
(2003) 01 JH CK 0003
In the Jharkhand High Court
Case No : Criminal Appeal No. 133 of 1991

Manohar @ Pagla Sawayan and Another	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2003) 1 JCR 548

Hon'ble Judges : Vinod Kumar Gupta, J; Lakshman Uraon, J

Bench : Division Bench

Advocate : R.C. Khatri and S.K. Sinha, for the Appellant; Shiv Kumar Sharma, APP, for the Respondent

Final Decision : Allowed

Judgement

Vishnudeo Narayan, J. 1. This appeal has been preferred by the appellants named above against the judgment dated 29.5.1991 passed in Sessions Trial No. 69 of 1988 by Shri J iwan Tigga, 2nd Additional Sessions Judge, Singhbhum at Chaibasa whereby and whereunder they were found guilty for the offence under Sections 302 and 201 read with Section 34 of the Indian Penal Code and they were convicted and sentenced to undergo R.I. for life for the offence u/s 302/34 of the Indian Penal Code and R.I. for seven years for the offence u/s 201/34 of the Indian Penal Code. However, both the sentences were ordered to run concurrently.

2. The prosecution case has arisen on the basis of the written report (Ext. 8) of PW 8, Kishore Sawayan, Mukhiya of village-Gundipua lodged before the Muffasil P.S., District Singhbhum on 28.8.1987 on the recovery of an unknown naked dead body of a woman in the paddy field full of water in village-Gundipua and the case was Instituted against unknown accused persons on 28.8.1987 at 6.00 hours which was received in the Court of Chief Judicial Magistrate, Singhbhum on 29.8.1987. The time of the alleged occurrence, however, has not been disclosed in the written report, (Ext. 8) aforesaid.

3. The prosecution case, in brief, is that there was an uproar in the village that there is a dead body of a woman in the paddy field full of water of Dogra Sawayan two kilometers north of village. Gundipua and on this information PW 8, the informant, in the company of Dokuma Chada Sawayan went there and found the naked dead body of an unknown woman, aged about 30 years in the paddy field full of water of Dogra Sawayan and there were a large number of injuries on the dead body of the deceased woman. It is further alleged that it appears that she has been done to death by some sharp cutting weapon by some unknown persons and her dead body has been thrown in the said paddy field. It is also alleged that the dead body has not been identified.

4. In course of investigation the dead body of the deceased was identified as Sohbari Kui @ Kundri Kui, wife of PW 1, Bhukari Sawayan resident of village - Gilpitola Kiriwada on the basis of her photographs and the complicity of both the appellants also transpired and on the confessional statement made by the appellants and as pointed by them the petticoat of the deceased was recovered in presence of the witnesses from a bush in village-Gilpitola Kirigote where her murder has been committed.

5. The appellants have pleaded not guilty to the charge levelled against them and they claim themselves to be innocent and to have committed no offence and they have been falsely implicated in this case.

6. It is pertinent to mention at the very out set that there is no ocular witness of the occurrence in question. However, the prosecution has examined ten witnesses in support of the prosecution case. PW 8, Kishore Sawayan, Mukhiya of village, Gundipua, is the informant of this case. PW 9, Marigal Singh Sawayan, resident of village Gundipua is the person who was informed PW 8, the informant regarding the existence of the dead body of a woman in the paddy field full of water of Dogro Sawayan. PW 2, Durga Charan Sawayan and PW 3, Chiran Satari Sawayan are the witnesses of the seizure regarding light pink brownish petticoat said to be of the deceased woman of this case alleged to have been recovered from a bush west of Hansabari tank in village Gitilpi Kiragot in pursuance of the confessional statement made by the appellants and Ext. 4 is the production-cum-seizure list in respect thereof but they have turned hostile. PW 4, Joti Sawayan and PW 6, Kailash Purty have also turned hostile and does not at all support the prosecution case. PW 1 is the husband of the deceased woman, namely, Sohbari Kui @ Kundri Kui of this case. PW 10, is Dr. Ranbir Singh, who has conducted the post-mortem examination on the dead body of the deceased and the post-mortem report as per his pen is Ext. 9. PW 7, N.S. Tirky is the I.O. of this case and he has proved the FIR (Ext. 3), Inquest report (Ext. 4), photographs of the deceased woman (Ext. 5) and the seizure-cum-production list (Ext. 6). The signatures on the inquest report of PW 8 and PW 9 are Ext. 4 series. No oral and documentary evidence has been adduced on behalf of the defence.

