
(2019) 12 JH CK 0235

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 572 Of 2011

Makru Oraon

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302

Citation : (2019) 12 JH CK 0235

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Divison Bench

Advocate : S.K. Upadhyay, Arun Kr. Pandey

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J

1. The sole appellant has faced the trial on the charge under section 302 of the Indian Penal Code for committing murder of Mostt. Fudan Orain.

2. In Sessions Trial No.413 of 2009, the appellant has been convicted and sentenced to R.I for life under section 302 of the Indian Penal Code.

3. The informant of this case is son of Mostt. Fudan Orain, the deceased. He is not an eye-witness of the occurrence. Whatever he has stated in his

fardbeyan is based on the information given to him by his wife, namely, Suman Orain. In his fardbeyan, the informant has stated that in the afternoon

of 24.02.2009 he was sitting in the house of Ranka Oraon. At about 12.30 hrs., his wife came running and told him that Makru Oraon has strangulated

his mother to death. He came to his house with his wife where he has seen the dead body of his mother. He has stated that there was a land dispute

between his mother and the appellant.

4. During the trial, the prosecution has examined 7 witnesses; the informant is P.W.6 and his wife is P.W.2.

5. According to the prosecution, wife of the informant is the only eye witness. But, she does not say that on seeing the appellant assaulting her

mother-in-law she has raised hulla. P.W.3 is daughter of the deceased. She has stated that when the appellant caught her mother by her hair and

thrashed her on the ground she fled away and her sister-in-law, that is, P.W.2 ran to the house of Ranka Oraon. The testimony of P.W.3 creates

doubt on the claim of P.W.2 that she has seen the occurrence. The informant has not disclosed the name of the persons who were present in the

house of Ranka Oraon and no one in the vicinity has seen the appellant running away from the house of the informant about the time of occurrence.

His wife has admitted in her cross-examination that her mother-in-law used to take drinks though on the day of the occurrence she was not drunk.

6. Dr. Sanjeev Kumar, who has conducted the post-mortem examination on 25.02.2009 at 10.35 a.m, has found diffused contusion of soft tissue of

neck on the upper part of Mostt. Fudan Orain. He has also found fracture in the second cervical vertebra and blood clot in the surrounding tissues.

7. The manner of occurrence as described by the informant in the fardbeyan is not corroborated by the findings of the doctor, who has conducted the

post-mortem examination. The informant as well as his wife has stated that the appellant twisted the neck of Mostt. Fudan Orain due to which she has

died, but at the same time the informant has stated that his wife informed him that the appellant has strangled his mother.

8. According to the prosecution, the incident has happened at around 12.30 p.m on 24.02.2009 and fardbeyan of the informant was recorded at 4.30

p.m on the same day. However, the inquest report has been prepared at 3.30 p.m on 24.02.2009. The discrepancy in the time of the First Information

Report and the inquest report has not been explained by the prosecution. Surprisingly, the inquest report gives details of the First Information Report.

9. In a case like the present one in which there is serious doubt on the manner of occurrence as described by the informant and his wife, particularly

when the doctor says that no evidence of any mechanical injury was detected by him and no sign of strangulation found by the doctor on the person of

Mostt. Fudan Orain, the discrepancy in the inquest report and the First Information Report cannot be brushed aside lightly. It goes to root of the

prosecution's case that the appellant has committed murder of Mostt. Fudan Orain.

10. The main investigating officer of this case was not examined during the trial.

11. The learned APP has contended that non-examination of the investigating officer would not cause prejudice to the appellant.

12. The discrepancy in the inquest report and the First Information Report could have been explained by the investigating officer who has prepared

these documents, but not by any other officer. The second investigating officer who has been examined during the trial as P.W.7 has stated in the

court that he has not recorded statement of any witness nor has he inspected the place of occurrence.

13. On such facts, we find that serious prejudice has been caused to the appellant during the trial.

14. The prosecution has failed to prove the place of occurrence, the time of occurrence and the manner of occurrence.

15. The above being the factual scenario, we find that the prosecution has failed to establish charge under section 302 of the Indian Penal Code

against the appellant and, therefore, his conviction for the said offence is set-aside.

16. The appellant is acquitted of the charges framed against him in Sessions Trial No. 413 of 2009.

17. The appellant, namely, Makru Oraon, who is in jail, shall be released forthwith, if not wanted in connection with any other cases.

18. In the result, Criminal Appeal (DB) No. 572 of 2011 is allowed. I.A. No.5254 of 2019 stands disposed of.

19. Let a copy of the judgment be transmitted to the court concerned through 'FAX'.

20. Let the lower-court records be transmitted to the court concerned, forthwith.