

(2009) 09 JH CK 0070

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 352 of 1999 (R)

Maresh Munda

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 09 JH CK 0070

Hon'ble Judges : Rakesh Ranjan Prasad, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : J. Dubey, for the Appellant; Tapas Roy, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present Criminal Appeal has been preferred against the judgment and order of conviction and sentence both dated 15th September, 1999, passed by the learned 1st Additional Judicial Commissioner, Ranchi, in Sessions Trial No. 647 of 1996, whereby, the sole appellant-accused has been convicted for the offence u/s 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. If the prosecution case is unfolded, the facts of the case are as under:

It is the case of the prosecution that on 24th June, 1999 at about 10.00 p.m. when mother of a female child of one and half month, namely, Sita Devi (P.W. 4), was sitting at the house of her mother i.e. at her parental house and when she was having her baby in her lap, the appellant-accused, who is also residing in front of their house, came there at night hours, forcibly took away the female child of one and half month from the lap of Sita Devi (P.W. 4) and carried the child at his house and that too, at the back side of the house and caused murder of the baby. When the informant Sita Devi (P.W. 4) had rushed at his house to have her baby, the appellant-accused refused to give and thereafter, P.W. 4 went

to call her mother Malti devi (P.W. 2). Thereafter, P.W. 2 and P.W. 4 both went to have the baby back from the appellant-accused and they found that blood was coming out from the nose of the baby and she was dead. Immediately, they informed P.W. 6, who is husband of P.W. 4, and thereafter, First Information Report was registered on 25th June, 1996 at 9.30 a.m. After lodging the First Information Report, investigation was carried out, statements of the witnesses were recorded and charge sheet was filed against the present appellant-accused. Thereafter, the case was committed to the court of Sessions, where it was numbered as Sessions Trial No. 647 of 1996 and after recording the evidence on record and after appreciating the same by the trial court, the present appellant-accused has been convicted for the offence u/s 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life, as stated hereinabove, for committing murder of the baby. Against this judgment and order of conviction and sentence, the present appeal has been preferred by the appellant-accused.

3. It is contended by the learned Counsel for the appellant-accused that there is no eye witness to the whole incident. The alleged P.W. 4 (Sita Devi) has also not seen the appellant-accused committing the murder of the baby. Moreover, there is no inimical terms or relationship between the informant and the appellant-accused. It is also contended by the learned Counsel for the appellant-accused that the prosecution witnesses i.e. P.W. 2, P.W. 3 and P.W. 4 are relatives of the deceased and, thus, no reliance may be placed upon these prosecution witnesses. It is also submitted by the learned Counsel for the appellant-accused that looking to the evidence, given by Dr. Ram Swarup Shah (P.W 1), it appears that there is no corroboration to the deposition of P.W. 4. This aspect of the matter has not been properly appreciated by the trial court and hence, the impugned judgment and order of conviction and sentence, passed by the trial court, deserves to be quashed and set aside.

4. We have heard learned Counsel appearing on behalf of the State, who has submitted that it is the present appellant-accused who has forcibly taken away the baby aged about one and half month from the lap of P.W. 4. P.W. 4 (Sita Devi) is the mother of the deceased baby. Thereafter, the appellant-accused had taken away the baby at his house and that too at the back side of his house. When P.W. 4 immediately rushed there and demanded for the baby, the appellant-accused refused to give her, the baby. Blood was coming out from the nose of the baby and, therefore, P.W. 4 shouted and called P.W. 2, who is mother of P.W. 4, and both of them have seen the blood coming out from the nose of the baby. The appellant-accused was not giving the baby to P.W. 4 or P.W. 2 and therefore, they have to snatch away the baby and they found that the baby aged about one and half month was dead. It is also submitted by the learned Additional Public Prosecutor that looking to the deposition, given by P.W. 1, who is Dr. Ram Swarup Shah and who has carried out the post-mortem examination on 25th June, 1996 at about 14 hours, it appears that the doctor has stated that the death has taken place within 6 to 24 hours and the death may be caused by simply covering her nose with clothes. There were haemorrhage spots on both

the lungs. This evidence of P.W. 1 gives enough corroboration to the depositions, given by P.W. 4 and P.W. 2 and these depositions of the prosecution witnesses have been properly appreciated by the trial court and the appellant-accused has been rightly, therefore, punished for the offence of committing murder of the deceased and, this Court may not interfere with the impugned judgment and order of conviction and sentence, awarded by the trial court to the appellant-accused, in this Criminal Appeal.

