
(2015) 08 JH CK 0006

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 140 of 2004

Khela Ram Mahli and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 325, 34

Citation : (2015) 3 JLJR 548

Hon'ble Judges : Rakesh Ranjan Prasad and Pramath Patnaik, JJ.

Bench : Division Bench

Advocate : A.K. Chaturvedi and Rajesh Kumar, for the Appellant; Mukesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. Both the accused persons were put on trial on the charge of committing murder of Madhusudan Namata and also for the charge of making an attempt to commit murder of Falguni Namata (P.W. 7). The trial Court having found both the appellants guilty for committing murder of said Madhusudan Namata convicted them under Section 302/34 of the Indian Penal Code and also under Section 307/34 of the Indian Penal Code for making an attempt on the life of the injured Falguni Namata (P.W. 7) vide judgment dated 8.12.2003 and sentenced them vide order dated 11.12.2003 to undergo imprisonment for life under Section 302/34 of the Indian Penal Code and also to undergo rigorous imprisonment for five years for the offence punishable under Section 307/34 of the Indian Penal Code. The case of the prosecution, is that on 15.9.1996 at about 6.00 a.m. Falguni Namata, the husband of the in-formant-Mandira Namata (P.W. 10) had gone to take bath over a well and the informant-Mandira Namata was doing household work. During that course, she heard distress sound being raised by Falguni Namata, the husband of the informant. Upon it, she came out of the house and saw these two appellants, who were having sword with them, assaulting her husband. Her husband was rushing back towards the house.

Meanwhile, Madhusudan Namata, the father-in-law of the informant, came to Bari (Kitchen Garden) where Falguni Namata also reached. The appellants then left chasing Falguni Namata and started giving sword blows to Madhusudan Namata as a result of which, Madhusudan Namata after receiving several injuries fell down and died. Thereafter, both the appellants went towards pond in search of Khusi Namata (P.W. 11), the brother of Falguni Namata, to kill him.

2. At about 7.30 a.m. when Ezra Bodra (P.W. 16) Officer-in-Charge of Potka Police Station received information that one person has been killed at Village-Matkamdih, he got that information entered into the station diary and proceeded to Village-Matkamdih where at about 8.00 a.m. he recorded the fardbeyan of Mandira Namata (P.W. 10), wife of injured Falguni Namata, wherein she narrated about the occurrence, as has been stated above, and also stated about the motive of the occurrence that the appellant had earlier asked money from Falguni Namata to purchase liquor, but when he refused to part with the money they had threatened him of dire consequences.

3. On such fardbeyan a formal F.I.R. was lodged and P.W. 16 himself took over the investigation, during which, he held inquest on the dead body of the deceased and prepared an inquest report (Ext.-7) and sent the dead body for post mortem examination, which was conducted by Dr. Y. Nath, who on holding autopsy on the dead body of the deceased-Madhusudan Namata did find following injuries:--

(i) 20 c.m. x 6 c.m. x 5 c.m. transversely placed over back of left chest, upper part adjoining scapula and shoulder. The scapula was cut into pieces.

(ii) 1.5 c.m. x 3 c.m. x 6 c.m. over the back of neck transversely placed cutting the vertebra completely.

(iii) 5 c.m. x 2 c.m. x bone deep transversely placed over occipital area behind right ear. The bone was found partially cut.

(iv) 16 c.m. x 4 c.m. x 3 c.m. over right elbow longitudinally placed.

(v) 5 c.m. x 4 c.m. x skin deep over left forehead.

The doctor issued post mortem report (Ext.-4) with an opinion that the death was caused due to shock and hemorrhage on account of aforesaid injuries caused by heavy sharp cutting weapon."

4. The I.O., during investigation, after noticing Falguni Namata, severely injured, sent him to T.M.H. Hospital where he was examined by Dr. Amal Prakash Patra (P.W. 6), who having noticed the injuries on the person of the injured prepared injury report (Ext.-3/1). In course of treatment, Falguni Namata was also examined by Dr. Saroj Kumar Das (P.W. 3), who found following injuries on his person:--

(i) Deep incised wound over back with muscle cut 12" in length from one scapular region to another, right scapula was found fractured.

- (ii) Incised wound over both shoulder 5" X 1/4".
- (iii) Incised wound over forehead 4" in length superficial.
- (iv) Incised wound left pinna and it was through and through.
- (v) Incised wound over left thumb over an area of 3" X 1/2".
- (vi) Incised wound over left cheek towards the carotid region 2" X 1/2".
- (vii). Incised wound over the right knee 4 1/2" X 1/2".