7. In view of oral and documentary evidence on the record the learned court below has found both the appellants guilty for the offence punishable under

Sections 302/34 and 201/34 of the Indian Penal Code and they were convicted and sentenced as stated above.

8. Assailing the impugned judgment it has been submitted by the learned counsel for the appellants that there is no iota of legal evidence on the record even to connect or implicate the appellants with the occurrence in question regarding the commission of the murder of Sohbari Kui @ Kundri Kui, the wife of PW 1 and there is, also no ocular witness of the occurrence in question and the circumstances emanating on the record as per the evidence of the prosecution witnesses do not at all unerringly and unmistakably lead to the hypothesis of the guilt of the appellants. Further it has been submitted that the production-cum-seizure list (Ext. 6) regarding light pink brownish petticoat alleged to have been recovered in pursuance of the confessional statement of the appellants made before the I.O. does not in any way connect the appellants with the commission of the murder of the deceased for the reasons that there is total absence of evidence on the record to establish the fact that the said petticoat belonged to the deceased and she was wearing the same at the time of the occurrence and the said petticoat was also never put on Test Parade Identification in course of investigation to be identified by PW 1 belonging to his deceased wife. Furthermore, PW 2 and 3 in their evidence on oath have not supported the prosecution case about the recovery of the said petticoat in their presence in the manner as deposed by PW 7, the I.O. and viewed thus, the recovery of the petticoat does not point in the facts and circumstances of the case unerringly to the guilt of the appellants in committing the murder of the deceased. It has further been contended that it will transpire from the evidence of PW 1 that he has seen the dead body of the deceased on the alleged date of occurrence in the vicinity of Hansabari tank on hectic search where she had gone to take bath and he also found bleeding injuries on the dead body of the deceased and thereafter he returned home and he again went to the said place in the company of several persons of the village but he did not find the dead body of deceased there but PW 1 for the reasons best known to him did not inform the police regarding the murder of his deceased wife. It has also been contended that on the following day of the murder of his wife, PW 1 came to know from one Satari Sawayan (PW 3) that both the appellants have committed the murder of the deceased and an information was also given to Munda Charan Sawayan by Satari Sawayan on that very day but it is surprising as to why the police was not even informed regarding the occurrence by PW 1, the husband of the deceased which casts a cloud of suspicion to the very credibility of the prosecution case. Lastly, it has also been submitted that after three days, the informant has identified the dead body of the deceased by her photographs (Ext. 5) at the police station and there is total absence of any cogent explanation on the record as to why the PW 1, the husband of the deceased did not inform the police regarding the occurrence in question and the prosecution case appears to be replete with inherent improbabilities and the false implication of the appellants in the facts and circumstances of the case cannot be totally ruled out and for the reasons

aforesaid, the impugned judgment is unsustainable.

9. The learned APP has submitted that the dead body of the deceased was found in the paddy field full of water two kilometers north of village Gundipua and PW 1, has identified the dead body being of his wife Sohbari Kui at the police station from her photograph and there were a large number of injuries on the dead body of the deceased and in course of investigation the complicity of both the appellants in the commission of the murder of the deceased had transpired and both the appellants had made confession before the I.O. regarding the fact that they have committed the murder of the deceased and they have thrown the dead body of the deceased in village Gundipua in the paddy field and they have also concealed her petticoat in the bush to screen themselves from legal punishment and to destroy evidence and the said petticoat was recovered as per Ext. 6 from the bush as pointed out by the appellants in presence of witnesses and the recovery of petticoat of the deceased is an unimpeachable circumstance to show that both the appellants have committed the murder of the deceased. It has also been submitted that the learned court below has rightly believed the said circumstances for coming to the finding of the guilt of the appellants and in this view of the matter there is no illegality in the impugned judgment.

