovery of the amount of Rs. 3,000/- at the house of appellants-accused and thereafter murder of son of informant taken place. This fact was stated by P.W.-1, P.W.-2 and P.W.-3. There is also recovery of knife and bicycle. These facts has been proved by P.W.-4 and P.W.6 and also by P.W.-9, who is I.O. Thus, there is recovery of incriminating articles because of the statement of appellant No. 1 (original accused No. 2), as well as on the basis of the statement of Desha Oraon, who is original accused No. 1, who has already been acquitted by the learned trial court. Moreover, there is extra judicial confession by appellant No. 1 before the police. Said document is Ext.-5 in the records of sessions trial, thus, no error has been committed by the learned trial court.

3. Having heard counsel for both the sides and looking to the evidences available on record, it appears that the case of the prosecution that informant (P.W.-7) had sold she buffalo to the accused and the amount of Rs. 3,000/- was to be recovered from them for which P.W.-7 sent his son namely Nazmul Ansari who

was killed by accused persons. F.I.R. was lodged on 6.7.1998. Investigation was carried out and charge-sheet was filed against three accused namely (a) Desha Oraon (b) Fagu Oraon and (c) Charku Oraon. Desha Oraon has been acquitted by the trial court, whereas, rest two accused namely Fagu Oraon and Charku Oraon have been convicted mainly for the offence punishable u/s 302/34 of the Indian Penal Code for life imprisonment. They have also been convicted for the offence u/s 201/34 IPC, but no separate sentence has been awarded.

4. Looking to the evidences of P.W.-1, P.W.-2 and P.W.-3, it appears that they are hearsay witnesses. They have clearly stated in their depositions that they came to know about the incident on the basis of information given by wife of one Bandhana Oraon. Thus, neither P.W.-1, nor P.W.-2 and P.W.-3 have seen the incident at all and the wife of Bandhana Oraon has not been examined by the prosecution.

5. Looking to the deposition of P.W.-4 it appears that neither knife nor bicycle was recovered on the basis of statement of original accused No. 1 or original accused No. 2. but, bicycle and knife was kept ready by the police and P.W.-4 has signed on panchnama. Thus, there is no connection between accused and recovery of incriminating articles. This aspect of the matter has also not been properly appreciated by the learned trial court. Similar is the deposition of P.W.-6. So far deposition of P.W.-5 is concerned, he is witness of inquest panchnama.

6. Looking to the deposition of P.W.-5 it appears that he is also a hearsay witness and P.W.-1 and P.W.-2 informed him about the occurrence. Thus, none of these witnesses have proved the offences beyond reasonable doubt of the murder of deceased.

7. Looking to the deposition of informant (P.W.-7), who is father of deceased, it appears that he is not an eye witness of the incident. He has also relied upon the information given to him by P.W.-1 and P.W.-2 and P.W.-1 and P.W.-2 were informed by the wife of Bandhana Oraon. Thus, none of these prosecution witnesses has not been able to prove the offence committed by the appellants of the murder of deceased.

8. Looking to the deposition of P.W.-9, who is investigating officer, has stated that there was extra judicial confession by appellant No. 1 (original accused No. 2). The signature upon his statement is not proved and the statement is simply made before the police is not admissible in evidence. Moreover, looking to the deposition of P.W.-9, who is investigating officer, he has stated that there is recovery of bicycle from well on the basis of statement of original accused No. 1, however, original accused No. 1 has already been acquitted by learned trial court. So far knife is concerned, it has been recovered from field of appellant No. 1 and there was water in the field. Recovery was from the open field, which was not within the house of any accused. Said place is open and is accessible to everyone. Looking to these weak piece of evidences, prosecution has failed to prove the offences beyond reasonable doubts. This aspect of the matter has not

been properly appreciated by the learned trial court. We, therefore, quash and set aside the judgment of conviction dated 10.05.2002 and order of sentence dated 13.05.2002 passed by 2nd Additional Sessions Judge, Gumla in Sessions Trial No. 41 of 1999. Appellants, namely, Fagu Oraon and Charku Oraon are acquitted from the charges levelled against them. The court below is directed to release the appellants, namely, Fagu Oraon and Charku Oraon, who are in custody, forthwith, if their presence is not required in any other case. Appeal is allowed and disposed of.