
(2019) 03 JH CK 0011

In the Jharkhand High Court

Case No : Criminal (Jail) Appeal (DB) No. 969, 970 Of 2015

Khepa Murmu @ Hembrom And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 328
Code of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 106

Citation : (2019) 03 JH CK 0011

Hon'ble Judges : Aparesh Kumar Singh, J; Kailash Prasad Deo, J

Bench : Division Bench

Advocate : Shresth Gautam, Priya Shrestha, Shekhar Sinha

Judgement

1. Heard learned Amicus Curiae Mr. Shresth Gautam, Mrs. Priya Shrestha in the respective criminal appeals and Mr. Shekhar Sinha, learned Additional Public Prosecutor representing the State.

2. These two appeals arise out of separate judgments passed in Sessions Trial No. 110/2012 and Sessions Trial No. 63/2013 both judgments dated 15.09.2015 / order of sentence dated 22.09.2015 by the Learned District & Additional Sessions Judge-III cum Special Judge (Vigilance Cases), Dumka, as respects the individual appellants, before us. They are being heard together as they arise out of the same incidence and the same FIR i.e. Raneshwar P.S. Case No. 24/2012 dated 29.02.2012 registered against these three accused persons namely, Khepa Murmu @ Hembrom, Rabilal Murmu @ Hembrom and Surili Marandi.

3. All the three appellants have been convicted for the charge under sections 302, 328, 201 read with section 34 of the Indian Penal Code and sentenced to undergo imprisonment for life with a fine of Rs. 25,000/-, in default whereof, to suffer simple imprisonment for three months. No separate sentence has been awarded for the conviction under the other two offences.

4. Munni Tudu is the informant and mother of the deceased Mariam Marandi upon whose fardbeyan recorded at 17.00 hrs. on 29.02.2012 at village Kukri Bhasa by the Sub Inspector Raja Ram, Officer-in-Charge, Raneshwar P.S., formal FIR bearing Raneshwar P.S. Case No. 24/2012 dated 29.02.2012 was registered at 20.30 hrs. under sections 302,201,328 and 34 of the Indian Penal Code against the three above named accused persons.

The informant inter-alia alleged that about nine months back, her daughter Mariam Marandi (deceased) entered into love marriage with the accused Rabilal Murmu, son of Khepa Murmu @ Hembrom of village Latabani under Raneshwar P.S. She started living in her matrimonial house thereafter along with her husband. On 28.02.2018 her husband Rabilal Murmu came at around 4.30 in the evening to her house and informed her that her daughter is seriously ill and she should accompany him for taking her for treatment, otherwise something would happen and then they should not be implicated. On this information, she accompanied her son-in-law to the matrimonial house of her daughter at village Latabani. On reaching there, she saw her daughter lying dead and froth coming out of her mouth and nostrils. On seeing this, she wanted to return to her village Kukri Bhasa to inform her relatives, but her son-in-law Rabilal Murmu, Samdhi Khepa Murmu (father of her son-in-law) and Samdhin Surili Marandi (mother-in-law of her daughter) restrained her from coming back. After 3-4 hours, she somehow managed to flee from their house and reached her home in the late evening and narrated this incidence. She further alleged that on seeing the dead body, it appeared that her daughter was administered poisonous substance by her son-in-law / husband of the deceased and she was killed. On 29.02.2012 at 9.00 am, she along with her relatives and villagers again went to the village Latabani i.e. the matrimonial home of her daughter, but she did not find her dead body there. She came to know that her dead body was taken to a distance from the village and was cremated. When she reached there, she saw the fire burning. On the basis of these allegations, informant asserted that her son-in-law Rabilal Murmu, Samdhi Khepa Murmu @ Hembrom and Samdhin Surili Marandi have administered poison to her daughter Mariam Marandi and killed her and tried to cause disappearance of the evidence by burning her dead body

