
(2009) 11 JH CK 0133
In the Jharkhand High Court

Gautam Pinguwa	Vs	APPELLANT
The State of Bihar (Now Jharkhand)		RESPONDENT

Date of Decision : 07-11-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 11 JH CK 0133

Hon'ble Judges : Rakesh Ranjan Prasad, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present appeal has been preferred against the judgment and order of conviction and sentence dated 5th May, 2000 and 6th May, 2000 respectively, passed by learned 1st Additional Sessions Judge, Chaibasa in Sessions Trial No. 112/14 of 1997, whereby, the appellant-accused has been convicted for an offence punishable u/s 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and a fine of Rs. 3,000/- has been imposed, in default whereof to further undergo rigorous imprisonment for one year. Against this judgment of conviction and order of sentence, the present appeal has been preferred by the appellant-accused.

2. If the facts of the prosecution are unfolded, the relevant facts are as under:

Incident has taken place on 22nd November, 1996 at 10:00 p.m. The deceased namely Kairi Kui expired at village-Gurgaon and P.W.-1 has filed an F.I.R. at Majhgaon police station, District-Singhbhum West. In presence of other witnesses, P.W.-1 had disclosed that the appellant-accused has committed murder of informant's bhabhi, namely, Kairi Kui by assaulting her by piece of stone and her dead body was lying in her Khalihan. The name of prosecution witnesses have also been referred in the F.I.R. and the motive is also referred in the F.I.R. that the appellant's sister was expired and the appellant was under belief that the deceased has played witchcraft, therefore, sister of the appellant-

accused was killed by her and, therefore, revenge has been taken by the appellant-accused. Upon recording of the F.I.R., investigation was carried out, statements of other witnesses were recorded, chargesheet was filed and upon appreciating the evidences before the trial court, the appellant-accused has been convicted for the offence u/s 302 of the Indian Penal Code for committing murder of Kairi Kui.

3. We have heard learned Counsel appearing on behalf of the appellant, who has submitted that the whole case of the prosecution is based upon the circumstantial evidence. There is no eye-witness of the incidence. The only evidence is the oral confession, which is a very weak piece of evidence. In fact, there is no confession by the appellant-accused. The witnesses namely Surendra Pingua (P.W.-1) and Janki Kui (P.W.-5) are the partisan witnesses and relatives of the deceased. There is no corroboration to the depositions of these witnesses. The Court witness is also a got up witness. This aspect of the matter has not been properly appreciated by the trial Court and, therefore, the judgment and order of conviction and sentence, passed by the trial court, deserve to be quashed and set aside. It is also submitted by learned Counsel for the appellant-accused that the medical evidence is not corroborative to the depositions of P.W.-1, P.W.-3, and P.W.-5 and is also not corroborative to the depositions of the Court witness. Prosecution is not sure about the weapon used by the appellant-accused whether it was the stone or Lathi or sharp cutting instrument. Thus, in absence of eye-witness, there is discrepancy in the medical evidence and the depositions of P.W.-1, P.W.-3, P.W.-5 and the Court witness. Prosecution has failed to prove, beyond reasonable doubts, the offence of murder of Kairi Kui and, therefore, the judgment and order of conviction and sentence passed by the trial court deserve to be quashed and set aside.

4. We have heard learned A.P.P. for the State, who has vehemently submitted that the prosecution has proved the offence of murder of Kairi Kui beyond reasonable doubts, which has been committed by the appellant-accused. Learned A.P.P. submitted that the prosecution is strongly relying upon the depositions, given by P.W.-1, P.W.-3, P.W.-5 and P.W.-6 and the Court witness. P.W.-1 is an informant, who has immediately filed F.I.R. The appellant-accused is named in the F.I.R. Further prosecution witnesses have also named the appellant in the F.I.R. P.W.-1 has clearly narrated before the trial court that the appellant-accused had come at the house of P.W.-1 at 10:00 p.m. and; has stated before P.W.-1 and P.W.-5 that as Kairi Kui (deceased) has played witchcraft and as she has killed his sister, he has completed his work by committing her murder. It is also submitted by learned A.P.P. that there is enough corroboration to the deposition of P.W.-1 by the evidences of other witnesses i.e. P.W.-3, P.W.-5, P.W.-6 and by the Court witness. There is also corroboration regarding time of occurrence, place of occurrence, the weapons and the blood stains, which were found at the place of scene of offence. Court witness is also an important witness, who has seen accused coming out of the house of the deceased with Lathi. He has also seen him running away and the appellant-accused was not available to the prosecution

