
(2020) 08 JH CK 0009

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 549 of 2014

Jai Prakash Singh And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 10-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 323, 341, 342, 506

Citation : (2020) 08 JH CK 0009

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

Bench : Division Bench

Advocate : Gautam Kumar, Madan Prasad, P. K. Appu

Final Decision : Allowed

Judgement

1. The appellants, namely, Jai Prakash Singh, Sumeshwar Singh @ Guduwa, Mohan Singh and Munarik Singh have been convicted and sentenced to

R.I. for life and fine of Rs. 2,000/-each under section 302/34 of the Indian Penal Code and R.I. for three years and fine of Rs. 1,000/- each under

section 201/34 of the Indian Penal Code. They have also been convicted under section 341/34, section 342/34, section 323/34 and section 506/34 of

the Indian Penal Code, however, no separate sentence has been awarded for the aforesaid offences.

2. Jhalo Devi, the mother of Subhash Singh, is the informant of this case. In the night of 08 th October, 2010 at about 11:00 am on hearing commotion

she came out from her house. She found that her son Subhash Singh has been confined in the house of Munarik Singh. Next day at about 11:00 am

Munarik Singh , Sumeshwar Singh @ Guduwa and Jai Prakash Singh brought her son to a nearby school and started assaulting him with lathi. When

she tried to rescue her son then Sumeshwar Singh assaulted her. The accused

persons thereafter carried her son to her house and left. She offered water to her son but while drinking water he succumbed to his injuries. She covered the dead body of her son and bolted the room from outside but in the evening when she entered her house she found that the dead body of her son was not there. She has further stated that the appellants threatened her not to go to the police for lodging any complaint about the occurrence.

3. The informant has gone to the police station on 10.10.2010 and her fardbeyan was recorded by B. D. Jha, Sub-Inspector of Police at Sadar

Hospital, Latehar at about 12:30 hrs. in the afternoon. On the basis of her fardbeyan, Latehar P.S. Case No. 124 of 2010 was lodged against

Sumeshwar Singh @ Guduwa, Jai Prakash Singh, Mohan Singh and Munarik Singh under sections 341/342/323/506/302 and 201 r/w section 34 of the Indian Penal Code.

4. In Sessions Trial No. 38 of 2011, the prosecution has examined five witnesses to prove the aforesaid charges framed against the appellants.

5. During the trial, Ram Kewal Singh PW-1 and Jagdish Singh PW-2 have been declared hostile. PW-3, Parmeshwar Singh and PW-5, Guna Singh are the hearsay witnesses.

6. The informant is the only eye witness in this case. She is mother of the deceased and, therefore, as indicated by the Hon'ble Supreme Court in

Joseph Vs. State of Kerala"" reported in (2003) 1 SCC 465, her evidence has to be examined with greater amount of care and caution and it can be

accepted only after testing it with reference to the evidence tendered by other prosecution witnesses.

7. In a criminal trial, the testimony of solitary witness can form the basis for conviction if it is found cogent and credible and inspires confidence of the

Court. In "" Kartik Malhar Vs. State of Bihar"" reported in (1996) 1 SCC 61,4 the Hon'ble Supreme Court has held that the Court can convict an

accused on the basis of the evidence of solitary eye-witness provided his credibility is not shaken by any adverse circumstance and at the same time

the Court is convinced that he is a truthful witness. The informant has substantially reiterated her fardbeyan in the Court. She has deposed in the

Court that her son was confined in the house of Munarik Singh and next day at about 11:00 am the appellants have assaulted him at a nearby school.

She has also stated that when she tried to intervene she was assaulted and the

appellants had left her son in her house almost dead. However, after this whatever she has stated in the Court is missing from her fardbeyan and, in our opinion, that is a substantial improvement in her testimony. In her fardbeyan she has simply stated that the appellants have caused disappearance of the dead body but in the Court she has deposed that the appellants have burnt the dead body of her son near Charka Pathar river. PW-1 has stated in the Court that his statement was not recorded by the police and he has no knowledge about the occurrence. PW-2 has also declined any knowledge about the occurrence. His statement was also not recorded by the police. Both PW-1 and PW-2 are relatives of the appellants and therefore there is a reason why they might have turned hostile, but the fact remains that their testimony in the Court is of no avail to the prosecution. PW-5 is the father of the deceased. At the time of the occurrence he was not present in his house. He has deposed in the Court that his wife informed him that Jai Prakash, Munarik Singh and others have killed their son and caused disappearance of his dead-body.

8. On such evidence, we find that the testimony of the informant is not corroborated by the evidence of other witnesses.

9. Therefore, we would now turn to the other evidences produced by the prosecution in this case.

10. However, we find that the investigating officer of this case was not examined during the trial and the fardbeyan or even the First Information

Report was not formally proved in this case. In ""Lahu Kamlakar Patil and Another Vs. State of Maharashtra"" reported in 2013 (6) SCC 41,7 the

Hon'ble Supreme Court has held that non-examination of the investigating officer by itself would not cause prejudice to an accused, however, in a

case like the present one in which testimony of the solitary eye-witness has to be examined largely with reference to quality of the corroborative

evidence, in our opinion, non-examination of the investigating officer in the trial has certainly caused prejudice to the accused. The place of

occurrence, the time of occurrence and the manner of occurrence, all have invited serious controversy in this case. The assault weapon, remains of

the dead-body, if any, and any other evidence which would show death of Subhash Singh have not been produced during the trial.

