
(2019) 12 JH CK 0040

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1292 of 2007

Kandan Soren

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302

Indian Evidence Act, 1872 — Section 6, 25, 26, 27, 32(1), 114, 135

Citation : (2019) 12 JH CK 0040

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

Bench : Division Bench

Advocate : Pradeep Kumar Deomani, Rajesh Kumar Mahtha

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J

1. The sole appellant has faced the trial on the charge under section 302 of the Indian Penal Code for committing murder of his wife, namely, Dhuni Soren.

2. In Sessions Trial No. 393 of 2006, he has been convicted and sentenced to R.I for life under section 302 of the Indian Penal Code.

3. The informant, namely, Somai Kisku is father of the deceased. On the basis of his fardbeyan which was recorded at about 8:15 a.m on 21.08.2006, Chakulia P.S. Case No. 50 of 2006 was registered against the appellant under section 302 of the Indian Penal Code.

4. Dr. J. Srinivas Rao has conducted the postmortem examination on 21.08.2006 at 1:10 p.m. He has found the following injuries on Dhuni Soren :

(i) Stab wound 2cm x ½ cm, chest cavity deep over left part chest 10 cm below left clavicle and 4 ½ cm left lateral to midline of the body.

(ii) Incise wound 2 cm x ½ cm, bone deep and left breast near left nipple 18 cm

below top of left shoulder and 12 ½ cm left lateral to midline of the body.

(iii) Incise wound 2 cm x ½ cm, muscle deep over right wrist.

5. In the opinion of the doctor, the injuries were ante-mortem in nature, caused by sharp-cutting pointed weapon and death was caused due to shock and hemorrhage. According to the doctor, the time elapsed since death was 12 to 18 hours.

6. During the trial the prosecution has examined 11 witnesses; the informant is P.W.3. His wife, namely, Bali Kisku-P.W.4 and his son, namely, Gangu Kisku-P.W.5 have also been examined during the trial. P.W.7 and P.W.8 are seizure witnesses and P.W.9 and P.W.10 are the inquest witnesses.

7. In his fardbeyan, the informant has stated that marriage of his daughter was solemnized with the appellant about 10 years back. About 3 months prior to the incident, he had brought his daughter to his house. In the fateful night, at about 2:00 a.m, when he heard cries of his daughter he rushed to her room. His daughter told him that her husband has stabbed her. He chased the appellant for some distance, however, somehow he managed to escape. His wife has also seen the appellant fleeing away. The informant has stated that his son-in-law was harassing his daughter and three days before he killed his daughter he was asking kharu (iron bangles) which is worn by married tribal women. The informant has been examined as P.W. 3 in the court. In his examination-in-chief, he has narrated a similar story of the incident in the intervening night of 20/21.08.2006 as has been recorded in his fardbeyan. According to the prosecution his wife and son are also eye-witnesses. They have also spoken about hearing cries of Dhuni Soren, chase by the informant and Dhuni Soren telling them that her husband has stabbed her.

8. Their presence in the night in their house is natural. In fact, there is no serious challenge by the defence to their presence in their house in the fateful night.

9. The other prosecution witnesses, namely, Ludu Ram Kisku-P.W.1 and Biram Hembram-P.W.2 are not the eye-witnesses, however, they have seen the dead body of Dhuni Soren in the house of the informant. They have stated that she was brought back to her father's house about 3/4 months ago and prior to the incident the appellant was asking kharu (iron bangles) from her. They have seen Dhuni Soren lying on the cot in the injured condition. P.W.2 has stated that Dhuni Soren told him that her husband has stabbed her. Presumably to a challenge by the defence to his presence in the house of the informant immediately after the occurrence, in his cross-examination P.W.2 has stated that his house is just 4-5 house away from the house of the informant. P.W.1 and P.W.2 both have identified the appellant and they have corroborated the evidence of P.W.3, P.W.4 and P.W.5 on other material aspects also.

