
(2016) 01 JH CK 0221

In the Jharkhand High Court

Case No : Cr. Appeal (DB) Nos. 1449 and 1450 of 2007

Habib Mian and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 164
Penal Code, 1860 (IPC) — Section 302, Section 34

Citation : (2016) 3 AIRJharR 351 : (2016) 2 ECrC 224 : (2016) 2 JBCJ 343 :
(2016) 4 JLJR 137

Hon'ble Judges : Dhrub Narayan Upadhyay and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : B.M. Tripathy, Sr. Advocate and Naveen Kumar Jaiswal, Advocate, for the Appellant; Shekhar Sinha, A.P.P., for the Respondent

Final Decision : Allowed

Judgement

1. These criminal appeals have been directed against the judgment of conviction and order of sentenced dated 20.09.2007 and 24.09.2007, respectively, passed by the Learned Additional Sessions Judge, F.T.C. II Palamau, in connection with Sessions Trial No. 19 of 2007, corresponding to G.R. Case No. 872 of 2006, arising out of Chhatarpur P.S. Case No. 65 of 2006 whereby the appellants have been held guilty for the offences punishable under Sections 302/34 of the I.P.C and Sections 3/4 of the Prevention of Witch (Daain)Practices Act and sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs. 5000/- each, in default of making payment of fine, they shall suffer further imprisonment for one year. The appellants have also been sentenced to undergo R.I. for three months and 6 months, respectively under Sections 3/4 of the Prevention of Witch (Daain)Practices Act.

2. The prosecution case, as it appears from the Fardbeyan of Ahmad Ali-P.W.7 (informant) recorded on 20.06.2006 at about 8.45 hours at Chhatarpur within district of Palamu, in brief, is that on 20.06.2006 at about 7 a.m, Sairun Bibi

(wife of the informant) was branded as witch by appellant Norri Mian and he told to the deceased that you had killed my elder daughter-in-law by Practicing Witch Craft and now you are intending to kill my younger daughter-in-law. In the meantime sons of Noori Mian (named in F.I.R), his bother Habib Miya and nephew Afroz Ansari reached to the place and caused assault to Sairun Bibi by means of branch of palm tree. When they were not satisfied, they climbed on her chest and pressed with force and thereafter fled away. Sairun Bibi was removed to hospital, but declared dead. On the basis of Fardbeyan of Ahmad Ali, Chhatarpur P.S. Case No. 65 of 2006, dated 20.06.2006 under Section 302/34 of the I.P.C and Sections 3/4 of the Prevention of Witch (Daain) Practices Act was registered. The police, after due investigation, submitted charge-sheet and accordingly cognizance of the offence was taken and the case was committed to the Court of Sessions and it was registered as S.T. No. 19 of 2007.

3. It is necessary to mention here that only the appellants were put on trial because rest of the accused persons have been found juvenile and case of those accused persons stood split up from the case of present appellants.

4. Charges under Sections 302/34 of the I.P.C. and Sections 3/4 of Prevention of Witch (Daain) Practices Act were framed to which the appellants pleaded not guilty and claimed to be tried. To bring home the charges, prosecution has examined altogether nine witnesses, including the Investigating Officer, Doctor, who conducted the autopsy on the body of the deceased, the informant and other eye witnesses. The learned Additional Sessions Judge placing reliance on the evidences and documents available on record held the appellants guilty for the offence punishable under Sections 302/34 of the I.P.C. and Sections 3/4 of the Prevention of Witch (Daain) Practices Act and sentenced them, as indicated above.

5. The appellants have assailed the impugned judgment on the ground that statement of none of the eye witness is consistent to each other. Each and every eye witness has authored independent story without being corroborated by other witnesses. Surprisingly enough, the Fardbeyan, which was lodged by P.W.-7, speaks about a story which is completely known to other witnesses who have claimed themselves to be the eye witnesses. It is submitted that informant had given his Fardbeyanas he is the eye witness. He has stated that the appellants with their associates entered in his house and caused assault to his wife by means of branch of palm tree, later climbed on her body and pressed with force causing internal damage to the deceased and then fled away. The informant in his deposition comes with a different story and says that he was not present in the home at the time of occurrence, rather he had gone to the village Bohrai. In course of returning home, he found his daughter coming and he was informed about the occurrence which had taken place with her mother Sairun Bibi. This contention of the informant made before the Court does not find support from the evidence of P.W.1-Rubi Khatoon who happens to be the daughter of the informant. She did not say that she ever narrated the occurrence to his father. It

is submitted that it is a strange behavior of daughter in whose presence her mother was killed and his father was absent from the house, but she did not disclose the incident to her father when he met with her. Therefore the information allegedly derived to the informant from his daughter, stood uncorroborated and that statement could not be relied upon.