5. On this information, investigation commenced and concluded in submission of the charge sheet bearing no. 29/12 dated 28.05.2012 under sections 302,201,328 and 34 of the Indian Penal Code against the accused Khepa Murmu @ Hembrom. Thereafter, another charge sheet bearing no. 57/12 dated 31.10.2012 under the same sections was submitted against the other two accused persons Rabilal Murmu @ Hembrom and Surili Marandi. Accordingly, cognizance was taken and the case was committed to the court of sessions. Charges were framed in Sessions Trial No. 110/2012 on 17.07.2012 under sections 302/34, 328/34 and 201/34 of the Indian Penal Code against the accused Khepa Murmu @ Hembrom and in Sessions Trial No. 63/2013, on 06.04.2013 under the aforesaid sections against the other two accused persons Rabilal Murmu @ Hembrom and Surili Marandi. Charges were explained to the

accused persons in Hindi, to which they pleaded not guilty and claimed to be tried. Thus, trial commenced.

It is pertinent to mention here that since trial of the accused Khepa Murmu @ Hembrom and the remaining two accused Rabilal Murmu @ Hembrom and Surili Marandi were split up, the prosecution witnesses were separately examined in both the cases before the same learned Sessions court. However, eleven of the prosecution witnesses are common in both the trial, except one Babai Murmu who has been additionally examined as PW-12 in Sessions Trial No. 63/2013.

6. For better appreciation, a comparative chart showing the name and number of the prosecution witnesses in the respective sessions trial, are given hereunder along with their status.

Name of prosecution witnesses

Deposed as in Sessions Trial No. 110/2012

Status

Deposed as in Sessions Trial No. 63/2013

Status

Paresh Hembrom

PW-1

Hearsay

PW-8

Hostile

Ramesh Tudu

PW-2

Hearsay

PW-10

Hostile

Babudhan Tudu

PW-3

Hearsay

PW-9

Hostile

Kishore Soren

PW-4
Hostile
PW-11
Hearsay
Kalam Hembrom
PW-5
Hostile
PW-1
Hostile
Phulmuni Murmu
PW-6
Hearsay
PW-2
Hearsay
Churki Hansda
PW-7
Hearsay
PW-3
Hostile
Ruplal Tudu
PW-8
Hearsay
PW-4
Hearsay
Kalingi Tudu
PW-9
Hearsay
PW-5
Hearsay
Muni Tudu

PW-10

Hearsay Informant

PW-6 Informant

Hearsay

Raja Ram

PW-11

I.O. of the case

PW-7

I.O. of the case

Prosecution has adduced certain documentary evidence in both the sessions trial, which are common in both the case. A comparative chart is being furnished hereunder:

Description of Documents

Status in Sessions Trial No. 110/2012

Status in Sessions Trial No. 63/2013

Fardbeyan

Ext.1

Ext.1

Endorsement on Fardbeyan

Ext.1/1

Ext.1/1

Seizure List

Ext.2

Ext.2

Formal FIR

Ext.3

Ext.3

These exhibits were adduced without objection.

7. Upon closure of the prosecution evidence, accused persons were examined under section 313 of the Cr.PC in both the Sessions Trial on 06.06.2015 to which they denied their involvement in the occurrence, claiming themselves to be

innocent. They have not adduced any defence or documentary evidence in support of their contention. Appellant Rabilal Murmu in answer to question no. 2, had stated that he had contracted love marriage with the deceased and the allegation of torture was false.

8. Upon consideration of the submissions of the learned counsel for the parties and on perusal of the material evidence on record, learned Trial Court recorded conviction as against the accused persons, though in two separate Sessions Trial in the same manner.

Appellant Khepa Murmu @ Hembrom is in custody since 02.03.2013 upon his conviction; appellant Rabilal Murmu @ Hembrom is in custody since 27.09.2012; appellant Surili Marandi had been taken in custody on 12.10.2012, but she has been enlarged on bail during the pendency of this appeal on 17.04.2018.