11. The informant has claimed that there were 20-25 persons present at the

school where Subhash Singh was assaulted by the appellants with lathi, however, no one from the village has come forward to support the prosecution during the trial. She has admitted in her cross-examination that she did not inform the Chaukidar or the police about the occurrence and did not raise hulla in the village. From the fardbeyan it appears that when the informant gave her statement to the police her brother Ramavtar Singh was accompanying her. However, he has not been produced during the trial. She has stated that in the night of 08.10.2010 she came to know that her son has been confined in the house of Munarik Singh, however, for two days she has not made any complaint to the police. PW-5, her husband has stated in the Court that when he reached home he found his wife crying in the house of his brother. From his evidence it thus appears that his brother is residing in the same village, however, he was also not examined by the prosecution. The informant must have informed him about the appellants confining Subhash Singh in the house of Munarik Singh and assault near the school next day but he had not gone to the police. His conduct is therefore highly questionable and creates doubt on the prosecution's case. PW-5, the father of the deceased has stated in his cross-examination that he came back home after about eight days of the occurrence. Apparently, his statement in the cross-examination not only reflects his unnatural and unbelievable conduct, it creates further doubt on the prosecution story that Subhash Singh was murdered by the appellants and they caused disappearance of his dead body. According to the informant, the motive behind the incident was that Subhash Singh sneaked in the house of the daughter-in-law of late Thakurai Singh. However, no one has come forward to support even this part of the story of the prosecution. The informant herself has also not made such a statement when she gave her evidence in the Court. The informant has stated that she had bolted her house from outside but when she entered her house in the evening at about 7:00 pm on 9.10.2010 she did not find the dead body of her son in the house. On her own saying, the disappearance of the dead body of her son is a mystery. Who had taken the dead body for cremation (burning) as claimed by the informant was not seen by anyone. No remnants of the burnt dead body of Subhash Singh was collected by the investigating officer and any witness, if he had seen the appellants burning the dead body, has not been produced by the prosecution.

12. The law on absence of corpus delicti is well settled by now. It is not necessary that to prove a charge of murder the prosecution must produce the corpus. What is required in law is that clinching evidence, direct or circumstantial, must be produced during the trial to establish death of a person. The

law on the subject has been summarized by the Hon'ble Supreme Court in ""Rishi Pal"" Vs. State of Uttrakhand reported in (2013) 12 SCC 55.1 Para

14 and 19 of the said judgement read as under:

14. In the absence of corpus delicti what the court looks for is clinching evidence that proves that the victim has been done to death. If the

prosecution is successful in providing cogent and satisfactory proof of the victim having met a homicidal death, absence of corpus delicti will not by

itself be fatal to a charge of murder. Failure of the prosecution to assemble such evidence will, however, result in failure of the most essential

requirement in a case involving a charge of murder. That is precisely the position in the case at hand. There is no evidence either direct or

circumstantial about Abdul Mabood having met a homicidal death. The charge of murder levelled against the appellant, therefore, rests on a rather

tenuous ground of the two having been last seen together to which aspect we shall presently advert when we examine whether the two being last

seen together is proved as a circumstance and can support a charge of murder.

19. It is true that the tell-tale circumstances proved on the basis of the evidence on record give rise to a suspicion against the appellant but suspicion

howsoever strong is not enough to justify conviction of the appellant for murder. The trial court has, in our opinion, proceeded more on the basis that

the appellant may have murdered the deceased Abdul Mabood. In doing so the trial court overlooked the fact that there is a long distance between

may have"" and ""must have"" which distance must be traversed by the prosecution by producing cogent and reliable evidence. No such evidence is

unfortunately forthcoming in the instant case. The legal position on the subject is well settled and does not require any reiteration. The decisions of this

Court have on numerous occasions laid down the requirements that must be satisfied in cases resting on circumstantial evidence. The essence of the

said requirement is that not only should the circumstances sought to be proved against the accused be established beyond a reasonable doubt but also

that such circumstances form so complete a chain as leaves no option for the court except to hold that the accused is guilty of the offences with which he is charged. The disappearance of deceased Abdul Mabood in the present case is not explainable as sought to be argued before us by the prosecution only on the hypothesis that the appellant killed him near some canal in a manner that is not known or that the appellant disposed of his body in a fashion about which the prosecution has no evidence except a wild guess that the body may have been dumped into a canal from which it was never recovered.

13. From the prosecution evidence, we find that except a statement of the informant any other evidence much less clinching evidence on death of Subhash Singh was not produced by the prosecution during the trial.

14. Therefore, the surrounding circumstances in the case and absence of any corroborative evidence to support the informant have seriously shaken the foundation of the prosecution's case. Non-examination of the investigating officer has caused serious prejudice to the appellants and the missing links in the case create serious doubt on complicity of the appellants in crime.

15. In the aforesaid state of affairs, we find that the prosecution has failed to establish the charges against the appellants and, therefore, their conviction in Sessions Trial No. 38 of 2011 is liable to be set-aside.

16. Accordingly, the judgement of conviction under section 341/34, section 342/34, section 323/34, section 506/34, section 302/34 and section 201/34 of the Indian Penal Code dated 24.9.2013 and the order of sentence of R.I. for life under section 302/34 of the Indian Penal Code with fine of Rs.

2,000/-each and R.I. for three years under section 201/34 of the Indian Penal Code with fine of Rs. 1,000/- each dated 25.9.2013 passed by the learned District & Additional Sessions Judge-II, Latehar in Sessions Trial No. 38 of 2011 are set-aside.

17. Mr. P. K. Appu, the learned APP states that the appellants have remained in jail custody.

18. Accordingly, the appellants, namely, (1) Jai Prakash Singh, (2) Sumeshwar Singh @ Guduwa, (3) Mohan Singh, and (4) Munarik Singh shall be set free forthwith, if not wanted in connection to any other case.

19. In the result, Criminal Appeal (D.B.) No. 549 of 2014 is allowed.

20. Let the lower court records be transmitted to the court concerned, forthwith.
21. Let a copy of the judgement be transmitted to the court concerned through 'FAX'.