10. It is pertinent to mention at the very outset that Sohbari Kui @ Kundri Kui, the wife of PW 1, Bhikari Sawayan was the resident of village Gitilpi Tola Kiriwada and she had gone to take her bath in Hansabari tank which is in village Gitilpi Tola Kiragot at about 1 O'clock in the day which was Wednesday. PW 1 made hectic search of the deceased when she did not return home after bath and thereafter he found her dead body having several injuries on her person at Gitilpi Tola Kiragot which is two kilometers south west to village Gundipua and PW 1 came back from that place to his village and again went there in the company of several co-villagers but he did not find the dead body there. The naked body of an unknown woman was found in the paddy field full of water of Dogro Sawayan two kilometers north of village Gundipua and on the basis of written report (Ext. 8) of PW 8, the informant, the case was instituted against unknown accused persons on 28.8.1987 as per Ext. 7, PW 7, the I.O. made inquest report of the dead body in the said paddy field and the dead body was photographed when the identity of the deceased woman could not be established. In course of investigation, PW 1 claimed to have identified of the said dead body as his wife by Ext. 5 shown to him at the police station. Both the appellants were apprehended by PW 7, the I.O. and they made confessional statement that they have committed the murder of the deceased at Gitilpi Tola Kiragot which is two kilometers south west of Gundipua and at their instance one petticoat as stated above has been recovered by the I.O. from the bush west of Hansabari tank as per Ext. 6.

11. PW 10, Dr. Ranbir Singh has deposed to have conducted the post-mortem examination on the dead body of the deceased and he has found the following ante-mortem injuries :--

- (i) A sharp cut on medial aspect of right palm 2" x 1/2" x 1".
- (if) A sharp cut on dorsum of left index finger 1" x 1/2" x 1/2".
- (iii) A sharp cut on lateral aspect of left supraorbital margin 1" x 1/2" x 2" with the fracture of left orbital bone.
- (iv) A sharp cut on left cheek below the molar prominence 4" x 1-1/2" x 2".
- (v) A sharp cut at the angle of mouth on left side 3" x 1/2" x 2-1/2".
- (vi) A sharp cut just below the lower lip on right side 2" x 1/2" x 1-1/2" and there was fracture of mandible.
- (vii) A sharp cut below the right ear 1/2" x 1/2" x 1".
- (viii) A sharp cut on the middle of left side of neck 1" x 1/2" x 1/2".
- (ix) A sharp cut on left side of chest in 4th anticostal space in mid caricular line 1" x 1-1/2" x cavity deep.
- (x) A sharp cut on the upper part of abdomen in the mid line 1" x 1-1/2" x cavity deep.
- (xi) A sharp cut on middle of abdomen on left side 1" x 2-1/2" x cavity deep, intestine was coming out from it.
- (xii) A sharp cut on the abdomen below the umbilicus in the middle line 1/2" x 1/2" x 1/2".
- (xiii) A sharp cut at right anterior superior iliac spiae 1-1/2" x 1" x 1/2".
- (xiv) A sharp cut on the middle side of left thigh 1" x 1/4".

The medical witness has further deposed to have found on dissection that an arrow type sharp pointed weapon was present in injury No. 11 and it was piercing the intestine and there was three and half ounce fluid in the stomach of the deceased having the smell of Haria and all the injuries were caused by sharp cutting weapon such as knife, Khanti and arrow. According to the medical witness the time elapsed since death is 48.00 hours.

12. PW 1 has deposed that deceased had gone to take bath in Hansabari tank on Wednesday at 1 O'clock in the day and when she did not return after bath he made hectic search of her and he found her dead body having bleeding injury thereon near the said tank. He has further deposed that he returned to his house and again went there in the company of his co-villagers, namely, Kirsan Sawayan, Safari Sawayan. Kandey and others but he did not find her dead body there and he returned to his house. He has further deposed that on the second day when he was making hectic search of her dead body, Satari Sawayan informed him that both the appellants have committed the murder of his wife and the said Satari Sawayan also gave an information about the murder of the wife of the informant to Mudan Charan Sawayan. He has also deposed that he

