
(2015) 01 JH CK 0014

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 744 of 2002

Konda Kharia

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 2 JLJR 58 : (2015) 2 AJR 208

Hon'ble Judges : Virender Singh, C.J.;Aparesh Kumar Singh, J.

Bench : Division Bench

Advocate : A.K. Chaturvedi, for the Appellant; S.P. Sinha, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, C.J.—Two persons, namely, Budhram Kharia and his father-Konda Kharia, the appellants herein (for short to be referred as accused) faced charge of Section 302/34 IPC for allegedly committing murder of one Etwa Kharia, husband of PW-8-Ratni Devi on 8th November, 1995 at about 4.00 p.m. in village Ambaatoli, falling within the jurisdiction Palkot. Both stand convicted for the said charge vide impugned judgment of conviction dated 27.9.2002 and sentenced to undergo rigorous imprisonment for life.

2. Budhram Kharia, the co-convict to the present accused, filed his separate appeal being Cr. Appeal(DB) No. 815 of 2000, which stands disposed of by the Coordinate Bench of this Court, vide order dated 20th February, 2014, as by that time Budhram Kharia had already served his entire substantive sentence and released from jail as indicated in the said order. The present accused however was on bail during the trial and after his conviction also his substantive sentence was suspended. However, when on one date, when the appeal was to be taken up for its consideration, he absented himself resulted into forfeiture of his bail bonds. He subsequently surrendered, as such in custody for the last more than

five years.

3. Prosecution swung into action on the statement (Fardbeyan) of PW-Ratni Devi, wife of the deceased, who within three hours of the occurrence lodged the report with the concerned police alleging that she along with her husband- Etwā Kharia(deceased)were going to the house of their daughter at Badhia Bandh Toli and when they reached near the house of Maku Kharia, she stopped for urinating and her husband went ahead and reached near a mango tree situated in the fields of Madho Sao. It is then alleged that after urinating, she was also going towards that side and saw that Budhram Kharia- co-accused came running and assaulted her husband with a Tangi (sharp edged cutting weapon) which he was having in his hand. He gave injuries on the neck of the deceased, who fell down on the ground. It is then alleged that before she could reach near her husband, another Tangi blow was given by Budhram Kharia on the neck of her husband and thereafter he fled away. She raised noise(in common parlance Hulla) which attracted Sanjo Kharian(wife of real younger brother of the deceased) and Poonam @ Birsi Kumari, who were incidentally working near the house and reached the spot. Etwā Kharia died at the spot. Motive projected for this occurrence is land dispute between the deceased and accused- Budhram Kharia.

4. Police recorded formal FIR No. 63 of 1995 initially under Section 302 IPC. However, subsequently during the investigation of the present case, statement of certain other witnesses, who turned out to be eye witness of the occurrence, were also recorded under Section 161 Cr.P.C. and in their respective statements, they alleged that the present accused had also caused one injury above the neck (near the ear) of the deceased with a Tangi/Balua, which he was having in his hand. This is how the investigation culminated into filing of Challan against the present accused and his son for the offence punishable under Section 302/34 IPC, for which they were charged and faced trial.

5. The prosecution, in order to prove the charge, has examined the following witnesses :

"PW-1: Sanjo Kharian

PW-2: Birsi Kumari

PW-3: Ropni Devi

PW-4: Maku Kharia

PW-5: Jatu Kharia

PW-6: Dilip Sahu

PW-7: Ratni Devi

PW-8: Dr. Anup Kumar Gupta; and

PW-9: Chaturdhan Pradhan"

6. It is worth mentioning here that Investigating Officer of the present case has not stepped into witness box.

7. As one finds from the statement recorded of the accused under Section 313 Cr.P.C., it is a case of total denial. However, no witness was produced by the accused in defence.

8. The trial court believing the eye version account, ultimately convicted both the accused, as stated above.

9. Heard Mr. A.K. Chaturvedi, learned counsel for the accused and Mr. S.P. Sinha, learned Additional Public Prosecutor, representing the State. With the assistance rendered by the learned counsel for both the sides, gone through the material evidence also.

10. Mr. Chaturvedi vehemently contended that although there appears to be no dearth of so-called eye witness to the occurrence but the case of the prosecution primarily revolves around the statement of PW-Ratni Devi and PW-Sanjo Kharian. Learned counsel submitted that in the initial statement(Fardbeyan), which is the basis of recording of the first information report under Section 302 IPC, not only no specific overt act has been attributed to the present accused, he is not even named in the FIR and that is the reason that the case was initially registered by the police under Section 302 IPC only.

11. Strengthening his case, learned counsel submitted that it is only Budhram Kharia, who had allegedly caused all the injuries on the person of the deceased within the sight of the first informant, who after reaching the spot found her husband lying on the ground and then raised Hulla which attracted other persons. Learned counsel submitted that when this star witness stepped into the witness box to prove her initial statement, she came out with a new story, attributing one injury with a sharp edged weapon at the hands of the present accused. This attempt is made by the complainant's side with an ulterior motive to falsely implicate the present accused, who is the father of Budhram Kharia.

12. Learned counsel submitted that the aforesaid flaw by itself goes deep to the root of the prosecution case to doubt the prosecution case, so far as involvement of the present accused is concerned, and would be enough to extend benefit of doubt to him.

13. Learned counsel then submitted that not only that even Sanjo Kharian, the other eye witness of the occurrence, does not appear to be a true witness to the occurrence as she had reached the spot after the deceased had fallen down on the ground and Ratni Devi raised Hulla. The other witnesses who have been produced by the prosecution otherwise have stated on oath that they reached the spot after the occurrence was over. He submitted that even PW-Ratni Devi has also mentioned this fact in her initial statement. Learned counsel thus submitted that, but for the evidence of Ratni Devi and Sanjo Kharian, perhaps the other prosecution evidence available on record does not prove the

prosecution case qua the accused in any manner.

