
(2015) 07 JH CK 0058

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 500 of 2005

Kamal Singh Munda

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 106

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2015) 4 AJR 205 : (2015) 3 JLJR 384

Hon'ble Judges : Rakesh Ranjan Prasad, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Harendra Kumar Mahato, for the Appellant; Laxmi Murmu, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment of conviction and order of sentence dated 22.3.2005 passed by the then Sessions Judge, Seraikella-Kharsawan, Seraikella in S.T. No. 61 of 2003 whereby and whereunder, the court, having found the appellant guilty for committing murder of his wife-Dropadi Mundain and also for disposing of her dead-body in order to screen himself from the legal punishment, convicted him for the offence punishable under Sections 302 and 201 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life for the offence under Section 302 of the Indian Penal Code and further to undergo rigorous imprisonment for five years for the offence under Section 201 of the Indian Penal Code. Both the sentences were ordered to run concurrently.

2. The case of the prosecution, as has been projected, is that the deceased-Dropadi Mundain had been married to the appellant-Kamal Singh Munda six years before the deceased was done to death. Out of their wedlock, two children begotten. The appellant was in habit of assaulting the deceased. 22 days before

lodgment of the case, the deceased-Dropadi Mundain had come to the house of her brother, informant-Shashodhar Singh Munda (P.W. 8), and disclosed that the appellant did assault her badly as she had refused to give tobacco to him and he has also held out threat of dire consequence. The informant-Shashodhar Singh Munda (P.W. 8) when made her understand to go and to live with her husband, the deceased went to her in-laws' place. On 22.8.2002 Chhutu Singh Munda, father of the appellant, came to the house of the informant and informed him that the deceased is in precarious condition on account of having diarrhoea. On getting such information, the informant -Shashodhar Singh Munda (P.W. 8) came to the place of his sister where this appellant told him that the deceased has died on account of having diarrhoea. The appellant did not allow the informant to see the dead-body rather on the day when she was killed the appellant buried the dead-body.

The informant came back to his village where he informed all about it to his uncle-Baldeo Singh Munda (P.W.9). Thereupon the informant as well as Baldeo Singh Munda (P.W.9) came to the Ichagarh police station where the informant gave his fardbeyan upon which FIR (Ext. 3) was drawn against the appellant and four other accused persons. Thereupon, the Investigating Officer (P.W.7) took up the investigation. During investigation, when the Investigating Officer did come to know that the dead-body has been buried in the courtyard of the appellant, he sent a requisition to the Sunil Kumar Jha (P.W.5), the then BDO, for exhuming the dead body. Acting upon such requisition, Sunil Kumar Jha (P.W.5) did come to the house of the appellant and exhumed the dead-body from the backyard of the appellant whereupon P.W.5 held inquest on the dead-body of the deceased and prepared an inquest report (Ext.1). Thereupon the dead-body was sent for postmortem examination which was conducted by Dr. Niranjan Minz (P.W.6) who upon holding autopsy on the dead-body of the deceased found the following injuries:-

Abrasion

- i. 31cm x 20cm x left glatal region.
- ii. 10cm x 6cm, 9cm x 7cm on the back at lumber region.

Bruise

- i. 8cm x 2 1/2 cm, 9 1/2 cm x 3cm on the back of chest.
- ii. 4cm x 3cm on right arm lateral side.

Internal injuries

Contusion was found over right fronto parietal scalp measuring 9cm x 7cm area which was depressed; fracture of right fronto parietal bones measuring 6cm x 5cm area with presence of subdural blood and blood clots over both sides of the brain with defused contusion of the right hemisphere of the brain.

3. The doctor issued postmortem examination report (Ext. 2) with an opinion

that the death was caused on account of head injury. Time elapsed since death was found 6 to 8 days before.

Meanwhile, the Investigating Officer recorded the statements of the witnesses and found the culpability only of this appellant and therefore, charge-sheet was submitted only against this appellant, whereas other accused persons were exonerated.

4. Accordingly, cognizance of the offence was taken and the case was committed to the Court of Sessions where the appellant was put on trial.

5. During trial, the prosecution in order to prove its case examined altogether 10 witnesses. Of them, P.W. 1-Jai Lal Singh Munda, P.W. 2-Makra Manjhi, P.W. 3-Nishikant Mahto, P.W. 4-Sahdeo Singh Munda and P.W. 10-Malu Singh Munda were declared hostile. P.W. 5-Sunil Kumar Jha, the then B.D.O. did depose that he did receive a requisition from the Officer In-charge of Ichagarh police station on 27.8.2002 for exhuming the dead-body. On receiving such requisition, he came to the courtyard of the appellant along with P.W. 9-Baldeo Singh Munda and Balo Singh Munda and exhumed the dead-body in presence of the Officer In-charge (P.W.7) which was decomposed. P.W. 8-informant-Shashodhar Singh Munda and P.W. 9-Baldeo Singh Munda, uncle of P.W.8, did testify that the deceased had been married to the appellant and they have two children but two years before, the appellant killed the deceased and that Chhutu Singh Munda, father of the appellant, came to the place of the informant and said that the condition of the deceased is quite precarious on account of having diarrhoea. On receiving such information, when the informant-P.W.8 went to the place of his sister, it was told by the appellant that the deceased has already died on account of having diarrhoea. Further, he has testified that when the informant expressed his desire to see the dead-body, the appellant did not allow him to see the dead-body, rather according to P.W.8, the dead-body was buried by the appellant on the same day when the deceased was killed.

