
(2018) 07 JH CK 0070

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No.110 of 1996

Ghasi Ram Munda

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2018) 07 JH CK 0070

Hon'ble Judges : H. C. MISHRA, J;B.B. MANGALMURTI, J

Bench : Division Bench

Advocate : B.M. Tripathy, Naveen Kr. Jaiswal, Krishna Shekhar

Final Decision : Allowed

Judgement

1. Heard learned senior counsel for the appellant and learned counsel for the State.

2. Appellant is aggrieved by the impugned Judgment of conviction dated 6.07.1995 and Order of sentence dated 7.7.1995, passed by the learned

Additional Judicial Commissioner, Khunti, in S.T. No.149 of 1992, whereby the sole appellant, who is the husband of the deceased, has been found

guilty and convicted for the offence under Section 302 of the Indian Penal Code. Upon hearing on the point of sentence, he has been sentenced to

undergo R.I. for life.Â Â

3. The dead body of the wife of the appellant was found in an agriculture field in the village Dikuloyong, P.S. Khunti, in the then district of Ranchi, on

11.9.1991, and the informant Jeet Munda, who is the father of the deceased lady, was informed about it by Dukhan Swanshi, Dhiraja Swansi and

other persons in the same night that the dead body of his daughter was lying in

the field, whereupon, he went there and saw the dead body.Â The FIR was lodged by the informant, the father of the deceased on 12.9.1991 at about 12 P.M., at the Police Station, wherein, he has stated that there was love marriage between his daughter and accused Ghasi Ram Munda, and out of this wedlock, they were blessed with a daughter also, who died after eight days of her birth.Â He has stated that the accused was in habit of assaulting the deceased and at one point of time, his daughter fled away from her matrimonial home and came to his house. Thereafter, she was taken away by the accused on the assurance to keep her properly, but even thereafter she was subjected to the same treatment by her husband.Â On 11.9.1991, at about 11 P.M., he was informed about the dead body his daughter lying in agriculture field, whereupon, he went there and saw the dead body of his daughter by the side of the foot way in injured condition.Â He stayed there for the whole night with the dead body and in the morning, he searched his son-in-law, but his son-in-law was not in the house and he was informed that he had gone to tend the cattle. Thereafter, the villagers searched the accused in the forest, apprehended him and brought him to the place of occurrence and he confessed before them that he had assaulted his wife to death, due to the fact that he had seen his wife in compromising position with another person and thereafter, she was fleeing away towards her parentsâ?? place, whom he chased and assaulted by balua (a sharp cutting weapon), which he concealed in the house of his sister.Â On the basis of this information, Khunti P.S. Case No.89 of 1991, corresponding to G.R. No.471 of 1991, was instituted for the offence under Section 302 of the Indian Penal Code, against the sole accused, and investigation was taken up.Â After investigation, the police submitted the charge-sheet in the case.Â Â 4. Upon commitment of the case to the Court of Session, charge was framed against the accused for the offence under Section 302 of the Indian Penal Code, and upon the accusedâ??s pleading not guilty and claiming to be tried, he was put to trial.Â In course of trial, the prosecution examined seven witnesses, including the Doctor, who had conducted the post-mortem examination on the dead body of the deceased.Â The I.O. has not been examined in this case and as such, the FIR, the seizure list of the seizure of the blood stained soil and the inquest report were proved by a formal witness P.W.-7 Shiv Charan Kalindi, and the same were marked Exts. 3, 4 and 5

respectively. Out of the material witnesses examined, P.W.-4

Dhiraj Swansi and P.W.-5 Dukhan Swansi, who had informed the informant about the dead body, have turned hostile on the point that the accused

had made any extra judicial confession in their presence. They have stated about the finding of the dead body of the deceased and have also stated

that the accused was brought there and he saw the dead body of his wife. They have turned hostile and not supported the fact that any extra

judicial confession was made by the accused in their presence. P.W.-2 Deva Munda has only proved his signature and the signature of other witness

on the inquest report and on the seizure list, which were marked Ext.-2 series.

5. P.W.-3 Jeet Munda, the father of the deceased and P.W.-6 Karan Singh, both of them have stated that they had seen the dead body of the

deceased. The accused was brought there and he had confessed his guilt before them stating that he had committed the murder of his wife. It

is also apparent from the evidence of these witnesses that extra judicial confession was made by the accused in the presence of the

Chaukidar. Though, in the FIR, it is stated that the accused had confessed before them that he had committed the murder of the deceased due to

the fact that he had seen the deceased in compromising position with another person and thereafter, she was fleeing away and he chased her and

assaulted her, but this fact has not been stated by either of these witnesses in their evidence. P.W.-3 Jeet Munda has stated that the accused

confessed that he was not happy with the work of his wife, whereas, P.W.-6 Karan Singh has completely concealed this fact and has not disclosed

any reason for committing the murder, as allegedly disclosed in the extra judicial confession.

