
(2015) 04 JH CK 0051

In the Jharkhand High Court

Case No : Criminal (Jail) Appeal (D.B) No. 1796 of 2004

Govind Tiriya and Others

APPELLANT

Vs

The Sate of Jharkand

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 3 AJR 603 : (2015) 4 CCR 222 : (2015) 3 Crimes 398

Hon'ble Judges : Rakesh Ranjan Prasad, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Amrita Banerjee, A.C., for the Appellant; Hamant Kumar Shikarwar, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment of conviction dated 03.8.2004 and order of sentence dated 04.8.2004 passed by the then 1st Additional Sessions Judge, Chaibasa in S.T. No. 117 of 2004 whereby and whereunder the court having found the appellants guilty for committing murder of Roya Gope convicted them for the offence punishable under Section 302 of the Indian Penal Code and sentenced them to undergo imprisonment for life.

2. The case of the prosecution is that on 23.12.2003 at about 5 p.m. when Roya Gope came home from his work place, the appellants came and started assaulting Roya Gope with sharp cutting weapon, as a result of which, he fell down and succumbed to his injuries. This information of deceased being killed by the appellants was given to the informant Bishnu Gpe (P.W.5) the brother of the deceased by Krishna Gope, aged about 8 years, son of the deceased. On getting this information, the informant (P.W.5) came home and found his brother dead.

3. Meanwhile, Investigation Officer, Rambali Yadav, P.W.8 when received information that somebody has been killed at village Sesopi Colony, came to the village and recorded the Fardbeyan (Ext. 4) of Bishnu Gope (P.W.5), who sated

about the said fact which has been mentioned above. According to him, motive of occurrence was that in the same day at about 10 a.m. the son of accused Govind Tiriya had destroyed 8 to 10 plant of lahar belonging to deceased and hence, deceased had scolded him. On the basis of the said Fardbeyan, a formal First Information Report (Ext. 5) was drawn. P.W.8 himself took up the investigation. During which, he seized earth smeared with blood under seizure list and held inquest on the dead body of the deceased and prepared an inquest report (Ext. 3). Thereupon he sent the dead body for post mortem examination which was conducted by Dr. Murli Manish (P.W.9). On holding autopsy, he found the following injuries.

"(i) Blue spot having size of 2" x 1/2" over left shoulder.

(ii) Incised wound 1-1/2 " x 1/2 " x brain deep associated with fracture of skull bone.

(iii) Incised wound 1" x 1/2" x bone deep over right parietal region of the skull.

(iv) Incised wound 1" x 1/2 " over chin.

(v) Incised wound 3/4 " x 1/4 " over left pinna.

(vi) Incised wound 1" x 1/2 " x 1/2 " over the cheek.

(vii) Blue spot over the chest of size 1-1/2 " x 1/4."

4. All the injuries except injury Nos. 1 and 7 were found to have been caused by sharp cutting weapon. Rest of the injuries were caused by sharp cutting weapon. Doctor issued post mortem examination report (Ext. 7) with an opinion that injuries were sufficient to cause death.

5. Meanwhile, the Investigating Officer recorded the statements of the witnesses. After completion of investigation, charge sheet was submitted against the appellants, upon which cognizance of the offence was taken and when the case was committed to the court of sessions, the appellants were put on trial.

6. During trial, the prosecution examined altogether ten witnesses. Of them, P.W.1, Bhavan Tiriya, P.W.2, Chirya Gope, brother of the deceased, P.W.3, Churi Gope, brother of the deceased, P.W.5, Bishnu Gope, the informant, brother of the deceased and P.W.7, Sona Gope, widow of the deceased are hearsay witnesses, who derived knowledge about the occurrence either from the Krishna Gope, P.W.6 or from other persons. P.W.1 and P.W.4 are witnesses to inquest. P.W.6 is the sole eye witness who has testified that both the appellants had assaulted the deceased with danda. P.W.10, father of the appellants has been declared hostile.