6. Learned counsel has further drawn our attention towards statement of P.W.1 who has pretended herself as eye witness and said that she was accompanying her mother since beginning to the end of the episode, but she has admitted that her statement before the police was recorded after 10 to 15 days and her statement under Section 164 of the Cr.P.C. was recorded about one and half months after the occurrence. Again it is argued that conduct and behavior of P.W.-1 is beyond natural conduct of a human being in whose presence her mother was killed but she did not lodge any case nor speak about the occurrence to her father. Either she had not witnessed any occurrence or she had made out a story on the basis of rumour. Doman Mian-P.W.2, Chandradeo Paswan-P.W.3, Raksun Bibi-P.W.4, Bano Khatoon-P.W.5 have also projected themselves as eye witnesses, but inconsistent statement given by them before the court is sufficient to falsify their presence at the place of occurrence. It is submitted that Doman Mian has stated in his deposition that Sairun Bibi (deceased) with her daughter Rubi Khatoon-P.W. 1 had been returning home after attending a telephone call from the house of Buddu Mian and at that point of time, this witness was having bath in front of his house on a Hand-pump. No sooner Ruby and her mother Sairun (deceased) reached near the house, appellant Noori Mian appeared and abused the deceased and slapped her. Doman Mian intervened and asked Noori Mian, to convene a Panchayti to settle the dispute, thereafter the deceased with her daughter went home, whereas Noori Mian had also returned to his house. After a while this witness again saw the deceased going towards village Bohrai but on the way she was intercepted by the appellants and their associates and at the instigation of Noori Mian, the appellants and their associates beaten the deceased till her death by using branch of palm tree. It is submitted that P.W.-1, who had been accompanying the deceased, did not support the contention made by P.W.2. She never says that Doman Mian intervened and asked the appellant Noori Mian for holding any Panchayti in the village. She did not recognize even the presence of P.W2 at any point of time at the place of occurrence.

Chandradeo Paswan-P.W.3 has stated that he had gone to answer the call of nature towards the pond side. He had seen Sairun Bibi and her daughter going on the way situated near the pond. They were suddenly intercepted by the appellants and their associates and they caused assault to Sairun Bibi till her death. When daughter of the deceased tried to intervene, she was compelled to keep her away. In para 14 this witness has clearly stated that except deceased and her daughter P.W1, the appellants and their associates, other witnesses were not present. Therefore, according to this witness, P.W.2, P.W.5 and P.W 6, have not seen the occurrence. It is submitted that according to the statement of P.W.1, 3rd place of the occurrence is situated at a distance of half kilometer from

the house of the deceased, had it been so, there was no occasion for P.W.2 to witness the occurrence. At this juncture, learned counsel has again referred the statement of P.W.1 para-18 in which she has stated names of other persons whose houses are situated in the vicinity, but none of them has come forward to support the prosecution case and she did not say that house of Doman Mian was situated near the place of occurrence.

7. By referring the statements of P.Ws. 4 and 5 who have admitted that they are Gotnis of the deceased (sister-in-law), it is submitted that they have tried to become eye witness to the occurrence and P.W.5 has gone to the extent of saying that she had been accompanying the deceased and her daughter at the time of occurrence. Surprisingly enough, daughter of the deceased did not say like that. She did not support that P.W.5 had ever accompanied them at any point of time or any place of occurrence. Since P.Ws. 4 and 5 are relatives of the deceased, they are to be considered as interested witnesses and their testimonies are required to be scrutinized with care and caution. If it is being done, no credibility would be given to their evidence. Sarfaraj Ansari is hearsay witness. Doctor Hriday Pandey had conducted the postmortem examination on the dead body of Sairun Bibi (deceased) and he had described the injuries which he had noticed during postmortem examination, Vijay Kumar is the Investigating Officer and he has been examined as P.W.-9 and he has supported the investigation done by him. Since the statement of material witnesses are not consistent, reliable and inspiring confidence, conviction and sentenced recorded by the trial court can not be upheld.

