
(2019) 09 JH CK 0085

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 475 of 2015

Inder Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302, 307, 309
Evidence Act, 1872 — Section 106

Citation : (2019) 09 JH CK 0085

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Prem Pujari Roy, Laxmi Murmu

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J

1. The sole appellant has faced the trial on the charge under section 302 of the Indian Penal Code for committing murder of Manju Kumari and Sunita Devi, under section 307 of the Indian Penal Code for attempting to murder his children and under section 309 of the Indian Penal Code for attempting to commit suicide.

2. In Sessions Trial No. 249 of 2006, he has been convicted for the aforesaid offences and inflicted punishment of R.I. for life and fine of Rs. 10,000/- under section 302 IPC. For the offences under Section 307 of the Indian Penal Code, he has been sentenced to undergo R.I. for seven years and under section 309 of the Indian Penal Code, S.I. for six months.

3. On the basis of the fardbeyan of Devi Rai, the father of Sunita Devi, which was recorded on 19.11.2005, Bengabad P.S. Case No. 178 of 2005 was registered under sections 302, 307 and 309 of the Indian Penal Code against the appellant. During the trial, the prosecution has examined ten witnesses. The informant and Kripali Mahto were examined as the court witnesses.

4. The minor son of the appellant, namely, Anand Kumar-PW-2 and his minor daughter, namely, Anju Kumari-PW- 3 have been projected by the prosecution as eye witnesses.

5. Dr. Biswanath Das-PW-4, who has conducted the post-mortem examination, has observed the following injuries on Manju Kumari:

" Incised wound 6"x1/2"x bone deep over front of neck cutting the soft tissues major vessels, Larynx-Trachea and deep over esophagus into two pieces. However, the vertebra soft tissue and skin of the posterior front of the neck was intact and connecting the skull with the trunk in anatomical continuity."

6. In the opinion of the doctor, the injuries found on Manju Kumari were ante-mortem in nature and the cause of death was shock and hemorrhage due to the injuries caused to her.

7. On the same day, that is, on 19.11.2005 P.W.-4 has conducted the post-mortem examination over the dead body of Sunita Devi and he has found the following injuries on her person:

"Incised wound 7"x3/4" x bone deep anteriorly over middle portion of neck cutting soft tissue, major vessels, Larynx, Trachea, Esophagus. However, skin soft tissue of the back side of neck including cervical vertebrae was intact and connecting the skull with the trunk in anatomical continuity."

8. According to the doctor, the injuries found on Sunita Devi were ante-mortem in nature and the cause of death was shock and hemorrhage due to the above injuries.

9. Anand Kumar-PW-2 and Anju Kumari-PW-3 are the injured witnesses. They have been examined by Dr. Shyam Prasad Poddar, PW-8. He has found the following injuries on Anand Kumar:

"Incised wound with bleeding edges 3 ½" x ½"x skin deep over the right side of the neck."

10. PW-8 has noticed one incised wound of the extent of 4"x ½ ", skin deep and another incised wound of the extent of 3"x1/2", skin deep, both on the left side of the neck of Anju Kumari.

11. According to the doctor, the injuries found on Anju Kumari and Anand Kumar were caused by sharp-cutting weapon and were dangerous to the life. In our opinion, on account of the injuries found on PW-2 and PW-3 the appellant has rightly been convicted under section 307 IPC.

12. P.W.-8 has also examined the appellant on the same day and found one incised wound of the extent of 10"x4" with portion of transverse column. In his opinion, the injury found on Inder Singh was caused by sharp-cutting instrument and it was dangerous to life.

13. According to PW-8, the injuries on Anand Kumar, Anju Kumari and the

appellant were caused within six hours of their examination by him; PW-8 has examined them on 19.11.2005.

14. Mr. Prem Pujari Roy, the learned Amicus has submitted that; (i) the manner of occurrence as disclosed by the prosecution is not believable; (ii) the testimony of PW-2 and PW-3 does not inspire confidence; (iii) the crime weapon was not seized and no report on the blood-stained soil or clothes of the deceased persons as well as the injured persons has been brought on record and; (iv) non-examination of the investigating-officer has caused serious prejudice to the appellant during the trial.

15. Two witnesses, namely, Devi Rai and Kripali Mahto have been examined as the court witnesses.

16. Devi Rai is the informant of this case. He is the father of Sunita Devi, the deceased. In his fardbeyan, the informant has stated that the appellant was staying with him as gharjamai and he was annoyed with him due to sale of land by him to other person. In the intervening night on 18th/19th November, 2005 he was sleeping with his wife and grand daughter Kajal Kumari. At about 2 a.m. in the night, he heard cries of his grandson Anand Kumar, aged about 8 years, whereupon he and his wife rushed to the room where Anand Kumar was sleeping with his parents. The informant says that there he found that the appellant had killed his wife and daughter by cutting their neck. He has tried to assault Anand Kumar and Anju Kumari with the knife on account of which they have suffered serious injuries. Thereafter, the appellant has injured himself with a knife blow in his chest. In the court, the informant has narrated a similar story of the incident as portrayed by him in the fardbeyan. He has made specific allegation against the appellant of killing his wife and the daughter. He is a natural witness. His presence in the night on the day of occurrence has been established by the prosecution. He has seen the injuries on his daughter and the grandchildren. The informant has also deposed regarding the appellant inflicting a knife blow on himself.

