
(2010) 04 JH CK 0069
In the Jharkhand High Court

Maklu @ Rani @ Dhundi Hansda

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 436

Citation : (2010) 04 JH CK 0069

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This appeal is directed against the judgment of conviction and order of sentence dated 28.3.2003 and 29.3.2003 respectively passed by Sessions Judge, Dumka in Sessions Case No. 177 of 2001, whereby the appellant convicted u/s 436 of the IPC and sentenced to undergo imprisonment for 10 years and pay fine of Rs. 5,000/-.

2. The case of prosecution in short, as per the written report of P.W. 6, is that the appellant was wife of Diwan Tudu, younger brother of informant's husband. It is stated that after sometime of marriage, appellant started living an adulterous life, which was protested by the informant and her family members including the Diwan Tudu. It is further stated that appellant was asked by the family members either to dissolve the marriage or mend herself, but she did not agree. Thereafter a panchayati took place, but the same was not attended by the appellant. It is further alleged that appellant threatened that she will put fire in their house. It is further alleged that 2 to 3 days before the occurrence, appellant kept bundle of straw in front of the house of Diwan Tudu and put fire on it, however, the fire was extinguished by the family members. It is further alleged that on 2.2.2001 at about 12 O'clock In the night, the informant woke up for urination and came to her Angan and saw that smoke and flame are coming out from a portion of her house, whereupon she raised alarm. It is further alleged that at that time she

saw that appellant was running away towards her house. It is further alleged that hearing hulla, villagers arrived. It is further stated that in the said fire paddy, other grains, currency note and utensils of informant's house had been burnt.

3. On the basis of aforesaid statement, police registered Sikaripara P.S. Case No. 9 of 2001 u/s 436 of the IPC and took up investigation. After completing investigation, police submitted charge sheet against the appellant u/s 436 of the IPC. It further appears that CJM, Dumka took cognizance of the offence and committed the case to the court of sessions.

4. Learned Sessions Judge, Dumka vide his order dated 5.7.2001 framed charge u/s 436 of the IPC and explained the same to the appellant to which she pleaded not guilty and claimed to be tried. Thereafter, prosecution examined altogether seven witnesses. Prosecution also proved Ext-1 Signature of P.W. 1 (Diwan Tudu) on the Talaknama, Ext-2 written report, Ext-3 formal FIR, Ext- 4 & 4/1- seizure lists.

5. After close of the case of prosecution, the appellant was examined u/s 313 of the Cr.P.C. in which her defence is of total denial. It appears that learned court below after considering the evidence available on record, convicted and sentenced the appellant as aforesaid, against that present appeal filed.

6. It is submitted by Sri Rajeeva Sharma, senior advocate, appearing for the appellant that in the instant case there is absolutely no eye witness to the occurrence. It is submitted that it is admitted by prosecution party that the relation of informant and her family members are strain with the appellant. It is further submitted that informant wants to to oust the appellant from her sasural and only with that view, the present case has been filed. It is further submitted that the informant and other prosecution witnesses admitted in their deposition that on hulla number of co-villagers arrived at the place of occurrence, but none had been produced in support of prosecution case. It is further submitted that all the witnesses are family members and interested in harassing the appellant. It is further submitted that the statement of informant is contradictory to her previous statement made in the FIR. She tried to develop the prosecution story by saying that she is an eye witness of the occurrence. Thus, her evidence cannot become sole basis of conviction.

7. On the other hand, learned Additional P.P. submits that the informant and other witnesses categorically stated that just after the occurrence the appellant was found running away towards her house, which shows that only the appellant and non else committed the present crime. Accordingly, it is submitted that there is no illegality in the impugned judgment of the court below.

8. Having heard the submission, I have gone through the record and carefully scrutinized the evidence available on record. P.W. 1 Diwan Tudu is the husband of appellant. He stated in his cross-examination at paragraph no 5 that he had not seen the occurrence from his own eyes and he came to know about the occurrence from the informant P.W. 6. Thus, he is hear say on the point of

occurrence. P.W. 2 Ashok Kumar Murmu is also hear say witness. He stated at paragraph No. 6 of his deposition that he is deposing in court on the basis of information received from informant. P.W. 3 Shanti Lata Tudu is sister-in-law of informant. She is also hear say witness on the point of occurrence. P.W. 4 Rashik Lal Murmu is the husband of P.W. 3. He in his examination- in - chief had stated that after hearing hulla he came out of his house and saw that a man is fleeing away after putting fire in the house of informant. However, during cross-examination he deposed that he saw appellant from back side while she was fleeing away. He further deposed that he guessed that the lady was appellant. Thus, his evidence on the point of identification is not consistent. P.W. 5 Gorain Chandra Tudu is another brother-in-law of informant. He also stated in his examination in chief that when he came out of his house, he found that appellant was fleeing away, but he has not stated so before the police during Investigation. Thus, it appears that he is making different statement at different stages. P.W. 6 Suhagini Murmu is the informant of this case. She deposed that appellant put fire on the roof of her house by lighting a match box and fled away. However, in the written report, she alleged that at the time of occurrence she woke up and came to her Angan for easing and saw smoke and flame in the roof of her house and then raised alarm. She further alleged in the written report that at that time appellant was running away towards her house. Thus, in the FIR P.W. 6 had not stated that the appellant put fire in her house. Under the said circumstance, I find that she made development in the prosecution therefore, her evidence is not wholly reliable and acceptable.

9. It is worth mentioning that almost all the witnesses admits that there is strain relation between informant and appellant. It further appears from the evidence available on record that while the appellant was in custody, her husband solemnized second marriage. Under the aforesaid background aforesaid discrepancy found in the evidence of prosecution witnesses become significant and it creates a doubt that the appellant was falsely implicated in the present case only with a view to oust her from sasural.

10. It has come In the evidence of P.W. 1, 3 and 4 that numbers of persons arrived at place of occurrence after hearing hulla. Some of them are residing in the neighbourhood of informant, but surprisingly none of them were examined in support of prosecution case, which also cast a serious doubt in the case of prosecution.

11. In view of the discussion made above, I find that there is material illegality and/or irregularities in the impugned judgment of conviction, therefore the same cannot be sustained.

12. In the result, this appeal succeeds and is allowed. The impugned judgment of conviction and order of sentence set aside. The appellant acquitted from the charge leveled against her. She is also discharged from the liability of bail bond furnished by her.