9. Learned Amicus Curiae in both the appeals have while assisting the Court, urged common grounds to support the case of the appellants. Learned Amicus Curiae submit that the case is based on circumstantial evidence. There are no eyewitness to the occurrence. There is unexplained delay in lodging of the FIR on 29.02.2012 at 17.00 hrs., though incidence had occurred on 28.02.2012, as per the case of the informant also, around 4-5 pm. There is no motive assigned in the commission of the offence by accused persons / appellants herein; no poisonous substance has been seized from the place of occurrence. Prosecution has proved the seizure list, but none of the seizure list witnesses were examined. The articles i.e. bones and ashes seized from the cremation ground were sent for forensic examination, but were returned with comments that sealing was not proper and despite direction of the learned court, they were not sent again. Therefore, there is no forensic evidence on record to substantiate the allegations. Mere proof of seizure list does not establish the charge as against these accused persons. There is no allegation of ill-treatment by the informant in her fardbeyan, nor any other witness has alleged so, except PW-9 / PW-5 Kalingi Tudu, though she is only a hearsay witness in both the sessions trial. There are no independent witnesses who have come forward to support the prosecution case. No person from the neighborhood of the accused persons have been either examined. There is no witness to the cremation of the dead body of the deceased Mariam Marandi. The informant accepts that the deceased had entered into love marriage with the appellant Rabilal Murmu. It has also come through her evidence that the deceased was married from before having two children. Apart from this assertion, there is no evidence to show that the children were in the house of the appellants or informant or in the house of her first husband. The conduct of the informant is also suspicious. She claims to have gone on information by the accused / appellant Rabilal Murmu, her son-in-law, to see her daughter and alleged that she was restrained from coming from their house for 3-4 hours, but even after her return late in the evening on 28.02.2012, she does not inform the incidence to the police. As per her own story, she went back to her home and returned with her relatives to the matrimonial house of her daughter on the next

date i.e. 29.02.2012 at 9.00 am. If a married daughter of a lady has been killed in suspicious circumstances, allegedly by the in-laws and her husband, the conduct of the informant by sitting quiet in the matter for whole of the night and reporting it to the police at 17.00 hrs. on the next date, is eloquently unnatural. This compared to the conduct of the appellant Rabilal Murmu on the other hand, clearly shows his bonafides as a husband of the deceased. He had gone to the house of the informant on 28.02.2012 at 4.00 pm and informed her about the serious illness of his wife and requested her to accompany her for taking his wife for treatment. If the story of the informant is accepted, she accompanied her son-in-law Rabilal Murmu (appellant) to his house and saw her daughter lying dead there. It appeared to her to be a case of suspected poisoning, but this allegation remained in the realm of suspicion as it has not been proved by any forensic evidence. The deceased died due to illness and the allegations have later on been woven as an afterthought to implicate the husband of the deceased / appellant Rabilal Murmu and both his father and mother, the other two appellants herein. Since this case rests on circumstantial evidence, it was the duty of the prosecution to prove all incriminating circumstances conclusively and in such a manner that they taken together form a complete chain leading to the only hypothesis pointing towards guilt of the accused persons and no other. The prosecution story as narrated through the mouth of the prosecution witnesses in fact, contains several missing links.

10. Learned Amicus Curiae have adverted to the testimony of other prosecution witnesses, noted above, and submitted that either they are hearsay or they have turned hostile during their examination. Learned Amicus Curiae also point out that the prosecution witness no. 1, 2 and 3 in Sessions Trial No. 110/2012 have deposed as hearsay witnesses, but in the analogous Sessions Trial No. 63/2013, they have been declared hostile on the request of the prosecution. PW-5 Kalam Hembrom has been declared hostile in both the sessions trial. Other prosecution witnesses are also hearsay witness. PW-4 Kishore Soren in Sessions Trial No. 110/2012 has been declared hostile, but surprisingly, prosecution has not declared him hostile and cited him as a hearsay witness in Sessions Trial No. 63/2013 as PW-11. If there is such inconsistency in the prosecution evidence in this case which depends upon the circumstantial evidence, it is not safe to convict the accused persons for the charges. Learned Amicus Curiae have, while summarizing their argument, also submitted that the conduct of the appellant Rabilal Murmu, husband of the deceased and son-in-law of the informant, as stated through the mouth of the informant in her fardbeyan and also in her testimony, is such that the onus to show circumstances of the death of Mariam in the house of the appellant, have also been duly explained. In any case, conviction could not have been recorded by the learned Trial Court only relying upon the provisions of section 106 of the Evidence Act. As such, appellants who have been convicted on practically no legal evidence by the learned Trial Court, deserve to be acquitted of the charges. Two of the appellants, Khepa Murmu @ Hembrom and Rabilal Murmu @ Hembrom are incarcerating since 27.09.2012