6. P.W.-1 Dr. T.P. Vaishya had conducted the post-mortem examination on the dead body of the deceased on 13.9.1991 and found three incised

wounds on the dead body, which were ante-mortem in nature and sufficient to cause death of the deceased and he has proved the post-mortem report

to be in his pen and signature, which was marked Ext.-1.

7. The accused has denied the evidence against him in his statement recorded under Section 313 of the Cr.P.C. No evidence, however, has been

adduced by the defence. On the basis of the evidence on record, the appellant has been convicted and sentenced by the Trial Court below, for the

offence as aforesaid.Â Â

8. Learned senior counsel for the appellant has submitted that the impugned Judgment of conviction and Order of sentence passed by the Trial Court

below cannot sustained in the eyes of law, in as much as, the case rests only on the alleged extra judicial confession made before P.W.-3 Jit Munda

and P.W.-6 Karan Singh.Â These witnesses have not given true text of the extra judicial confession allegedly made by the accused and have

concealed and changed the portions thereof. Learned senior counsel also submitted that the evidence of these witnesses would show that the

confessional statement was made before the Chaukidar and the confessional statement is not admissible in the eyes of law.Â It has also been pointed

out by learned counsel that the Chaukidar and the I.O. have not been examined in the case and though in the FIR, it is stated that the deceased also

disclosed where he had concealed the weapon of offence, but no witness has stated that the weapon of offence was recovered. Learned senior

counsel accordingly, submitted that the prosecution has failed to bring home charge against the accused beyond all reasonable doubts and it is a fit

case, in which, the accused ought to have been given the benefits of doubt.Â

9. Learned counsel for the State on the other hand has opposed the prayer and has submitted that though there is no eyewitness to the occurrence, but

the accused himself confessed his guilt before the witnesses, which is fully supported by P.W.-3 Jeet Munda, the informant and father of the

deceased and P.W.-6 Karan Singh.Â Learned counsel submitted that the evidence of P.W.-1 Dr. T.P. Vaishya shows that the deceased had

suffered three incised wounds caused by sharp cutting weapon, which were sufficient to cause death in ordinary course of nature, and in that view of

the matter, the prosecution has been able to bring home charge against the accused beyond all reasonable doubts.Â

10. Having heard learned counsels for both the sides and upon going through the record, we find that in the present case, there is no eyewitness to the

occurrence. The dead body of the deceased was found in an agriculture field and the only evidence against the appellant is that he had made extra

judicial confession that he had committed the murder of his wife.Â The said oral extra judicial confession has been proved by P.W.-3 Jeet Munda, the

informant and the father of the deceased, and P.W.-6 Karan Singh and the

evidences of both these witnesses show that they have made substantial changes in the alleged extra judicial confession. Though in the FIR, it is stated that the accused had disclosed the fact that he had seen the deceased in compromising position with another person and thereafter, she started fleeing away and she was chased and assaulted, but P.W.-3 Jeet Munda, who is the father of the deceased, has stated in his evidence that the accused disclosed that he was not happy with the work of his wife, whereas P.W.-6 Karan Singh has completely concealed this fact and has not stated this portion of the extra judicial confession.Â We also find from the evidence of P.W.-6 Karan Singh that he is also closely related to the informant P.W.-3 Â Jeet Munda, and they being highly interested witnesses, their evidence cannot be relied upon, particularly due to the change / concealment made by them in the alleged extra judicial confession.Â The evidences of both these witnesses show that the extra judicial confession was made in the presence of the Chaukidar, but the Chaukiar and the I.O. of the case have not been examined by the prosecution.Â Though, it is also apparent from the FIR that the weapon of offence was said to be concealed at the sisterâ??s place of the accused, but there appears to be no effort by the I.O., to recover the said weapon, as none of the witnesses have stated that the weapon was also recovered.Â In the facts of this case, we are of the considered view that the prosecution has not been able to bring home charge against the accused beyond all reasonable doubts, and it is a fit case in which the accused ought to have been given at least the benefits of doubt.Â

11. For the foregoing reasons, the impugned Judgment of conviction dated 6.7.1995 and Order of sentence dated 7.7.1995, passed by the learned Additional Judicial Commissioner, Khunti, in S.T. No.149 of 1992, convicting and sentencing the appellant for the offence under Section 302 of the Indian Penal Code, are hereby, set-aside.Â The appellant is given the benefits of doubt and he is acquitted of the charge. The accused appellant Ghasi Ram Munda is on bail, and he is discharged from the liabilities of his bail bond.Â Â Â

12. This appeal is accordingly, allowed. Let the Lower Court Record be sent back to the Court concerned forthwith, along with a copy of this Judgment.Â