7. After closure of the prosecution case, when the incriminating evidences were put to the accused persons under Section 313 of the Code of Criminal Procedure, they denied.

8. Thereupon the court, in spite of taking notice of the testimony of P.W.6, testifying that the appellants had assaulted the deceased with danda whereas

the injuries on the person of the deceased was found to have been caused by sharp cutting weapon, recorded the order of conviction by holding that P.W.6 being 4 and 1/2 years old at the time of occurrence may not be able to distinguish danda with the sharp cutting weapon and furtherance when P.W.6 had seen the appellants assaulting the deceased why he would be telling lie. On that premise the appellants on being found guilty were convicted and sentenced as aforesaid. The said judgment of conviction and order of sentence is under challenge.

9. Ms. Amrita Banerjee, Amicus curiae submits that P.W.6 is the only eye witness whereas all others are hearsay witnesses and that P.W.6 has categorically testified that the appellants had assaulted the deceased with danda but the doctor has found injuries on the person of the deceased being caused by sharp cutting weapon and thereby there has been direct conflict in between ocular evidence and the medical evidence and thereby the testimony of P.W.6 cannot be relied upon. Moreover, there has been no corroboration of the testimony of P.W.6 and under the circumstances, the trial court has certainly committed illegality in recording the order of conviction and sentence against the appellants.

10. As against this, Mr. Shikarwar, learned counsel appearing for the State submits that it is true that there has been conflict in between ocular evidence and the medical evidence but on account of that the prosecution case cannot be thrown for the reason that P.W.6 being 4 and 1/2 years old child at the time of occurrence may not be able to distinguish danda with any sharp cutting weapon and thereby the trial court has rightly convicted the appellants and hence, the judgment of conviction and order of sentence never warrants to be interfered with.

11. Having heard learned counsel appearing for the parties and on perusal of the record, we do find that P.W.6 is the only eye witness, who has testified that the appellants killed his father by assaulting him with Danda. According to P.W.1, P.W.3, P.W.5 and P.W.7 they derived knowledge of the occurrence from P.W.6 but P.W.6 in his evidence has never said that he had disclosed about the occurrence to them and thereby testimonies of P.W.1, P.W.3, P.W.5 and P.W.7 do not have any evidentiary value.

12. Coming to the testimony of P.W.6, he has categorically said that the appellants assaulted his father with danda but the doctor has found injuries on the person of the deceased being caused by sharp cutting weapon and thereby there has been direct conflict in between ocular evidence and the medical evidence and thereby the testimony of P.W.6 cannot be relied upon.

13. According to the counsel appearing for the State P.W.6 being of tender age may not be able to make distinction in between danda and sharp cutting weapon and thereby it be taken that the appellants were assaulted by sharp cutting weapon.

14. The submission advanced on behalf of the State is not acceptable for the

reason that P.W.6, who is said to be 4 and 1/2 years old at the time of occurrence appears to be much older as per the statement made in the Fardbeyan wherein his age has been recorded as 8 years. Moreover, it was for the prosecution to establish that witness was not capable to make distinction in between danda and sharp cutting weapon. There appears to be no evidence in this regard and under the circumstances, it cannot be presumed that the witness, P.W.6 was having no idea that the sharp cutting weapon is different from danda. On the other hand, it is also quite possible that he may not have seen the occurrence and on account of that, this discrepancy is there in between ocular evidence and medical evidence.

15. Under the circumstances, the explanation given by the State is not acceptable, rather we do find that there has been direct conflict in between the ocular evidence and the medical evidence. Hence, the prosecution can easily be said to have failed to establish its case beyond all reasonable doubt 5 but the court did not take into account all these aspect of the matter in right perspective.

16. Accordingly, the judgment of conviction and order of sentence passed by the trial court is hereby set aside. Consequently, the appellants are acquitted of the charge and are directed to be released forthwith, if not wanted in any other case.

17. In the result, this appeal stands allowed.