for investigation, initially, though, he was named in the F.I.R., which is lodged on 23rd November, 1996 at about 16:00 hours. The appellant-accused had surrendered before the concerned trial court on 27th November, 1996. It is also submitted by learned A.P.P. that motive has also been established and it has also been referred in the F.I.R. Thus, the evidences of P.W.-1, P.W.-3, P.W.-5, P.W.-6 and the Court witness are consistent, natural and they are trustworthy witnesses and, therefore, rightly, their evidences have been relied upon by the trial court and no error has been committed by the trial court in convicting the appellant-accused for the offence of murder of Kairi Kui. It is also submitted by learned A.P.P. that there was no inimical terms between the prosecution witnesses and the appellant-accused and, therefore, there is no reason for the prosecution witnesses to give false evidence before the trial court. In these set of circumstances, the appellant-accused has been rightly punished for the offence of murder of the deceased and, therefore, the present appeal deserves to be dismissed.

5. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that the offence has taken place at village-Gurgaon. Deceased is Kairi Kui. P.W.-1, who is an informant, has lodged F.I.R. on 23rd November, 1996 at about 16:00 hours at Majhgaon police station, District-Singhbhum West, stating therein, that the appellant-accused has committed murder of Kairi Kui, bhabhi of P.W.-1, by assaulting her by piece of stone and the dead body was lying in her Khalihan. The appellant is residing in the same village. Therefore, there is no question of mis-identification. P.W.-5 and Court witness have also been referred in the F.I.R. Motive is also alleged in the F.I.R. looking to the deposition of P.W.-1. This P.W.-1 has also proved the F.I.R. (Ext.-4) and has stated that the appellant-accused had come at the house of the deceased on 22nd November, 1996 at about 10:00 p.m. and has stated before P.W.-1 and P.W.-5 (wife of P.W.-1) that as Kairi Kui (deceased) had played witchcraft and killed his sister, the appellant had completed his work by committing murder of Kairi Kui and he would run away from the village. Looking to the deposition of this witness and cross examination, nothing is coming out in favour of the appellant-accused and, therefore, this witness is natural and trustworthy witness and his deposition is also being corroborated by other witnesses.

6. Looking to the deposition of P.W.-3, who is a co-villager, it appears that he was also informed by P.W.-1 about the whole incident. Though this witness is not an eye-witness, he has supported the deposition of P.W.-1.

7. Looking to the deposition of P.W.-5 (Janki Kui, wife of P.W.-1), she has also stated that the appellant-accused had come at her house at 10:00 p.m. on 22nd November, 1996 and had made oral confession. P.W.-1 and P.W.-5 are husband and wife. P.W.-5 has identified the appellant-accused in the court. Looking to her cross-examination also, nothing is coming out in favour of the appellant-accused. On the contrary, her deposition, though has given after several months after

lodging the F.I.R., is without omission and contradiction. She is also a natural and trustworthy witness. There are no inimical terms between P.W.-1, P.W.-3, P.W.-5 and the appellant-accused. Thus, there is no reason for them to give false evidence against the appellant-accused.

8. Looking to the deposition of the Court witness, namely, Ladura Pingua, who is a co-villager. This witness is also named in the F.I.R. Thus, from very beginning i.e. immediately on the next day of incidence, the name of this witness was stated in the F.I.R. and, therefore, the allegation levelled by learned Counsel for the appellant that the court witness is a got up witness, is not accepted by this Court. Looking to the deposition of this witness, he has stated that he has seen the appellant-accused at night hours on 22nd November, 1996, coming out of the house of the deceased with Lathi in his hand. He saw him running away. Thus, there is enough corroboration to the deposition of P.W.-1 and P.W.-5 by this Court witness. It was stated by the appellant-accused before P.W.-1 and P.W.-5 that the appellant-accused has completed his work and he would run away from the village. This fact is corroborated to the deposition of the Court witness. This Court witness has also identified the appellant-accused in the court.

