
(2016) 06 JH CK 0072

In the Jharkhand High Court

Case No : Cr. Appeal (DB) No. 892 of 2010 (Against the judgment of conviction dated 24.01.2007 and order of sentence dated 27.01.2007 passed by the 1st Additional Judicial Commissioner, Khunti in S.T. No. 62 of 2003)

Faguwa Pahan @ Pandit

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Prevention of Witch (Daain) Practices Act, 1999 — Section 4

Citation : (2016) 4 AIRJharR 827 : (2016) 3 JBCJ 233 : (2017) 1 JCR 565 : (2016) 3 JLJR 293

Hon'ble Judges : Mr. Pradip Kumar Mohanty and Mr. D.N. Upadhyay, JJ.

Bench : Division Bench

Advocate : Mr. Pradip Kumar Deomani, Advocate, for the Appellant; Mr. Sanjay Kumar Srivastava, APP, for the Respondent

Final Decision : Disposed Off

Judgement

1. This criminal appeal is directed against the judgment of conviction dated 24.01.2007 and order of sentence dated 27.01.2007 passed by the 1st Additional Judicial Commissioner, Khunti, in S.T. No. 62 of 2003, whereby the appellant having been found guilty of the charges under Section 4 of the Prevention of Witch Practise Act, 1999 as well as under Section 302 Indian Penal Code, has been sentenced to undergo R.I. for six months under Section 4 of the Prevention of Witch Practise Act, 1999 and has further been sentenced to undergo imprisonment for life under Section 302 Indian Penal Code, besides a fine of Rs.20,000/- to be payable in favour of the informant. All the sentences have been directed to run concurrently.

2. The case of the prosecution, in brief is that, on 20.05.2002, while the informant-Basanti Pahan (P.W.6) after taking meal along with her husband was doing domestic work, at about 3 p.m., appellant- Faguwa Pahan @ Pandit along

with co-accused Turi Lede Pahan and Laluwa Pahan, all armed with axes (tangi), came there and started abusing the informant alleging her to be witch and also challenged her to come out of the house. Upon it, Informant's husband-Bagaru Pahan (deceased) came outside of the house and protested and also forbade the accused to abuse. Thereafter appellant-Faguwa Pahan @ Pandit inflicted tangi blow on the head of the Bagaru Pahan. Seeing this, the informant rushed out of the house to save her husband, but appellant-Faguwa Pahan assaulted the informant by means of tangi due to which she sustained injuries on her both hands. Since she had tried to ward off the blow, her left thumb was severed from its root. All the accused wanted to kill the informant too, but she ran away towards the village to save her life. After a while when she returned back, she found her husband- Bagaru Pahan lying dead having injuries on his person.

The A.S.I. of Karra police station, on being informed about the incident, reached at the village where fardbeyan of informant- Basanti Pahan was recorded in which she narrated about the incident as has been stated above.

3. On the basis of the aforesaid Fardbeyan, Karra P.S. Case No. 18 of 2002 was registered for the offence under Sections 302, 307 and 326/34 of the Indian Penal Code as well as under Sections 3/4 of the Prevention of Witch Practices Act, 1999 against the appellant as well as co-accused Turi Lede Pahan and Laluwa Pahan.

4. After registering the case, the investigation was carried out and after preparing the inquest report of the deceased, the dead-body was sent for postmortem examination, which was conducted by Dr. Pawan Kumar Dutta-P.W.1 who upon holding autopsy on the dead-body of the deceased found the following injuries:-

1. Rigor mortis present.

2. Incised wound found in the neck.

i. Horizontal on back (posterior aspect) side a First 5" X 3" X ?" cutting brain matters superiorly caused by sharp cutting heavy weapon such as tangi.

b. Second 4" X 3" X ?" caused by sharp cutting heavy weapon such as tangi.

(ii). One horizontal injury (cut) on interior and left side ?" X ?" X ?".

3. Bleeding over nose and mouth. The doctor issued postmortem examination report with an opinion that the death was caused due to head and neck injuries caused by sharp cutting heavy weapon such as axe (tangi). Time elapsed since death within 24 hours and injuries were ante-mortem in nature.

5. On completion of the investigation, charge-sheet was submitted against the appellant and cognizance of the offence was taken. In due course when the case was committed to the Court of Sessions, he was put on trial. Other two co-accused Laluwa Pahan and Turi Lede Pahan having been shown to be absconders in the charge-sheet, their cases were split up from the original case record. Later

on, co-accused Laluwa Pahan was produced by the police after execution of the permanent warrant of arrest and, therefore, the record of said co-accused Laluwa Pahan was numbered as S.T. No. 62(A) of 2003 which is pending for prosecution evidence and the record of co-accused Turi Lede Pahan was split up which has been numbered as S.T. No. 62(B) of 2003.