10. Mr. Pradeep Kumar Deomani, the learned Amicus, submits that testimony of

P.W.5 wherein he has stated that he also had gone to the room of his sister is falsified by evidence of the informant who has stated that his son was sleeping with his sister in the same room. It is contended that no one has seen the appellant stabbing his wife and his identification by the prosecution witnesses is highly doubtful. On non-examination of Singrai who is son of the informant's elder brother and his mother-in-law, who, according to the informant were sleeping in the same room with Dhuni Soren, the learned Amicus has referred to the decision in "Sawal Das Vs. State of Bihar" reported in 1974 CRI. L. J. 664, to contend that non-examination of the material witnesses would materially affect the prosecution's case.

11. In the first place, the Indian Evidence Act, 1872 does not speak of a particular number of witnesses. Section 135 provides that no particular number of witnesses in any case is required for proof of a fact. In "Stephen Seneviratne Vs. the King" reported in AIR 1936 Privy Council 289, a decision which is referred in "Sawal Das" case, it has been observed that an idea that a prosecution must call witnesses irrespective of considerations of number and of reliability, or that a prosecution ought to discharge the functions both of prosecution and defence, cannot be approved. Secondly, the facts in "Sawal Das" are different from facts of the present case in as much as none of the persons who was sleeping with Dhuni Soren in the night of 20/21.08.2006 was an independent witness; they are the family members. Non-examination of some of the family members would not throw a doubt on testimony of P.W.3, P.W.4 and P.W.5; others also would have said the same story. Moreover, it is not a case set-up by the defence that those persons who have not been produced during the trial have spoken something different or contrary to what has been spoken by the informant, his wife and son. On minor inconsistencies in testimony of the eye-witnesses suffice would be to observe that minor inconsistencies, exaggerations or embellishments are bound to happen in testimony of prosecution witnesses in every case. The reason may be many, such as, forgetfulness, stress, inadvertence, lapse of time etc. It is those inconsistencies, embellishments or exaggerations which would amount to contradictions and go to root of the prosecution case are material and on minor inconsistencies, contradictions, embellishments or exaggerations the prosecution's case cannot be thrown to the winds.

12. P.W. 3, P.W.4 and P.W. 5 have stood to their ground and during their cross-examination the defence has failed to elicit such material which would throw a doubt on the prosecution's case. They are the reliable witnesses.

13. Now, the question is whether on the basis of the testimony, particularly of P.W.3, P.W.4 and P.W.5, the appellant can be held guilty on the charge under section 302 of the Indian Penal Code.

14. To prove the charge against the appellant, the prosecution has laid evidence on: (i) oral dying declaration of Dhuni Soren, (ii) motive, (iii) immediately after the incident the appellant has been found running away from the house of the informant with a knife in his hand, and (iv) recovery of knife on his disclosure

statement.

15. On recovery of the crime article on the basis of the confessional statement of the appellant, we find that the seizure witnesses, namely, Buddan Kisku and Jiten Kisku have not been examined by the prosecution and while so, recovery of knife is not proved by the prosecution. Moreover, under section 27 of the Evidence Act, discovery of a new fact, not known to the police previously, only is admissible in evidence. In "Pulukuri Kottaya Vs. Emperor" reported in AIR 1947 PC 67, the Privy Council has observed that section 27 of the Evidence Act incorporates an exception to the restrictions under section 25 and section 26 and enables certain statements made by an accused in police custody to be proved. It has been held that the condition necessary to bring section 27 of the Evidence Act into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be proved, and thereupon so much of the information as relates to the fact thereby discovered may be proved.

16. We find that no part of the confessional statement of the appellant is admissible under section 27 of the Indian Evidence Act, 1872.