and 02.03.2013 respectively without any shred of evidence against them.

11. Learned Additional Public Prosecutor, Mr. Shekhar Sinha has placed the evidence on record and supported the findings rendered by the learned Trial Court. It is his submission that in such circumstances when a married lady dies in the house of her in-laws, it is unlikely that any eye witness could be found to support the case of the prosecution. The informant has found her daughter dead in the house of her in-laws and froth coming out of her mouth and nostrils. The coming of froth from mouth and nostrils itself created suspicion in the minds of the informant that the accused persons had administered poison to her daughter and caused her death. The accused persons / appellants herein restrained her from coming back to her home to inform her relative on 28.02.2012. However, she managed to come back to her home late in the evening and being a rustic lady she again ventured with her relatives and villagers to the matrimonial house of her daughter to take legal steps. However, the dead body of the victim was not found in the house of the appellants and only upon coming to know that they had already taken her for cremation, she went and saw fire of cremation burning at a distance from the house of the appellant. The Investigating Officer had proved the seizure list containing the ash and bones of the deceased and sent it for forensic science examination but on account of certain technical defects relating to its sealing, same were not examined and returned with an endorsement to send it afresh. However, lapses on the part of the investigation cannot benefit the accused persons, if the other circumstances are proved through the prosecution witnesses and the first information story narrated by the informant in her fardbeyan stands fully corroborated during trial. The deceased died in the house of the accused persons/ appellants herein. She was a married lady. This fact have been established, therefore, the onus to prove circumstances leading to her death shifted upon the appellants including the husband of the deceased i.e., Rabilal Murmu. They have miserably failed to explain the circumstances of the death of Mariam, daughter of the informant, though it was within their special knowledge. The aforesaid circumstances having been conclusively proved and taken together with the non-explanation of the accused persons of the circumstances leading to death under Section 106 of the Evidence Act are sufficient to uphold the conviction recorded by the learned Trial Court. Therefore, the grounds urged on behalf of the appellants do not merit acceptance. Appeals are without merits and fit to be dismissed.

12. We have considered the submission of learned Amicus Curiae, learned Additional Public Prosecutor representing the State; gone through the entire materials on record which include the fardbeyan, evidence of eleven prosecution witnesses in Sessions Trial No. 110 of 2012 and twelve prosecution witnesses in Sessions Trial No. 63 of 2013, eleven of whom are common to both the cases except P.W.12 Babai Murmu in Sessions Trial No. 63 of 2013 who has been declared hostile; the prosecution exhibits which are common in both sessions trial cases; statement of the accused persons under Section 313 Cr.P.C. along with judgment of conviction and order of sentence recorded by learned Trial

Court in both the Sessions Trial.