The injuries were found fresh in nature. According to the doctor injuries were grievous in nature but none of the injuries was sufficient to cause death in normal course.

5. Meanwhile, the I.O. seized earth smeared with blood from the place of occurrence and also some clothes under seizure-list (Ext.-8). He also recorded the statements of the witnesses. In course of investigation, the I.O. did arrest both the appellants and recorded their confessions which led to recovery of cloth smeared with blood and also sword, which were seized under seizure-list (Ext.-8/A).

6. On completion of the investigation, charge-sheet was submitted, upon which, cognizance of the offences was taken.

7. When the case was committed to the Court of Sessions, the appellants were put on trial, during which, the prosecution examined as many as 16 witnesses. Of them, P.W. 5-Rakhi Rauth, the niece of Falguni Namata (P.W. 7), P.W. 7-Falguni Namata, P.W. 10-Mandira Namata (informant), P.W. 14-Kiya Namata (mother of the informant) and P.W. 15-Bhawani Namata (daughter of the deceased) were examined, who claim themselves to be the eye witnesses. According to them, particularly P.W. 7 and P.W. 10, while Falguni Namata had gone to take bath over the well, the appellants came and started giving blows by sword from behind. He in order to save himself ran towards home and when reached to Bari (kitchen garden) he came across with his father there. The appellants then left chasing him and started assaulting his father as a result of which he sustained severe injuries and died. Thereupon, the appellants went towards pond in search of Kashi Namata (P.W. 11), the brother of the injured-Falguni Namata for killing him. P.W. 11 did testify that while he was near the pond the appellants came and tried to inflict sword blow but he ran away from there. While he was running away, the appellants were shouting that they have killed his father and brother and will be killing him also. P.W. 2-Thakur Ram Soren and P.W. 8-Jhuma Namata are the hearsay witnesses.

8. After closure of the prosecution case, when the appellants were questioned under Section 313 of Cr.P.C. over the incriminating material appearing against them, they simply denied. Thereupon, the Court having placed its implicit reliance on the testimonies of P.Ws. 5, 7, 10, 14 and 15 getting corroboration from the medical evidences did find the appellants guilty and accordingly

recorded the judgment of conviction and order of sentence.

9. Mr. A.K. Chaturvedi, learned counsel appearing for the appellants submits that the Court has recorded the judgment of conviction and order of sentence on the basis of the evidences of the witnesses who are closely related to each other and hence, the Court should have been quite circumspect in accepting their testimonies particularly when not a single independent witness has been examined, though the independent witnesses must have been available as the occurrence took place in the early morning at 6.00 O'clock and there were number of houses in the vicinity of place of occurrence. Further, it was submitted that P.Ws. 5 and 8, who have claimed themselves to be the eye witnesses, are in fact not the eye witnesses as their names do not find figure in the fardbeyan. Meaning thereby that they at the time of occurrence were not present and therefore the Court should have rejected their testimonies outrightly. Further submission which was advanced on behalf of the defence is that the motive cannot be said to have been established by the prosecution as the informant in her fardbeyan had stated that the appellants had come to the shop of the injured-Falguni Namata for asking money for purchasing liquor but the injured refused to part with money and therefore, the appellants had held out threat of life but the injured (P.W. 7) has testified that they had come and asked for cigarette which was not provided and therefore, they had held out threat. The other witnesses are also not consistent on this point and hence, the prosecution can certainly be said to have failed to establish the motive and once the motive goes the entire prosecution case gets shrouded with doubt and under the circumstances the Court below should have given benefit of doubt to the appellants but instead of giving benefit of doubt to the appellants the Court below recorded order of conviction and sentence and hence it be set aside.

10. As against this, Mr. Mukesh Kumar, learned counsel appearing for the State submits that the prosecution has been able to establish its case beyond all reasonable doubt by examining P.Ws. 5, 7, 10, 14 and 15, who are consistent on the point that the appellants did kill the deceased and inflicted injuries on the person of P.W. 7 which gets corroboration from the post mortem report and also from the injury report (Exbt.-3) and, thereby, the trial Court was absolutely justified in recording the order of conviction and sentence which never warrants to be interfered with.