9. Thus, looking to the depositions of P.W.-1, P.W.-3, P.W.-5 and Court witness over and above, the oral confession before P.W.-1 and P.W.-5, there is enough corroboration by the deposition of this Court witness. Bloodstains at the place of occurrence have also been proved by the prosecution. Place of occurrence is the Khalihan of the deceased. Thus, the case of the prosecution is not only based upon the oral confession, but, there is corroboration about the time, about the place of occurrence, about the weapon, about the bloodstain, which was there at the place of scene of offence. The appellant-accused was found, coming out of the house of the deceased with Lathi and he was also found, running away. The date of F.I.R. is 23rd November, 1996 and initially the appellant-accused was not available for investigation and had surrendered in the Court on 27th November, 1996. Looking to these evidences, no error has been committed by the trial Court for convicting the appellant-accused for committing murder of the deceased.

10. Learned Counsel for the appellant-accused has submitted that there is no corroboration by the medical evidence to the deposition of P.W.-1, P.W.-5 and the Court witness. This submission is also not accepted by this Court, looking to the deposition of Dr. Lalit Minj (P.W.-6), who has carried out postmortem examination of the deceased on 24th November, 1996 at about 2:00 p.m. Postmortem is marked as Ext.2. Looking to the deposition of P.W.-6, there are several injuries upon the deceased, which are as under:

(i) Penetrating wound 3 in number over right side of face between right ear and right eye 1/2", 1" and 1/2" in length respectively.

(ii) Penetrating wound over right jaw 1" long.

(iii) Gutter wound below left mandible 3" in diameter.

(iv) Right side of face was depressed due to assault by hard and blunt object such as stone.

(v) Fracture of Cervical bone, 6th and 7th vertebrae on opening the chest, ecchymosis and blood clots were found in the muscle of chest wall. Left upper four ribs were fractured. Tracheal ring was also broken. Fracture of sternum was also detected. Blood was present in left pleural cavity. Heart was empty. Lungs were empty. Stomach was empty. Bladder was full of urine. Uterus was small.

It has been stated by the Dr. Lalit Minj that injury Nos. (i) to (iii) were caused by sharp and pointed weapon. Injury No. (v) was caused by hard and blunt substance, such as, stone. Tracheal ring was broken due to assault by sharp and pointed weapon and it was result of external injury No. (iii). Time elapsed since death was within 24 to 36 hours from the time of post mortem examination and the injuries were sufficient to cause death in ordinary course of nature and the deceased had died due to haemorrhage and shock as a result of cumulative effect of injuries upon her.

11. Thus, looking to the deposition of P.W.-1 and P.W.-5, the appellant-accused had stated before them that he has completed his work by committing murder of the deceased as she had played witchcraft, whereby, sister of the appellant-accused was killed. These witnesses have never exaggerated their version, right from F.I.R. itself. Whatever stated by the accused, has been stated by them before the court as well as in the F.I.R. Which weapon was exactly used for committing murder is known to the appellant-accused only, but, as stated in the medical evidence, injury No. (v) can be caused by hard and blunt substances like a stone. Injury No. (v) is also a major injury at the vital part of the body i.e. at chest and there is also a fracture of cervical bone. Injury No. (iv), which is on the right side of face was depressed due to assault by hard and blunt substance, such as, stone. Injury Nos. (iv) and (v), both are tallying with the depositions of P.W.-1 and P.W.-5 and looking to the depositions of P.W.-1, P.W.-3, P.W.-5 and Court witness, to be read with the medical evidence, given by P.W.-6, the prosecution has proved the offence of murder of Kairi Kui, committed by the appellant-accused, beyond reasonable doubts. P.W.-1, P.W.-3, P.W.-5 and Court witnesses are natural witnesses and they have given their depositions without omissions and contradictions and without any exaggerations whatsoever. What they have seen and observed, have been reflected in their depositions. No error has been committed by the trial Court in convicting the appellant-accused and in appreciating the evidences on record. There is also motive behind the murder, committed by the appellant-accused. Thus, we hereby, confirm the judgment and order of conviction and sentence dated 5th May, 2000 and 6th May, 2000 respectively, passed by the learned 1st Additional Sessions Judge, Chaibasa in Sessions Trial No. 112/14 of 1997. There is no substance in the appeal and, hence, the same is, hereby, dismissed.