

(2011) 10 JH CK 0058

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 198 of 2002

Jairam Baraik and Aghnu Sahu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2011) 10 JH CK 0058

Hon'ble Judges : R.K. Merathia, J; P.P. Bhatt, J

Bench : Division Bench

Advocate : A.K. Kashyap and Mr. Ravi Prakash, for the Appellant; V.S. Sahay, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal has been Filed against the judgment dated 19/03/2002 and order of conviction dated 20/03/2002, passed by the Sessions Judge, Gumla in Sessions Trial No. 79 of 2001 convicting the appellant No. 1, Jairam Baraik under Sections 302 and 201 of the I.P.C. and sentencing him to undergo R.I. for life for the offence u/s 302 I.P.C. and four years for the offence u/s 201 I.P.C. and the appellant No. 2, Aghnu Sahu has been convicted for the offence u/s 201 I.P.C. and has been sentenced to undergo Imprisonment for four years. However, both the sentences were ordered to run concurrently.

2. The prosecution case in short is that Mini Devi (P.W. 2) gave her statement on Wednesday at about 8:30 A.M. Before the Police that on Tuesday, her cousin brother-in-law (chachera dewar), Jairam, appellant No. 1 came to her house and took her husband, namely, Pati Baraik for drinking "Maria" (country made liquor). When her husband did not return, after one hour, she went to the house of appellant No. 1, where appellant No. 1 was not present, but his wife was there, who replied that at about 8 P.M., there was hot exchange of words between both the brothers and during that period, the appellant No. 1 committed murder of

Pati Baraik by cutting his head and neck with "Tangi". She went inside the house and saw the dead body of her husband wet with blood. At that time, the neighbours have slept, therefore, she remained in the house in the night and came to the Police Station in the morning.

3. Mr. A. K. Kashyap, learned senior counsel appearing for the appellants submitted that the prosecution has not proved its case beyond all reasonable doubts. He also submitted that in any event, appellant No. 1 has remained in jail for about 11 years.

4. On the other hand, learned counsel for the State supported the impugned judgment.

5. For the following reasons, we are inclined to give benefit of doubt to the appellants.

P.W. 1, Nate Kharia, father of the informant (P.W. 2), inter alia, said that P.W. 2 was not married with the deceased as per the custom as the family did not want to marry P.W. 2 with the deceased, who remained in jail in the cases for dacoity, murder and rape etc. He further said that appellant No. 1, Jairam Baraik and his family lives in the house at Harizan Tola, which is about 1 kms. away from Baghima. Jairam has another house in "Basti Baghima, which is in dilapidated condition, where nobody resides.

Therefore, it becomes doubtful that whether the informant met with the wife of Jairam at the house of Jairam, which is said to be in dilapidated condition and where nobody lives. Moreover, this is against the normal human conduct that the wife of Jairam, even after the death of husband of the informant, will remain in the house, awaiting for the informant.

It has come in the evidence that there are other houses near the place of occurrence. The occurrence is said to have taken place at around 9 p.m.. It is doubtful as to why nobody turned up, if the informant raised alarm.

P.W. 2, inter alia, said that on her alarm, Chowkidar came and they remained, with the dead body in the night. P.W. 6-I.O., said that the informant did not stated before him that Chowkidar reached at the place of occurrence in the night and remained with her in the night.

She also said that she was living with the deceased as his wife, without customary marriage. She further said that the date of occurrence was festival day when the villagers used to drink country made liquor and remain intoxicated. She also said that all the persons were sleeping in the night and she went to the Police Station in the morning. She further said that the Mukhia, Surpanch and Chowkidar live in the village. She did not tell anybody about the occurrence. She further said that the deceased was in jail in connection with a rape case.

P.W. 3 is the wife of Jairam, who has been declared hostile.

P.W. 4, the Doctor found four incised wound on the vital parts of the body of the

deceased, caused by a sharp-culling weapon, which were sufficient to cause death.

P.W. 5, Jhakan Sahu, who is an inquest witness, also said that nobody lives in the house of Jairam. He also said that the house of Jairam is in dilapidated condition and he lives at Harijan Tola with his family for a long time.

P.W. 6 is the investigating Officer. He simply proved the seizure list to prove the recovery of "Kulhari" from the house of the appellant, Aghnu and the alleged confession of Jairam made before Police, which was endorsed on the seizure list by Jairam. None of the seizure list witnesses have been examined. The alleged blood stained "axe" was not made material exhibit and was not produced before the Court. The judgments reported in *Punja Mava Vs. State of Gujarat*, , *Punja Mava versus State of Gujarat*, 1979 SCC (Cri) 743, *Babboo alias Kalyandas and others versus State of Madhya Pradesh*, *Anter Singh Vs. State of Rajasthan*, , *Anter Singh versus State of Rajasthan* and 1987 Cri L L.J. 1512, *Dadasaheb Patalu Misal and others versus State of Maharashtra*, relied on behalf of the appellants with regard to interpretation of Section 27 of the Evidence Act Supports the contention raised on behalf of the appellants that only that part of the contention, which is directly and distinctly related with the discovery is admissible and the confession before the Police about the other part of confession is not admissible and that in the present case, even the recovery of "Tangi" has not been properly proved by the Prosecution. It also appears that the motive i.e. land dispute, alleged by P.W. 2, has not been supported by any independent witness.

6. Thus, we are of the view that the prosecution has not been able to prove its case beyond all reasonable doubts. Accordingly, we are inclined to give benefit of doubt to the appellants. In the result, the impugned judgment dated 19/03/2002 and order of conviction dated 20/03/2002, passed by the Sessions Judge, Gumla in Sessions Trial No. 79 of 2001 is set aside. This appeal is allowed. The appellant No. 1, Jairam Baraik, who is in jail, is directed to be released forthwith, if not wanted in connection with any other case. The appellant No. 2, Aghnu Sahu, who is on bail is discharged from the liability of his bail bonds.