
(2009) 10 JH CK 0071

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 423 of 2000 (R)

Jago Bhumij

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 10-10-2009

Acts Referred:

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

Citation : (2011) 8 RCR(Criminal) 1211

Hon'ble Judges : Prashant Kumar, J; Narendra Nath Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This criminal appeal has been preferred by the Appellant against the judgment of conviction and order of sentence dated 22.09.2000 passed by the learned Sessions Judge, Singhbhum (West) at Chaibasa in S. T. No. 290 of 1998.
2. The sole Appellant was charged for committing murder of Durga Bhumij and was prosecuted u/s 302 I.P.C. The court below by the impugned judgment convicted the Appellant u/s 302 I.P.C and sentenced him to undergo imprisonment for life.
3. The Prosecution case, in brief, is that on 17.06.1998 at about midnight while the informant Soma Bhumij (P.W.-3) was sleeping in his house, his aunt Rani Bhumij (P.W.-5) called his father complaining that co-villager Jago Bhumij assaulted her husband Durga Bhumij with farsa. On hearing the same the informant and his father rushed to the place of occurrence. They saw the accused-Appellant assaulting Durga Bhumij with farsa and giving blow on the neck of the deceased. On alarm co-villager Bir Singh Bhumij (P.W.-4) had also reached there and seen the occurrence. Villagers took the injured on a cot and kept him in the house as it was dead night and not possible to take him anywhere. In the morning they were getting ready to take Durga Bhumij to hospital but he succumbed to injuries.

4. On the said fardbeyan of Soma Bhumij, formal F.I.R. was drawn and police took" up investigation. On conclusion of investigation, the police submitted charge sheet.

5. Charge u/s 302 I.P.C. was framed against the Appellant. The Appellant denied the charge and claimed to be tried. He was put on trial. In his examination u/s 313 Code of Criminal Procedure he denied to have committed any offence.

6. The prosecution in order to establish the charge against the Appellant altogether examined six witnesses. P.W.-1, Dr. Yogendra Singh, had conducted post mortem on the dead body of the deceased. P.W.-2, Ghasiram Manda, is a formal witness. He has proved inquest report. P.W.-3, Soma Bhumij, is the informant and the eye-witness of the occurrence. P.W. -4, Bir Singh Bhumij, is the neighbour, P.W.-3, Rani Bhumij, is the widow of the deceased. She is also an eye witness. P.W.-6, Saroj Kumar Mandal, is a formal wi(sic)ess. He has proved fardbeyan (Ext.-4), formal F.I.R. (Ext.-5) and signature on Inquest Report (Ext.-2 &2/1)

7. Learned trial court on conclusion of the trial held the Appellant guilty of the charge u/s 302 I.P.C. Learned court below mainly relied upon the evidences of P.W.-3 and P.W.-5 who are eye witnesses coupled with the medical evidence of P.W.-1 and convicted the Appellant u/s 302 I P.C. and sentenced him aforesaid.

8. The Appellant has assailed the impugned judgment ma(sic)nly on the ground that the evidence of P.W.-3 and P.W.-5 are wholly unreliable. They are interested witnesses. It has come in the evidence of P.W.-5 widow of the deceased that there was quarrel regarding grazing of crops in the field of the Appellant. P.W.-5, being wife of the deceased, her evidence is wholly unreliable. PW.-3, Soma Bhumij, is said to be another eye witness. He is also an interested witness as he happens to be nephew of the deceased.

9. Learned Counsel for the Appellant submitted that P.W.-5 admittedly being an interested witness, conviction of the Appellant cannot sustain on the sole testimony of P.W.-3, who is also not fully independent witness. The deceased was his uncle in relation. The statements are also not free from contradictions. The place of occurrence is the midst of the village but no independent witness has come forward to support the prosecution case. The occurrence took place in night and there was no source of light to identify the Appellant. Learned Counsel submitted that in view of the said infirmity in the prosecution evidence, it is not safe to uphold the conviction of the Appellant only on the sole testimony of P.W.-3. The impugned judgment, mainly based on the evidences of P.W.-3 and P.W.-5, is therefore liable to be set aside.