6. During trial, the prosecution in order to prove its case has examined as many as 6 witnesses. Out of whom, P.W. 1- Mr. Pawan Kumar Dutta is the medical officer. P.W.2- Sukhram Munda, P.W.3- Mana Horo, P.W.4- Sukhu Pahan and P.W.5- Sadhu Pahan have been declared hostile. P.W.6-informant is the wife of the deceased, who has narrated the entire story and has alleged that the appellant and the other accused persons inflicted tangi (axe) injuries on the person of the deceased, as a result of which, he died.

7. The trial court after appreciating the evidences of the prosecution witnesses and the materials available on record, found the appellant guilty for committing murder of the deceased and accordingly recorded the judgment of conviction and order of sentence against the appellant, which is under challenge.

8. Based upon the evidence of the informant, Mr. Pradip Kumar Deomani, counsel for the appellant, has assailed the judgment of the learned court below on the following grounds:

(I) No independent witness has corroborated the prosecution version.

(II) P.Ws.2, 3, 4 and 5 have turned hostile.

(III) P.W.6 is the only witness who is not the eyewitness in the instant case because she fled away from the place of occurrence out of fear.

(IV) Injury report of P.W.6 was not proved by the prosecution and thereby, the prosecution has suppressed the material facts.

(V) No question was put to the appellant under Section 313 Cr.P.C., implicating him in the alleged offence.

(VI) Investigating Officer has not been examined by the prosecution.

9. On the other hand, Mr. Sanjay Kumar Srivastava, learned A.P.P. has vehemently opposed the contentions raised by the learned counsel for the appellant and submits that the appellant and other accused persons have given tangi (axe) blow to the deceased, as a result of which, he died. It is further submitted that the appellant also assaulted the informant but the informant anyhow fled away from there to save her life. On the basis of the aforesaid submission, learned Additional Public Prosecutor submitted that there being no infirmity in the impugned judgment and order of conviction and sentence, the findings arrived at by learned trial court do not require any interference by this Court.

10. We have heard learned counsel for both the sides and also perused the

materials available on record. It appears that P.W.1 is the doctor who conducted postmortem examination on the dead-body of the deceased, has opined that the death was caused due to head and neck injuries caused by sharp cutting weapon i.e. tangi and the injuries were ante-mortem in nature. P.Ws. 2, 3, 4 and 5, who are the co-villagers of the appellant and the deceased, have turned hostile. P.W. 6-informant is the eye witness and the widow of the deceased. She deposed that the present appellant along with co-accused Turi Lede Pahan and Laluwa Pahan inflicted tangi blows on the head of the deceased-Bagaru Pahan as a result of which he died. The appellant also assaulted her with tangi (axe) which was intercepted by the informant with her hands as a result of which, she sustained injuries on her both thumbs and right forearm. Her left thumb was severed from its root.

11. Charges for the offence under Sections 307 and 326 of the Indian Penal Code were framed against the appellant but the appellant was acquitted from the said charges. It is alleged that informant-P.W. 6 was inflicted tangi blow by the appellant but no injury report was produced by the prosecution and the doctor, who treated P.W. 6, has not been examined by the prosecution in this regard. Neither the severed thumb has been exhibited nor the informant during examination-in-chief has stated that her thumb has been severed by the appellant at the time of incident. Further in the instant case, Investigating Officer has not been examined and FIR has not been proved by the prosecution. No question under Section 313 Cr.P.C. was put to the appellant implicating him in the alleged offence. There is no evidence with regard to the incident of severing of left thumb from its root and there are major contradictions in the evidences of P.W. 6 and the doctor. Thus, the evidence of P.W. 6 cannot be sustained. No injury report has been proved by the prosecution. The informant has not seen the occurrence, as out of fear she fled away towards the village and thus, her evidence is not trustworthy and reliable.

12. Thus, it is difficult to uphold the findings arrived at by the learned trial court, inasmuch as merely on suspicion, a person cannot be held guilty.

13. After considering the submissions of learned counsel for both the parties, this Court is of the view that the prosecution can never be said to have proved its case beyond all reasonable doubts. However, the trial court did not take into account all these aspects of the matter in right perspective and thereby it committed illegality in recording the judgment of conviction and order of sentence against the appellant.

14. As such, the instant appeal is allowed and the judgment of conviction dated 24.01.2007 and order of sentence dated 27.01.2007 passed by the 1st Additional Judicial Commissioner, Khunti, in S.T. No. 62 of 2003 stands set aside. The appellant, who is in jail, is acquitted of the charges and is directed to be released forthwith, if not wanted in any other case.