17. Another court witness, namely, Kripali Mahto is the person who on hearing hulla had gone to the house of the informant. He has seen the dead bodies of Sunita Devi and Manju Kumari.

18. Both these witnesses have deposed that the occurrence has taken place in the night and the appellant has caused injuries to his wife and children with a knife. They have also stated that the appellant was living as gharjamai.

19. The son of the deceased, namely, Anand Kumar has been examined as PW-2. At the time of the occurrence he was aged about 8 years. For ascertaining his maturity and understanding, the court has first questioned him before his deposition was recorded in the Court. The court has recorded its opinion that the witness is capable to depose. PW-2 has deposed that at about mid-night his father, his mother and his sisters were present in the house. His maternal grandfather, maternal grandmother and his sister Renu Kumari were sleeping in

another room whereas he was sleeping with his parents and other sister. He has deposed that his father has killed his mother and sister with knife blows on their neck. He has spoken about injuries to him and his sister. He has also spoken about the appellant injuring himself with knife.

20. The daughter of the appellant, namely, Anju Kumari-PW-3 has also been found by the court capable to depose. In the fateful night, she was also present in the room with her parents, brother and sister. In the court she has deposed that her father has struck knife blows on the neck of her mother and her sister. She has also stated about injuries caused to her and her brother. PW-2 and PW-3 have stood the ground during their cross-examination; nothing material could be elicited by the defence which may substantially challenge their evidence.

21. From the evidences led by the prosecution during trial, presence of the appellant at the place of occurrence and at the time of occurrence are established. The appellant was examined by PW-8 on the same day when his children have been examined. The doctor has found that injuries to PW-2 and PW-3 as well as to the appellant were caused within six hours. The First Information Report was lodged on 19.11.2005 and they were examined by the doctor on the same day. The prosecution has established that the appellant has been found present in the night in his house. He was with his wife and children in his room and he was found injured. In the aforesaid state of evidence, if he denies the charge the appellant is required to explain what has happened in the fateful night.

22. By now it is well settled that the person who was with the deceased in the night in his house that person alone can explain what has happened in the night. In "Shambhu Nath Mehra v. State of Ajmer" reported in AIR 1956 SC 404, the Supreme Court has stated the legal principle thus:

"This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge."

23. From the records of S.T. No. 249 of 2006, we do not find any explanation coming forth from the appellant on the incriminating circumstance-his presence in the room with two persons dead, two injured and injury on him, appearing against him.

24. On the evidences laid by the prosecution during the trial, we say that the testimony of a child witness can be made foundation for conviction of an accused. The only requirement in law is that the evidence of a child witness must

be reliable and trustworthy, may be as a rule of prudence the court would seek corroboration to the testimony of a child witness. The learned Sessions Judge has found the testimony of PW-2 and PW-3 reliable and trustworthy. From the evidence of the informant and the doctor who has conducted the post-mortem examination over the dead bodies of Sunita Devi and Manju Kumari and the doctor who has proved the injury reports of PW-2, PW-3 and the appellant, we find sufficient corroboration to the testimony of the PW-2 and PW-3, who are the child witnesses. On non-examination of the Investigating Officer, this has to be kept in mind that there is no absolute rule that in every case in which the Investigating Officer has not been examined, it would be inferred that prejudice has been caused to the accused, rather it is for the accused to show how prejudice has been caused to him due to non-examination of the Investigating Officer during the trial. The plea raised on absence of the forensic report, nonproduction of the crime weapon and failure of the Investigating Officer to collect other material informations regarding the incident, in view of the evidences led by the prosecution through PW-2, PW-3, PW-4 and PW-8, cannot be accepted. The minor inconsistencies in the evidence of the witnesses and the mistakes in the investigation would not shake the foundation of the prosecution's case. Above all, failure of the appellant to come forward with an explanation to the incriminating circumstance; that he was found in the injured condition present in his room where dead bodies of his wife and daughter have been found, is another aspect of the matter which persuades us to hold that the prosecution has proved the charge under sections 302, 307 and 309 of the Indian Penal Code against the appellant.

25. In the above facts, having examined the records of S.T. No. 249 of 2006, we find that no error has been committed by the learned District and Additional Sessions Judge-1, Giridih in convicting the appellant for the aforesaid offences.

26. In the result, Cr.Appeal (DB) No. 475 of 2015 is dismissed.

27. We appreciate the able assistance rendered by Mr. Prem Pujari Roy, the learned Amicus.

28. The Secretary, Jharkhand High Court Legal Services Committee shall reimburse the learned Amicus on submission of bill(s).

29. Let lower court records be transmitted to the Court concerned, forthwith.