14. Mr. Chaturvedi submitted that another material flaw, which is also staring at the prosecution is non examination of the Investigating Officer. He is one who had prepared the rough site plan of the place of occurrence. He stated that in the rough site plan, the point where the other witnesses, especially Sanjo Kharian who is projected as eye witness to the occurrence, is not indicated. Had the Investigating Officer been produced by the prosecution, this aspect could be made clear from his statement. Therefore, non examination of the Investigating Officer has also turned out to be fatal to the prosecution.

15. On the strength of the aforesaid submissions, learned counsel submitted that the prosecution has not been able to prove its case beyond any shadow of reasonable doubt against the present accused, at least, therefore he deserves acquittal for the charge.

16. Learned Additional Public Prosecutor while supporting the impugned judgment of conviction/sentence submitted that the case of the prosecution is proved to the hilt as there appears to be no reason to disbelieve PW-Ratni Devi and PW-Sanjo Kharian, eye witnesses to the occurrence. He contended that so far as Ratni Devi, the wife of the deceased is concerned, her presence along with her husband cannot be doubted who within three hours of the occurrence only lodged the report with the police. Learned counsel however fairly admitted that the name of the present accused is not reflected in the first information report and has been attributed a specific part of the injury causing to the deceased on the statement of the other witnesses, especially Sanjo Kharian, who stepped into the witness box, supporting her earlier statement recorded under Section 161 Cr.P.C. during investigation. Learned State counsel however submitted that the name of Sanjo Kharian is reflected in the initial stage, may be she reached the spot within a very short period after hearing Hulla, as stated by Ratni Devi. He thus prays for dismissal of the instant appeal.

17. Having heard learned counsel for both the sides and rescanning the entire prosecution case in its right perspective, we are of the considered view that prosecution has not been able to prove its case beyond any shadow of reasonable doubt against the present accused. The detail reasons for arriving at that conclusion are as under.

18. Admittedly, name of the accused does not figure in the initial statement(Fardbeyan), which is the basis for recording of first information report with the police. It is for this reason that the case was initially registered under Section 302 IPC only and not under Section 302/34 IPC. It appears to us that the prosecution agency in an attempt to knit a net wider brought the present accused into picture by recording the statement of certain other witnesses projecting them to be present at the place of occurrence, including PW-Sanjo Kharian, wife of Maku Kharia(real younger brother of the deceased). This is not uncommon.

19. Record reveals that when Ratni Devi stepped into the witness box, she was confronted from her previous statement vis-?-vis the involvement of the present accused, in which she stated that she had disclosed to the police in her statement that the accused who was armed with sharp edged cutting weapon has also caused an injury above the neck (near the ear) of the deceased. This is a very very vital improvement, which altogether changes the entire complexion of the case, so far as involvement of the present accused is concerned. No leverage can be given to the prosecution with regard to this vital weakness at least. Even otherwise, this aspect is very clear from the fact as the first information report is recorded under Section 302 IPC only and not with the aid of Section 34 IPC.

20. No doubt, the prosecution agency in order to overcome the aforesaid weakness and to involve the present accused made an attempt to bring forward other witnesses, including PW-Sanjo Kharian from the family of the deceased only, but except for Sanjo Kharian, the other witnesses when stepped into the witness box stated that they had reached the spot after the occurrence was over. They do not turn out to be eye witness to the occurrence at all. Whether, in this factual backdrop, the evidence of PW-Sanjo Kharian is worth credence or not, is an important aspect. Admittedly, she is not shown to be an eye witness to the occurrence as one finds from the Fardbeyan of PW-Ratni Devi. She reached the spot after hearing Hulla. We could not find from the evidence available on record the distance between the house of Maku Kharia and that of the place of occurrence. Rough site plan prepared by the Investigating Officer is also not proved on file. Otherwise also, this fact is not clear from the statement of any prosecution witness. In this eventuality, possibility of introducing Sanjo Kharian as a complete eye witness at a subsequent stage taking the benefit of her name in the initial statement cannot be ruled out. Therefore, it would not be safe to give any credence to the statement of PW-Sanjo Kharian as an eye witness to the occurrence being doubtful on account of aforesaid flaws.

21. Learned State counsel has fairly admitted that, but for the evidence of PW-Ratni Devi and PW-Sanjo Kharian, the prosecution, perhaps cannot bank upon the evidence of any other witness. We are also disbelieving the statement of these so-called star witness, so far as involvement of the present accused is concerned. We may state here that cautiously we have not commented upon the evidence of these witnesses, so far as involvement of Budhram Kharia, the son of the accused, is concerned, who stands convicted for the charge of Section 302 IPC and his separate appeal (Cr. Appeal [DB] No. 815 of 2000) also being disposed of by this Court vide order dated 20th February, 2010, primarily on the ground of completion of substantive sentence in the jail.

22. After churning the entire prosecution case in its right perspective, in our considered view, the prosecution has miserably failed to prove its case against the present accused beyond any shadow of reasonable doubt. We, thus, while extending benefit of doubt to him, disturb the conviction and sentence as

recorded by the learned trial court vide its impugned judgment.

23. Resultantly, the appeal on hand is allowed, as prayed for. Appellant- Konda Kharia son of late Kulu Kharia, resident of Ambaatoli, PS-Palkot, District-Gumla is acquitted of the charge. Since, he is in custody, he shall be released forthwith, if not required in any other case(s).

24. The release order in this regard shall be sent forthwith to the concerned authority(s).

25. The Registry to notify the outcome of the present appeal to the learned trial court also without any delay, for its compliance.