
(2012) 03 JH CK 0002

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 542 of 2002

Jakra Kalundiya

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 03 JH CK 0002

Hon'ble Judges : R.K. Merathia, J;D.N. Upadhyay, J

Bench : Division Bench

Advocate : Rajesh Kumar, for the Appellant; Ravi Prakash, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal arises out of the judgment of conviction and order of sentence dated 24.6.2002 passed by the learned 1st Additional Sessions Judge at Chaibasa in Sessions Trial No. 298 of 2001, convicting the appellant u/s 302 IPC and sentencing him to undergo R.I. for life. The prosecution case in short is that the informant-Ladura Kalundia (PW-2) gave a written report to the police that when he was working in his field on 25.5.2001 at 8.00 AM, the appellant came there and told him that he has killed his Nani (grandmother)-Suru Kui on the previous day by causing injuries on her by "lathi" and "talwar". The informant came at the place of occurrence and found Suru Kui lying dead with bleeding injuries on her head near right and left ear. Then he alongwith PW-3 brought the appellant to the police station and handed over him to the police. It was alleged that the reason behind the occurrence was land dispute.

2. The prosecution examined four witnesses. PW-1 is the doctor who conducted post mortem on the dead body of the deceased. He found incised wound at right and left ear skin deep and fracture of left elbow of right shoulder. He also found incised wound on chest and blood clots in cranial cavity. In the opinion of the doctor, such injuries can be caused by hard and blunt substance like "lathi" and

"talwar". The cause of death was shock and hemorrhage.

3. PW-2 is the informant who inter alia supported the FIR.

4. PW-3 has been tendered from cross-examination. PW-4 is the Investigating Officer.

5. Learned counsel for the appellant submitted that in absence of any corroboration of extra judicial confession said to have been made by the appellant before the informant, conviction cannot be sustained.

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

7. If the appellant is alleged to have made extra judicial confession, his statement u/s 164 Cr. PC should have been recorded, but that was not done. The alleged confession made by him was not marked as exhibit. The signature of the appellant does not appear on the seizure list of alleged weapons. Thus, in our opinion, there is no confession or proper seizure of the weapon of assault on the record. From the evidence of the I.O., weapons of assault were recovered from the heap of straw kept near the house of the deceased. Moreover, there is nothing to show that the appellant and the deceased were residing jointly or separately. Thus, the only thing which remains is the alleged extra judicial confession said to have been made by the appellant before the informant. But in his examination u/s 313 Cr. PC, he denied the charges. Thus, it would not be safe to uphold the conviction only on the basis of such extra judicial confession in the absence of corroboration with any other material.

8. After hearing the parties at length and going through the records carefully, in our opinion, the prosecution has not been able to prove it's case against the appellant beyond all reasonable doubts and the appellant deserves the benefit of doubt. In the result, this appeal is allowed. The impugned judgment of conviction and order of sentence as passed by the trial court against the appellant, is set aside. The appellant is acquitted of the charges. The appellant is in jail. He is directed to be released forthwith, if not wanted in connection with any other case.