13. In the foregoing paragraphs of this judgment, we have incorporated the comparative chart of the prosecution witnesses examined in both Sessions Trial. The case of the prosecution is not based on any direct evidence or eye witness testimony. The case hinges upon circumstantial evidence as no independent witnesses such as villagers of Latabani and / or neighbourhood of the house of the appellants where the daughter of the informant Mariam died, have come forward to support the prosecution case. The prosecution story was based on the fardbeyan of informant Munni Tudu mother of Mariam (deceased). She has supported her statement in the fardbeyan during the deposition in both the Sessions Trial cases as P.W.10 and P.W.6 respectively. She claims to have gone to the matrimonial home of her daughter after receiving information from her son-in-law, appellant Rabilal Murmu about serious illness of Mariam. In her statement during trial, she has improved her version by further stating that there used to be altercation / quarrel between the appellant and the deceased. However, she subsequently accepts that it was on the information of Rabilal Murmu, who came to her house, that she came to know that her daughter Mariam is seriously ill and was undergoing treatment. On visiting the matrimonial house of her daughter, she has found her dead and froth coming out of her mouth and nostrils due to which she suspected that she was killed by administering poison to her. The entire story of the prosecution alleging involvement of the appellants in the offence of murder of informant's daughter is based on this suspicion. This suspicion is not proved by any evidence worth its name in the eyes of law by the prosecution. This witness does not explain as to why after coming back from the matrimonial house of her daughter on the night of 28.02.2012 she did not report the matter to the Police or village Choukidar when she had herself seen the dead body of her daughter lying in suspicious circumstances. It has also come in her evidence that deceased had first marriage with one Philip from which marriage two children were born. In her cross examination, she denied that her daughter had died due to illness but her own testimony read together with the fardbeyan cast a doubt upon the truthfulness of the prosecution case, since the informant herself stated that it was the her son-in-law, appellant Rabilal Murmu who had voluntarily gone to her house and given information about the illness of her daughter Mariam and also requested her to accompany him so that Mariam could be taken for treatment. The fact that Mariam died as a result of some illness in the house of the appellant alone were not sufficient to bring home the charge of murder as against the accused persons i.e., son-in-law, samdhi and samdhin of the informant unless suspicious circumstances leading to her death i.e., by poisoning were duly proved during trial. As has been taken note above, the informant after sufficient delay again claims to have gone to the matrimonial house of her daughter on the next day and came to know that her body was taken for cremation. This fact, if examined in objective manner suggest an unnatural course of conduct on the part of the appellants since even after information to the informant and on her seeing the dead body of her daughter

Mariam in the matrimonial house, she did not take any steps for 12 hours thereafter. In such circumstances, the appellants were left with no choice but to dispose of the dead body when none of the members of the informant's family were coming forward to cremate her.

14. Considered in this light, the conclusive circumstances which if proved could have shifted the onus under Section 106 of the Evidence Act upon the accused persons / appellants herein were not established on behalf of the prosecution. In this light, when we deal with the testimony of other prosecution witness, we find that Paresh Hembram, Ramesh Tudu, Babudhan Tudu who deposed as hearsay witness in Sessions Trial No. 110/2012 have for strange reasons not supported the case of the prosecution and had been declared hostile when examined as P.W.8, P.W.10 and P.W.9 in Sessions Trial No. 63 of 2013. Similarly, Kishore Soren (P.W.5) in Sessions Trial No. 110 of 2012 who had been declared hostile, has appeared as hearsay witness P.W.11 in Sessions Trial No. 63 of 2013. Kalam Hembram who has been examined as P.W.5 and P.W.1 in either of the Sessions Trial, has been declared hostile by the prosecution. Other prosecution witnesses namely Fulmani Murmu, Churki Hansda, Rooplal Tuddu, Kalingi Tuddu all are hearsay witness in both the Sessions Trial. They were not belonging to the village of the accused persons. These witnesses have also failed to show any motive for commission of the offence or that there was any ill treatment of the deceased by the appellants.

15. We have to consider these evidence on record also keeping into mind that the deceased had entered into love marriage with the appellant Rabibal Murmu only nine months back, though she was married from before with two children born out of first marriage. The Investigating Officer Raja Ram who was examined as P.W.11 and P.W.7 respectively in two trials has during his testimony apart from proving the formal F.I.R (Ext.1/1), the fardbeyan (Ext.1), seizure list (Ext.2) and formal F.I.R as Ext.3, has done nothing more to collect the materials in support of the prosecution case. Though pieces of bone and ashes were collected from the place where the dead body of Mariam was cremated, but because of some flaw in its sealing, the FSL returned it with an endorsement to send it afresh with a fresh sealing. This was in fact not carried out despite direction of the learned Trial Court. The seizure list witnesses were also not examined by the prosecution. As such, the entire case of the prosecution which hinged on circumstantial evidence that the deceased had been killed by administering poison by the accused persons, have not been established through conclusive evidence.