10. Learned A.P.P., on the other hand, urged that the grounds taken by the Appellant in this appeal were also taken before the learned trial court. Learned court below thoroughly discussed the evidences and all the relevant aspects and has found the Appellant guilty for committing murder of Durga Bhumij. The impugned judgment is wholly sound and legal. He further submitted that P.W.-3

and P.W.-5 had witnessed the occurrence and they are competent witnesses. There was no quarrel with Soma Bhumij (P.W.-3). There was no such enmity between the deceased and the Appellant for which P.W.-5 would implicate the Appellant for the charge of murder of her husband. P.W.-3 and P.W.-5 have given clear account of the occurrence and have proved the prosecution case. P.W.-1 is the doctor, who conducted autopsy on the body of the deceased. He had found the injuries of sharp cutting weapon on the neck and other parts of the body of the deceased. Medical evidence, thus, fully corroborate the ocular evidence. P.W.-4, who is a close neighbour of deceased, has also supported the prosecution case. The defence cross examined these witnesses at length but nothing can be elicited to discredit the said witnesses. The prosecution has thus been able to establish the charge against the Appellant beyond shadow of all reasonable doubts.

11. Having heard learned Counsel for the Appellant and learned A.P.P., we have scrutinized the evidences on record. We find that P.W.-3 Soma Bhumij and P.W-5 Ram Bhumij are the eye witnesses. They have fully supported the prosecution case. P.W.-3 in paragraph-1 has Stated that he saw the Appellant giving repeated farsa blow. The deceased on receiving farsa blow had fallen down. Lamp was burning and he clearly identified the accused-Appellant. He had stated the occurrence before the police and also proved the signature on fardbeyan (Ext.-3). On going through the entire deposition, we find that the defence has not even cross examined the said witnesses on the manner of occurrence stated by them. P.W.-5 is the widow of the deceased. She has fully supported the prosecution case in her evidence. In paragraph-1, she has stated that when her husband raised alarm as "mar- diya-mar diya" she rushed with a burning lamp (dhibri) and saw the Appellant giving repeated farsa blow on the nech and other parts of body of deceased. She raised alarm whereupon P.W.-3 and his father immediately arrived there and witnessed the occurrence. Thereafter, they brought the injured Durga Bhumij on a cot and kept in the house. In paragraph-2 she has proved the place of occurrence. She has been also cross examined at length but nothing can be elicited to discredit her testimony. P.W.- 4 Bir Singh Bhumij is the neighbour. He stated in paragraph-1 that P.W.-5 had described the incident after occurrence, when he arrived there and he had seen the injuries on the neck and other parts of the body of the deceased.

12. Dr. Yogendra Singh (P.W.-1), who held post mortem on the body of Durga Bhumij, on examination of the body found following ante-mortem injuries:

- (i) Cut wound over side of fore-head extending to right ear. Size 4" x 2" x deep cranial cavity.
- (ii) Cut wound over right fore-arm on the dorsal surface. Size 3" x 1/2" x 1".
- (iii) Cut wound over right arm size - 3" x 1/2" x 1 1/2.
- (iv) Cut wound over right side of lower part of back. Size-2"x 1" x 1".

(v) Cut wound over right thigh on outer surface. Size - 2 1/2" x 1".

(vi) Cut wound over neck extending from right side to mid line in front. Size - 4" x 2" x 1".

(vii) Cut wound over left hand. Size - 2" x 1" x 1/2"

(viii) Cut wound over front of chest. Size - 4" x 2" x 1/2" x 1/2"

On dissection: - he had found the parietal bone fractured on right side, blood in cranial cavity, brain matter disrupted and cutting of right side of blood vessels carotid artery. He had also found second rib on right side fractured and blood in thorsi cavity.

13. He has given opinion that the death of the deceased was due to the said injuries, caused by hemorrhage and shock. According to him, the weapon used was hard and heavy sharp weapon such as "tangi". The evidence of P.W.-1 fully corroborates the oral testimony of eye witnesses P.W.-3 and P.W.-5. The prosecution has, thus, fully proved the charges against the Appellant by the said evidences. That apart, the prosecution has also proved fa(sic)dbeyan (Ext.-4), formal F.I.R. (Ext.-5) and signature on Inquest Report (Ext.-2 & 2/1). The said documentary evidences also supports the oral testimony.

14. Learned trial court has discussed the said evidence in detail and has rightly held that the prosecution has been able to prove the charge of committing murder of Durga Bhumij against the Appellant. We find no substance in the submission of learned Counsel for the Appellant that there is no reliable evidence to support the prosecution case. Admittedly, the occurrence took place in the dead night and it is not expected that so many villagers would assemble at the spur of moment, after raising alarm. P.W.-3 and P.W.-4 who are close neighbours had immediately arrived and they have fully supported the prosecution case. P.W.-3 and P.W.-5 have clearly stated in their evidence that they had seen the accused-Appellant giving repeated farsa blow on the neck and other parts of the body of the deceased in the light of the burning lamp. The grounds taken by the Appellant have not been substantiated by the materials on record.

15. We, therefore, find no infirmity and illegality in the impugned judgment. This appeal is, accordingly, dismissed.