11. Having heard learned counsels appearing for the parties and on perusal of the record, we do find that it is a case of the prosecution, as has been testified by the informant-Mandira Namata (P.W. 10) that while she was doing household work her husband-Falguni Namata (P.W. 7) had gone to take a bath at a well. At that point of time, she heard distress sound of her husband. When she came out she saw her husband-Falguni Namata running being chased by the appellants who were giving sword blows upon her husband. By the time her husband reached to Bari (kitchen garden), Madhusudan Namata (deceased)-her father-in-law also came over there and then the appellants left chasing Falguni Namata

and started giving sword blows upon the deceased as a result of which, he sustained severe injuries and died instantaneously. The testimony of the informant gets support from the evidence of Falguni Namata (P.W. 7), an injured witness, wherein he has testified in the same manner. On the person of P.W. 7, the doctor has found as many as seven injuries which supports his testimony that he was inflicted with injuries with sword. A criticism has been made that the fardbeyan of P.W. 10 cannot be treated as a First Information Report in view of the testimony of P.W. 10 testifying in her cross-examination that her statement had been recorded by the police at the police station whereas fardbeyan of P.W. 10 which has been treated as First Information Report would go to show that it had been recorded at the house of the informant-P.W. 10. It is true that such discrepancy is there but that cannot be taken to be fatal for prosecution for the reason that on account of passage of time P.W. 7 may have forgotten as to whether she had given statement at the police station or at her house. However, from the evidence of the I.O-P.W. 16, it is evident that the fardbeyan had been recorded at the house of Mandira Namata (informant) and, thereby, the submission made in this respect is only to be taken notice of for its rejection. That apart, the testimonies of P.W. 7, as also P.W. 10 gets support from the testimonies of P.W. 5, 14 and 15, who almost have testified in the same manner as the case has been put in by the informant (P.W. 10) and the injured witness. The criticism which has been made on behalf of the defence is that though P.W. 5 has claimed to be an eye witness but as per the fardbeyan given by the informant (P.W. 10), she was not at the place of occurrence. It is true that name of P.W. 5 Rakhi Rauth is not there in the fardbeyan but she happens to be the niece of P.W. 7, the injured witness and had come to the place of her maternal uncle. She has testified that when she heard distress sound of her maternal uncle she came out and saw her uncle being assaulted by the appellants. She has also testified that both the appellants by inflicting sword blows killed Madhusudan Namata. Nothing seems to be there in the cross-examination so as to discard her testimony. Similar is the case with P.W. 14, the mother of the informant, who had been at the house of the informant on the day of occurrence. Her name also does not find mentioned in the fardbeyan but nothing has been elicited by the defence to discard her testimony. So far P.W. 15-Bhawani Namata is concerned, she being the daughter of the deceased present in the house is certainly expected to come out of the house after hearing distress sound of Falguni Namata and then saw the appellants assaulting the deceased and also to Falguni Namata. Thus, we do find that testimonies of the eye witnesses, as stated above, are consistent with each other which get corroboration from the medical evidence whereby doctor did find number of injuries on the person of the deceased being caused by sharp cutting weapon and at the same time doctor also did find injury on the person of P.W. 7.

12. So far as motive is concerned there appears to be inconsistency in the evidences of the witnesses as the case which has been made initially in the fardbeyan was that occurrence took place on account of the fact that P.W. 7 had

refused to give money to the appellants for taking liquor, whereas, P.W. 7 has said that they had come and asked for cigarette which he refused to give and then they extended threat of dire consequences. In this regard evidence of other witnesses also seems to be inconsistent. But where the case happens to be a case of direct evidence, the motive does not play important role and in that event even if motive has not been established, it will not have any adverse effect on the case of the prosecution. Moreover, we do find that each one has testified that on account of money being not given to the appellants they had extended threat and, thereby, the witnesses are consistent on the point that since Falguni Namata had refused to give money to them, they were carrying grudge and on account of that they did commit offence, as has been stated above.

13. Under the circumstances, we do find that the trial Court was absolutely justified in recording the order of conviction and sentence so far as offence under Section 302/34 of the Indian Penal Code is concerned.

14. So far as conviction under Section 307/34 of the Indian Penal Code is concerned, the trial Court does not seem to be justified for convicting them for the said offence as according to P.W. 3, who did notice number of injuries on the person of Falguni Namata (P.W. 7), none of the injuries was sufficient to cause death and, thereby, we do find that trial Court committed illegality in recording the order of conviction and sentence under Section 307/34 of the Indian Penal Code, hence, it is set aside. However, instead of that we convict the appellants under Section 325/34 of the Indian Penal Code and is sentenced for the period already undergone.

15. So far as conviction and sentence passed against the appellants under section 302/34 of the Indian Penal Code is concerned that remains intact. Thus in view of the aforesaid modifications in the order of conviction and sentence, as indicated above, this appeal stands dismissed.