6. After closure of the prosecution case, when the incriminating evidences appearing against the appellant was explained to the appellant under Section 313 of Cr.P.C. he denied that he has killed the deceased rather he took a plea that the deceased has died on account of having diarrhoea.

7. The trial court having placed implicit reliance on the testimonies of P.Ws. 8 and 9 and also the circumstances appearing against the appellant, indicating towards the culpability of the appellant, did find the appellant guilty for the offence punishable under Sections 302 and 201 of Indian Penal Code and accordingly recorded the judgment of conviction and order of sentence against the appellant, which is under challenge.

8. Mr. Harendra Kumar Mahato, learned counsel for the appellant, submits that the prosecution can be said to have failed to prove the charges, as not a single witness was examined by the prosecution to support the charges that it was the appellant who killed the deceased, still the trial court recorded the order of

conviction and sentence, as some injuries were found on the person of the deceased and also on account of the fact that the doctor did find fracture on the scalp bone which was presumed to have been caused by the appellant in absence of any cogent evidence.

In this regard, it was further submitted that the court should have discarded the medical evidence as has been testified by the doctor-P.W.6 for the reason that when the dead-body was exhumed, neither P.W.5 nor P.W.7-Investigating Officer did find any injury over the person of the deceased and that the dead-body was fully decomposed and in such situation, it would not have been possible on the part of the doctor to find out any injury on the person of the deceased and hence the trial court should have discarded the medical evidence but the trial court instead of discarding the medical evidence recorded the order of conviction and sentence against the appellant which is quite illegal and hence it be set aside.

9. As against this, Ms. Laxmi Murmu, learned counsel for the State, submits that it is true that the prosecution has not come forward to examine any eye witness to the occurrence but the circumstances are as such which go to indicate the culpability of the appellant alone and none else, as the deceased, who was living with the appellant, was found killed and thereby the court was absolutely justified in recording the order of conviction and sentence and hence it never warrants to be interfered with by this Court.

10. Having heard learned counsel for the parties and on perusal of the records, we do find that the prosecution has come forward with the case that the deceased-Dropadi Mundain having married the appellant-Kamal Singh Munda was living with her husband. From the evidence adduced by the P.Ws. 8 and 9, it does appear that the appellant was in habit of assaulting the deceased and therefore, 22 days before lodgment of the case, the deceased-Dropadi Mundain had come to the place of his brother-informant-Shashodhar Singh Munda (P.W. 8) where she disclosed to him that she has been assaulted by the appellant as she did not provide tobacco to the appellant. However, according to P.W. 8, he made her understand to go and live with her husband and then the deceased went to her in-laws' place. After some days, Chhutu Singh Munda, father of the appellant, came to the house of the informant and informed him and also to the P.W.9, uncle of the informant, that the deceased is in precarious condition on account of having diarrhoea. On receiving such information, when the informant-Shashodhar Singh Munda (P.W. 8) came to the house of the appellant, this appellant did disclose him that the deceased has already died on account of having diarrhea. Thereafter the informant came back to his village and went to the police station along with P.W. 9 and informed about such incident to the Officer In-charge (P.W.7) who lodged the case. Thereupon the Investigating Officer (P.W.7) sent a requisition to Sunil Kumar Jha (P.W.5), the then BDO, for exhuming the dead body. Accordingly, the dead body was exhumed in presence of P.W.9 and Balo Singh Munda and also the Investigating Officer. Thereupon, when the dead-body was sent for postmortem examination, the doctor upon

holding autopsy did find abrasions as well as bruises on the person of the deceased. That apart, the doctor also found contusion over the scalp which was associated with fracture of fronto parietal bones. According to the doctor, the death was caused due to head injury, whereas the plea, which has been taken on behalf of the appellant, is that the deceased had died on account of having diarrhoea which plea apparently appears to be false.

11. It be stated that admittedly the deceased was killed at the house of the appellant and, therefore, burden was upon the appellant in terms of the provision as contained in Section 106 of the Evidence Act to explain about the cause of death. The appellant has come forward with the plea that the deceased died due to diarrhoea but that plea in view of the medical evidence apparently appears to be false and therefore, that would be taken to be one of the circumstances against the appellant. That apart, the incriminating circumstance, which is there against the appellant, is that the appellant was in habit of assaulting the deceased and that the appellant hurriedly disposed of the dead-body without allowing the informant to see her.

12. It be further stated that the submission has been advanced on behalf of the appellant that the doctor though has found the injuries on the person of the deceased but P.W.5, who got the dead-body exhumed, did not find any injury and therefore, there has been no mentioning of any injury being there on the dead-body.

13. It is true that the inquest report does not speak about any injury being there on the dead-body but wherever there is discrepancy in between the postmortem report and the inquest report, it would be the postmortem report which would prevail.

14. Furthermore, in this regard it be stated that the fracture of bones of the scalp could be found out only during autopsy and as such, when the fracture of bones was not visible, non-mentioning of fracture of bone in the inquest report will have hardly any adverse effect upon the case of the prosecution.

15. Having regard to the facts and circumstances as stated above, we do find that the prosecution has been able to establish its case and thereby the trial court is absolutely justified in recording the judgment of conviction and order of sentence against the appellant.

16. Accordingly, the judgment of conviction and order of sentence passed against the appellant is hereby affirmed.

17. Consequently, this appeal stands dismissed.