8. The learned A.P.P has opposed the arguments and submitted that P.Ws. 1, to 5 are the eye witnesses and they have fully corroborated the occurrence and the manner in which the deceased was assaulted and killed. These witnesses have clearly stated that deceased was branded as witch by appellant Noori Mian and he was not satisfied only by branding her witch, but he had called his sons, brother and nephew and committed murder of Sairun Bibi within public view. A lady was killed by the appellants and their associates and the occurrence was witnessed not only by the family members but also by the independent witnesses and they are P.Ws 2, 3 and 6. There is consistency in the ocular evidence and medical evidence, postmortem report corroborates the injuries caused to the deceased by means of hard and blunt substance and the manner of assault as stated by the witnesses finds support. The Investigating Officer has described all the three places of the occurrence in his deposition and the aforesaid place of occurrence were duly inspected and investigated. Only because some fact appearing in the Fardbeyan of the informant is not in consonance with the statement given by the witnesses, entire prosecution case could not be disbelieved. Admittedly the informant is not an eye witness which he had admitted too. Even excluding the statement of the informant, occurrence finds support from the statement of other witnesses and those are P.Ws. 1 to 5. There is no merit in this appeal and the learned trial Judge has rightly held the appellants guilty for the alleged offence.

9. We have examined the evidence on record in view of the points raised by the learned counsel for the appellants. We do agree that contention made in the Fardbeyan does not find support from the statement of P.Ws. 1 to 5. The informant has tried to correct himself while examined in Court and he has tried to throw light of the occurrence by saying that entire incident was narrated to him by his daughter-P.W.1. We find force in the argument that statement of P.W.7 (informant) could not be relied upon because P.W.1 did not say that she had narrated the incident to his father when he returned home. There appear substance in the arguments, when suspicion has been raised against the conduct of the P.W.1 for remaining silent for 10 to 15 days till the date her statement was recorded under Section 161 of the Cr.P.C. The facts, which are appearing in the prosecution evidence, indicates that P.W.1 might be the key witness, but her deposition made in the Court does not inspire confidence. The story narrated by P.Ws. 2 and 5 appears similar to some extent, but P.W. 1 did not support the presence and intervention of P.W.2. If we consider the statement of P.W.3 then no witness other than P.W. 1 was present at the place of occurrence where Sairun Bibi was done to death. If we again consider the statement of P.W.1, she did not say about the presence of P.W. 3 at the place of occurrence. It is not a case in which incident has occurred within no time, but it is a case in which there are three places of occurrence and three different incidents took place at those places. The last place of occurrence, where deceased was done to death, is a place near the pond and the manner of assault as disclosed by the witnesses suggests that the occurrence must continued for sometime and in such situation it could not be said that the witnesses did not notice presence of each other. Therefore, the evidence of P.W.3 could not be relied upon because his presence is not corroborated and proved by any other witness. P.Ws. 4 and 5 are the relatives of the deceased and they are highly interested witnesses and that facts surface, When P.W 5 says that she had been accompanying the deceased and her daughter, but aforesaid fact does not find support from evidence of any of the witness including the daughter of the deceased.

10. Considering all these aspects, we feel inclined to hold that the evidences, on which the trial court has recorded conviction of the appellants, is not consistent and therefore, the judgment of conviction and order of sentenced could not be sustained.

11. In the result the impugned judgment of conviction and order of sentenced dated 20.09.2007 and 24.09.2007, respectively, passed by the Learned Additional Sessions Judge, F.T.C, II Palamu, in Sessions Trial No. 19 of 2007, corresponding to G.R. Case No. 872 of 2006 arising out of Chhatarpur P.S. Case No. 65 of 2006 stands set aside and these appeals are allowed. Accordingly, the appellants Habib Mian, Aslam Ansari, Afroz Alam @ Afraz Ansari and Noori Mian are acquitted from the charges levelled against them and the appellants Aslam Ansari and Afroz Alam @ Afraz Ansari are directed to be released forthwith from jail custody, if not wanted in any other case(s) and for that appropriate direction may be issued, if necessary, by the convicting/successor Court. The appellants

Noori Mian and Habib Mian who are on bail, are discharged from the liability of their bail bonds and set at liberty.