17. On motive for the crime, the prosecution has set-up a story that since his wife was unable to bear a child in the last 10 years the appellant was harassing her and he intended to divorce her and that was the reason he was asking her to return kharu (iron bangles) which is a sign of a married woman. Not only the informant and his family members, the other prosecution witnesses; P.W.1 and P.W. 2, have also spoken about harassment of Dhuni Soren at the hands of the appellant. True, only on the basis of motive conviction of an accused cannot be recorded, but then, in a case like the present one motive, if proved, would be an incriminating circumstance against the appellant. From the evidence of P.W. 1, P.W. 2, P.W.3 and P.W.4, we find that the prosecution has proved motive for the crime. This aspect of the matter has been dealt with by the learned Sessions Judge in paragraph no. 15 of the judgment, thus;

"15..... There appears also motive behind causing murder. From the evidence of prosecution witnesses particularly P.W.3, 4 and 5 Kandam Soren had visited the house and had demanded Iron Bangles (Kharu) a symbol of married lady but when father of the deceased stated that after consulting village Pradhan he would decide about handing over the bangle to accused, whereupon it appears that accused returned in an angry mood and threatened to kill, deceased. Actually the accused wanted to break the marriage with the deceased and therefore he had demanded the iron bangles which is generally worn by a married lady as a symbol of marriage. Refusal to hand over the said iron bangle in my considered view is immediate motive behind committing the offence of murder. The accused Kandam Soren had visited the village on Friday and incident is said to occur on Monday and therefore within two days the accused had committed the murder when he had visited the village".

18. On identification of the appellant by the informant and his wife, it needs to be kept in mind that he is the son-in-law, his marriage was solemnized about 10 years back and, therefore, it was not difficult for them to identify him in the night. Above all, evidence of the informant that he has identified him in the torch light, even though the torch has not been recovered, is sufficient to hold that there is no doubt on identification of the appellant by the prosecution witnesses.

19. Admittedly, no one has seen the appellant stabbing his wife. All that the prosecution has established is that immediately after the incident the appellant has been found running away from the house of the informant with knife in his hand and Dhuni Soren has informed her father and others that her husband has stabbed her. Under section 114 of the Indian Evidence Act, the court may presume existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Had it been a case in which the only evidence against the appellant was that immediately after the incident he was found running away from the house of the informant, that would not have been sufficient to infer that he has committed crime, but then, there are other incriminating materials which corroborate this incriminating circumstance against the appellant, such as; P.W. 3 and P.W. 4, both have seen the appellant running away from the house; P.W. 3 has chased him; P.W.4 has seen her husband chasing the appellant, and they all have seen knife in his hand. The injured Dhuni Soren has told her father and others that the appellant has stabbed her. The principle of law embodied under section 6 of the Evidence Act, commonly known as rule of *res gestae*, provides that statement of a victim given immediately after the occurrence is a relevant fact, and admissible in evidence. Such statement forms part of the same transaction referring to the cause of the incident. In "*Rattan Singh Vs. State of H.P.*" reported in (1997) 4 SCC 161, the Supreme Court has discussed relevancy of statement of a victim, thus:

"16. Even apart from section 32(1) of the Evidence Act, the aforesaid statement of Kanta Devi can be admitted under Section 6 of the Evidence Act on account of its proximity of time to the act of murder. Illustration 'A' to Section 6 makes it clear. It reads thus:

'(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.'

(emphasis supplied)

Here the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under

Section 6 of the Evidence Act."

20. In the aforesaid state of affairs; (i) harassment and torture of Dhuni Soren by the appellant, (ii) the informant and his wife seeing him running away from the place of occurrence with a knife in his hand, (iii) chase by P.W.3, (iv) Dhuni Soren informing the prosecution witnesses that her husband has stabbed her, (v) motive behind the crime, and (vi) other prosecution witnesses, particularly, P.W.1 and P.W.2 corroborating the prosecution's case, we hold that the prosecution has proved the charge under section 302 of the Indian Penal Code against the appellant.

21. In the above facts, finding no merit in this criminal appeal, Criminal Appeal (DB) No. 1292 of 2007 is dismissed.

22. We appreciate the efforts of Mr. Pradeep Kumar Deomani, the learned Amicus.

23. The Secretary, Jharkhand High Court Legal Services Committee shall reimburse the learned Amicus as per Notification dated 23.11.2017.

24. Let a copy of the judgment be transmitted to the Court concerned through 'FAX'.

25. Let lower-court records be transmitted to the court concerned, forthwith.