

(2016) 04 JH CK 0224

In the Jharkhand High Court

Case No : Cr. Appeal (DB) No. 641 of 2013; (Against the judgment of conviction dated 8th August, 2005 and order of sentence dated 9th August, 2005, passed by Sri Arun Kumar Rai, 1st Additional Sessions Judge, West Singhbhum at Chaibasa in Sessions Trial No.126 of 1

Jagai Barika @ Dabro Barika

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 364

Citation : (2016) 3 ECrC 225

Hon'ble Judges : Mr. D.N. Upadhyay and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. Ravi Prakash, Advocate, for the Appellant; Mr. Hemant Kr. Shikarwar, A.P.P, for the Respondent

Final Decision : Allowed

Judgement

Mr. D.N. Upadhyay, J.—This criminal appeal has been directed against the judgment of conviction and order of sentence dated 8th August, 2005 and 9th August, 2005, respectively, passed by learned 1st Additional Sessions Judge, West Singhbhum at Chaibasa in connection with Sessions Trial No.126 of 1995, corresponding to G.R. No.268 of 1993, arising out of Sonua P.S. Case No.34 of 1993, whereby the appellant has been held guilty for the offence punishable under Sections 364 and 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life for both the offences and the sentences so passed were directed to run concurrently.

2. The fact, in brief, is that on 30th June, 1993, the deceased Gardi Bankira along with his wife-Bisangi Devi and grand son-Motai Bodra were indulged in repairing country tile roof of their house, situated at Bhutnasa. In the meantime, the appellant along with his associates Nayki Bankira, Motka Bankira and Rupol Bankira, armed with bowes and arrows, Tangi and sword, came to the place and

compelled Gardi Bankira (deceased) to come down from the roof. Apprehending danger, grandson-Motai Bodra (P.W.4) fled away from the place and the informed Motai Bankira (son of the deceased) about the occurrence. The wife of the deceased also escaped from the place. On the following day, dead body of Gardi Bankira was found lying on Bhutnasa-Burudih Kacha Road. It was heavily raining on that day and, thereafter, matter was reported to police on 1st July, 1993.

On the basis of Fardbeyan of Motai Bankira, son of the deceased, Sonua P.S. Case No.34 of 1993 under Sections 302/34 of the Indian Penal Code against the appellant and his associates was registered.

Police after investigation submitted charge sheet against all the four accused, including the appellant, and, accordingly, cognizance was taken. Two of the accused, namely, Nayki and Motka have absconded, whereas accused Ropol was declared juvenile. In the circumstance, only the appellant was put on trial and the case was committed to the court of sessions and registered as Sessions Trial No.126 of 1995.

3. Charges under Sections 364 and 302/34 IPC against the appellant were framed to which he pleaded not guilty and claimed to be tried.

To substantiate the charge, the prosecution has examined altogether eight witnesses, whereas the appellant also examined two witnesses in his defence.

Learned Trial Judge, placing reliance on the evidences and documents available on record, held the appellant guilty for the offence punishable under Sections 364 and 302/34 IPC and inflicted sentence as indicated above.

4. The appellant has assailed the impugned judgment on the ground that the appellant has been held guilty only on the solitary testimony of Motai Bodra (P.W.4), who was aged hardly 14 years at the time of occurrence. Motai Bankira (P.W.1) happens to be the informant, whereas Ladgo Kui (P.W.2) is wife of the informant. Both of them are hearsay witnesses and they have not seen the occurrence. They have deposed on the basis of information provided to them by P.W.4-Motai Bodra. Bande Hembrom (P.W.3) happens to be the witness to inquest. Raut Dindaga (P.W.5) and Mukti Kui Hemrom (P.W.6) are also hearsay witnesses. Dr. Yogendra Sinha (P.W.7) is doctor, who conducted postmortem examination on the dead body of Gardi Bankira and postmortem report has been proved Ext.1. The Investigating Officer has not been examined. Rajesh Ravi (P.W.8) is an advocate clerk and he has proved Fardbeyan, formal first information report and inquest report.

It is submitted that P.W.4 is not reliable witness and conviction cannot be sustained on the sole testimony of such witness. In fact, he had not witnessed the occurrence of assault, rather he had seen the appellant and his associates, taking the deceased from the first place of occurrence, which is house of the deceased, situated within village Bhutnasa. No sooner, the deceased was asked to come down from the roof, P.W.4 escaped from the place and that is admitted

by him in his deposition in Court. The prosecution evidence is silent as to who assaulted the deceased and which of the injury caused to him proved fatal. The wife of the deceased, according to the prosecution case, was also an eye-witness, but she has not examined. Non-examination of the Investigating Officer in such situation has certainly caused prejudice to the appellant. Learned Trial Judge has erred in holding the appellant guilty for the offence alleged on the basis of evidence available on record.

5. Learned APP opposed the argument and submitted that conviction can well be recorded on the sole testimony, if the evidence is reliable, convincing and inspiring confidence. P.W.4 was present along with the deceased at the time of occurrence and he was also assisting the deceased in repairing country tile roof of the house at Bhutnasa. This witness has stated that he had seen the appellant and his associates causing assault to the deceased at the spot itself. The deceased was forcibly taken by the appellant and his associates in presence of P.W.4. Thereafter, the dead body of Gardi Bankira was found lying on Bhutnasa-Burudih Kacha Road.

6. Heard rival submissions and perused the case record. Admittedly, the prosecution case is based mainly on the evidence of P.W.4 and, therefore, we would like to scrutinise the evidence of said witness. He says, on the date of occurrence, he was assisting his maternal grandfather (Nana)-Gardi Bankira in repairing country tile roof of the house. In the meantime, four persons armed with bows and arrows, sword and axe reached to the place and he has named all those persons, including the appellant. He says, all the four persons caused assault to his maternal grandfather and took him to Burudih. He says, due to fear he fled away to village Arjunpur and informed the occurrence to his maternal uncle-Motai Bankira and Motai Bankira is none else but son of the deceased and informant of this case. On the next day, the dead body of Gardi Bankia was located lying at a some distance from village Bhutnasa. Thus, it is clear that this witness has not seen the entire occurrence. In his presence, the deceased was compelled to get down from the roof and then after causing assault, he was taken by the appellant and his associates. According to his statement, he immediately rushed to the house of maternal uncle and informed about the occurrence, but they did nothing and kept mum till the dead body was recovered. It is also to be noted that as per the evidence of P.W.4, the dead body of Gardi Bankira was lying at some distance from village Bhutnasa, where the deceased was indulged in repairing roof of the house. The occurrence took place during day hours. No witness except P.W.4 had seen the occurrence. The motive assigned by the witness does not appear to be sound one because the occurrence of branding witch had taken place about two years ago. No reason has been assigned by any of the witnesses as to what happened on that date or on previous day which compelled the appellant and his associate to commit murder.

We do not find that evidence of P.W.4 is so reliable, consistent, convincing and

inspiring confidence to uphold the judgment of conviction recorded under Sections 364 and 302/34 IPC.

7. In the result, we feel inclined to allow this appeal. The judgment of conviction and sentence recorded by learned 1st Additional Sessions Judge, West Singhbhum at Chaibasa stands set aside. The appellant, who is lodged in jail, in connection with Sessions Trial No.126 of 1995, corresponding to G.R. No.268 of 1993, arising out of Sonua P.S. Case No.34 of 1993, is directed to be released forthwith, if not wanted in any other case, and for that the convicting/successor court shall issue appropriate direction, if needed.