16. We may at this stage, rely upon the opinion of the Apex Court on the rule of circumstantial evidence, as laid down in the case of Sharad Birdhichand Sarda versus State of Maharashtra reported in (1984) 4 SCC 116 and consistently followed in the subsequent judgment such as, in the case of Gagan Kanojia and another versus State of Punjab [(2006) 13 SCC 516] and Kuna @ Sanjaya Behera versus State of Odisha [(2018) 1 SCC 296]. The aforesaid principles has been also followed in a recent judgment of the Apex Court dated 12.02.2019 in

the case of Chandru @ Chandrasekhran versus State Rep. by Deputy Superintendent of Police CB CID and another passed in Criminal Appeal 1193/2011 [(2019) SCC Online SC 176], particularly para 9 to 11, which reads as under:

"9. Admittedly, there are no eye-witnesses to the case and this is a case based on circumstantial evidence. The law with regard to appreciation of circumstantial evidence has been clearly enunciated in the case of Hanumant v. State of Madhya Pradesh¹, wherein this Court held as follows:

"10.....It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

10. This law has been consistently followed and has been repeated in catena of authorities. It is not necessary to refer to all the authorities. However, we may refer to Sir Alfred Wills book Wills on Circumstantial Evidence (Chapter VI), in which he has laid down the following Rules specially to be observed in the case of circumstantial evidence:

"RULE 1. - The facts alleged as the basis of any legal inference must be clearly proved, and beyond reasonable doubt connected with the factum probandum.....

RULE 2. - The burden of proof is always on the party who asserts the existence of any fact which infers legal accountability.....

RULE 3. - In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits.....

RULE 4. - In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.....

RULE 5. - If there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

11. The law can be summarised in the following terms:

1. The circumstances relied upon by the prosecution which lead to an inference to the guilt of the accused must be proved beyond doubt;

2. The circumstances should unerringly point towards the guilt of the accused;

3. The circumstances should be linked together in such a manner that the cumulative effect of the chain formed by joining the links is so complete that it leads to only one conclusion i.e the guilt of the accused;

4. That there should be no probability of the crime having been committed by a person other than the accused."

17. The golden rule of Panchasheel laying down the test for circumstantial evidence, have not been adhered to by the prosecution and considered by the learned Trial Court. On the basis of the aforesaid discussion and the reasons recorded, this court in appeal is persuaded to form an opinion that the charge of murder under section 302 and also under sections 328 and 201 of the Indian Penal Code were not proved beyond shadow of all reasonable doubt to uphold the conviction of these appellants. The appellants are entitled to benefit of doubt. As such, the impugned judgment of conviction and order of sentence passed by the Learned District & Additional Sessions Judge-III cum Special Judge (Vigilance Cases), Dumka in Sessions Trial No. 110 of 2012 / Sessions Trial No. 63 of 2013, is set aside. Appellants Khepa Murmu @ Hembrom and Rabilal Murmu @ Hembrom, who are in custody, are directed to be released forthwith, if not wanted in any other case. The appellant Surili Marandi is on bail, she is discharged of the liability of the bail bonds. Both the appeals are allowed. Let the Lower Court Records be sent to the Court concerned along with the copy of this judgment.

18. Before parting, we appreciate the valuable assistance rendered by the learned Amicus Curiae Mr. Shresth Gautam in Cr. (Jail) Appeal (DB) No. 969/2015 and Mrs. Priya Shrestha in Cr. (Jail) Appeal (DB) No. 970/2015 during hearing of this case. Their admissible legal remuneration should be borne by the High Court Legal Services Committee on production of a certified copy of the judgment along with an application. The Secretary, HCLSC shall do the needful within a time frame.