5. Having heard learned Counsel for both the sides and looking to the evidences, collected during course of trial, it appears that the incident has taken place on 24th June, 1996 at about 10.00 p.m. Looking to the deposition, given by P.W. 4 (Sita Devi), who is mother of the deceased, it appears that she has stated clearly before the trial court that the appellant-accused came at the house of P.W. 4, where she was having her baby of one and half month in her lap. The appellant-accused forcibly took away the baby at his residence and that too, at the back side of his house. Thereafter, P.W. 4 went there and demanded back her baby, which was refused by the appellant-accused and, therefore, she shouted for help and thereupon, P.W. 2, mother of P.W. 4, rushed immediately at the house of the appellant-accused. There they saw that the blood was coming out from the nose of the baby and as the appellant-accused was not handing over the baby to them, they forcibly took her back from the appellant-accused and they saw that the baby had already expired. Thereafter, First Information Report was lodged on 25th June, 1996 at about 9.30 a.m., wherein, the appellant-accused was named. Looking to her cross-examination, it appears that nothing is coming out in favour of the appellant-accused. Looking to her deposition, which is corroborated by the depositions of other prosecution witnesses as well as by the medical evidence, in our opinion, P.W. 4 is a reliable and trustworthy witness.

6. It also appears from the deposition of P.W. 2. Malti Devi, who is mother of P.W. 4, that her daughter (P.W. 4) came at her house and called her, as the appellant-accused was not giving her the baby. Immediately, she rushed at the house of the appellant-accused, where she saw that blood was coming out from the nose of the baby and they have to take back the baby from the appellant-accused and immediately, they realized that the baby has been murdered by the appellant-accused. Looking to the deposition of P.W. 2, it further appears that she has narrated that there was throttling and this is how the murder was committed, during night hours, and at the time of filing of the First Information Report, P.W. 4 being a rustic witness, has narrated this method of committing murder of the deceased. But, looking to the deposition of P.W. 1, who is Dr. Ram Swarup Shah, it appears that he has clearly stated that the death has been caused by simply pressing her nose with clothes. Looking to the deposition of P.W. 2, it appears that her deposition is corroborated by the deposition of P.W. 4. Her deposition is also getting further corroboration by the deposition of P.W. 1. Thus, she is a natural witness and her presence at her own house is absolutely a natural one, at the night hours. Further, looking to her cross-examination, it appears that P.W. 2 stands by the examination-in-chief. Thus, P.W. 2 is a trustworthy and reliable

witness and she has narrated the whole incident without any exaggeration or without embroidery of untruth.

7. Looking to the deposition of Dr. Ram Swarup Shah (P.W. 1), who has carried out the post-mortem examination of the deceased on 25th June, 1996 at about 14 hours, it appears that he has clearly stated that the death has taken place within 6 to 24 hours. This time is tallying with the deposition of P.W. 4 and P.W. 2. It is also stated by this doctor (P.W. 1) that the death may be caused by simply covering her nose with clothes. Haemorrhage spots were found at both the lungs. Looking to this evidence, it appears that what has been stated by P.W. 4 and P.W. 2 is getting enough corroboration.

8. Thus, looking to the evidences of the prosecution witnesses, it appears that no error has been committed by the trial court in appreciating these evidences and coming to the conclusion that it is the appellant-accused who has committed the murder of the deceased. There are no omissions or contradictions in the depositions of P.W. 4 and P.W. 2, even though they are rustic witnesses and have given their depositions after several months from the date of incident. They have narrated the whole incident, in detail, without any exaggeration.

9. In view of the aforesaid evidences, the prosecution has proved, beyond all reasonable doubts, that the present appellant-accused has committed the murder of the deceased. Thus, the impugned judgment and order of conviction and sentence both dated 15th September, 1999, passed by the learned 1st Additional Judicial Commissioner, Ranchi, in Sessions Trial No. 647 of 1996, is hereby affirmed. There is no substance in this Criminal Appeal and, hence, the same is hereby dismissed.