
(2006) 03 JH CK 0063

In the Jharkhand High Court

Case No : Criminal Appeal No. 134 of 1990 (R)

Khem Lal Ganjhu

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 291, 302, 34

Citation : (2006) 2 JCR 231

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Advocate : P.K. Mukhopadhyaya, T. Mistri and K.C. Mahto, for the Appellant; I.N. Gupta, APP, for the Respondent

Final Decision : Allowed

Judgement

1. The accused appeals.

2. The appellant, on being tried for an offence u/s 302 read with Section 34 IPC and u/s 291 IPC, was convicted and sentenced to imprisonment for life u/s 302 read with Section 34 IPC. He was also directed to undergo rigorous imprisonment for a period of five years u/s 201 IPC. The present appeal is against the aforesaid conviction and sentence.

3. The case of the prosecution is as follows :

At about 5.00 p.m. on 13.11.1985, the appellant went to the house of Nema Ganjhu accompanied by another. The deceased Nema Ganjhu, the appellant and other persons left together. Thereafter the deceased was not seen alive. On 16.11.1985, the body of the deceased was found floating by the villagers and information was given as Khelari police station by the village mukhiya. On receiving he said information, PW 10 Vivekanand Singh reached the village, found the dead body and thereafter recorded the statement, Ext. 2, given by PW 1, who is the brother of the deceased. He took up investigation of the crime and

prepared inquest report and the same stands marked as Ext. 4. After the inquest, the body was sent to the hospital with a requisition to the Doctor to conduct autopsy. On receipt of the requisition, PW 9, Dr. Renu Bala, conducted autopsy on the dead body and found the following injuries:

- (i) Lacerated wound 4-1/2 x 1 x 1/2 cm on the left side of occipital side of head.
- (ii) Abrasion 3x2 cm; and
- (iii) Abrasion 2-1/2 x 1-1/2 cm on the front part of right side of chest.
- (iv) Abrasion 3x2 cm on the left lateral part of the neck.

She issued Ext. 1, post-mortem certificate, with her opinion that the deceased would have died on account of antemortem injuries caused by blunt substance and that the death could have occurred about 36 to 72 hours prior to the autopsy.

4. The investigation continued and witnesses were examined during such investigation. After completion of the investigation, final report was filed against the appellant as the other accused, who went along with the appellant, was not available at the time of filing the final report.

5. The appellant was questioned u/s 313, Cr PC on the incriminating circumstances appearing against him. He denied all the incriminating circumstances. No witness was examined on his side.

6. Learned Counsel appearing for the appellant submits that the prosecution, having relied upon the circumstantial evidence to establish that the appellant caused the death of the deceased, ought to have proved all the links in the chain of circumstances and the prosecution having failed to establish any of the links in the chain, the appellant is entitled to acquittal.

7. We have heard Mr. I.N. Gupta, learned Counsel appearing for the State.

8. The case of the prosecution is that the deceased Nema Ganjhu died on account of homicidal violence. There can be no dispute about the said fact since the same stands proved through Ext. 1 and from the evidence of the Doctor, PW 9, who conducted autopsy and issued post-mortem certificate. We, therefore, hold that the deceased Nema Ganjhu died on account of homicidal violence.

9. The only question that is to be decided by this Court is whether the appellant is responsible for the death of Nema Ganjhu. The prosecution, in order to establish that the deceased Nema Ganjhu was murdered by the appellant, relied upon circumstantial evidences. They are:

- (i) the deceased and the appellant were seen coming from the house of the deceased; and
- (ii) a blanket was recovered from the house of the appellant.

10. It could be seen from the evidence of PW 1 that at about 5.00 on

13.11.1985, the deceased and the appellant along with another left the house of the deceased and thereafter he was not seen alive and information was sent to the police station at 11.00 a.m. on 16.11.1985 and on such information being received by PW 10, Vivekanand Singh, Officer In-charge attached to the Khelari police station, went to the village and recorded the fardbeyan, Ext. 2, given by PW 1, Luxman Ganjhu, on the basis of which a formal FIR was registered at the police station. Apart from the evidence of PW 1 that the deceased and the appellant along with another left the house of the deceased, there is absolutely no other evidence to show that the appellant caused the death of the deceased and threw the body into the well. It is no doubt to be true that a blanket was recovered from the house of the appellant. Though PW 1 stated in his evidence that the deceased left the house wearing a blanket, he did not say in the Court that the said blanket recovered from the house of the accused was the blanket which the deceased was wearing on the date when he left the house along with the appellant and another person. It is also worthwhile to remember at this stage that the appellant is closely related to the deceased as he is the brother of the son-in-law of the deceased. In the above circumstances, the possibility of the blanket having been given to the appellant by the deceased cannot also be ruled out. In any event, as we have stated earlier, the prosecution did not conclusively establish that the blanket which the deceased was wearing on the date when he went along with the accused was actually recovered from the house of the appellant at a later point of time. In the absence of any material, we find it difficult to accept the prosecution case since the prosecution did not establish all the links in the chain of circumstances. We, therefore, set aside the order of conviction and sentence imposed upon the appellant and acquit him. It is reported that the appellant is on bail. He is discharged from his bail bonds. The appeal is allowed.