had three children and he did not go to the police station to report about the occurrence leaving his children. He has further deposed that he made further hectic search for two days for the dead body of his wife and three days thereafter he saw the photograph of the deceased wife in the police station and identified the said photograph to be of his wife. In para 9 of his evidence he has deposed that there are several houses in between the said tank and his house. His evidence is further to the effect that he had gone to the tank after one hour of his wife going to take bath and when he reached near the tank he found several persons cultivating their land. In para 9 he has deposed that he has found the injuries on the dead body of his wife having been caused by stones. His evidences is further to the effect that the place was quite open from all sides where he had seen the dead body and it was quite visible from far away. The evidence of PW 8 and 9 read with the evidence of PW 1 do not connect the appellant with the commission of the murder of the deceased. PW 7, the I.O. has deposed that both the appellants on their arrest have confessed their guilt in committing the murder of the deceased before him in presence of PW 2, Durga Charan Sawayan, PW 1, Bhikari Sawayan and others and the appellants came near the bush west of the said tank in their presence and produced the said petticoat to the I.O. stating that after committing the murder he had removed the said petticoat from her body and concealed it in the bush so that the dead body may not be identified and a production-cum-seizure list was prepared. The confessional statement was made before the police by the appellants has no evidenciary in value except so far it relates to the recovery of the said petticoat PW 2 and 3 are the witnesses of the production-cum-seizure list of the said petticoat. They have turned hostile but had admitted their signatures on the said production-cum-seizure list (Ext. 6) but in their cross-examination they have specifically deposed that they have put their signatures on a blank paper at the instance of the I.O. out of fear. Therefore, the production-cum-seizure list in view of the evidence aforesaid of PW 2 and 3 is not free from blemish. It is equally relevant to mention here that PW 1 in his evidence on oath does not whisper regarding recovery of petticoat in pursuance of the confessional statement of the appellants from the bush in his presence and thereby his evidence contradicts the testimony of PW 7, the I.O. in material particulars. There is no cogent evidence also on the record to show that the said petticoat is of the deceased. It has also not been put on T.I.P. for the reasons best known to the I.O. There is no iota of evidence on the record regarding the motive for the commission of the murder of the deceased by the appellants. In the facts and circumstances of the case, it cannot be said that the said petticoat belongs to the deceased in absence of any cogent legal evidence on the record. Therefore, the only circumstance i.e. the recovery of petticoat does not connect the appellants with the commission of the murder of the deceased and at the same time it does not unerringly and unmistakably lead to the hypothesis of the guilt of the appellants. For the purpose of establishing the truth of the confessional statement it has to be viewed and examined and compared with the rest of the prosecution evidence and the probability of the case. It is no appellant but considered as a whole the

prosecution story may be true but between may be true and must be true there is inevitably a long distance to travel and the whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before the appellant can be convicted. Furthermore, there is also no legal evidence of any independent witness to corroborate the fact that the said petticoat belongs to the deceased and its recovery has been made in pursuance of the confessional statement made by the appellants in presence of the witnesses. It is well settled that when a case rest on circumstantial evidence, such evidence must satisfy the circumstance from which an inference of guilt is sought to be drawn must be cogently and firmly established and the circumstances must be of a definite tendency unerringly pointing towards the guilt of the appellant and all the circumstances taken cumulatively should form a chain so complete that there is no scope from the conclusion that within all human probability the crime has been committed by the appellant and non-else. It would not be out of place to mention here that Satari Sawayan (PW 8) who has said to have given information to PW 1 regarding the murder of his wife by the appellants in his evidence on oath does not at all whisper in support thereof. And last but not the least, PW 1, the husband of the deceased seeing the dead body soon after the occurrence west of the said tank and getting information regarding the appellants as her assailant on the following day from Satari Sawayan aforesaid did not inform the police and this aspect of the matter equally casts a cloud of suspicion to the very credibility of the evidence of PW 1.

13. Therefore, in the facts and circumstances of this case, the recovery of petticoat as per Ext. 6 is replete with inherent legal infirmities. Furthermore, the circumstances appearing as per evidence on the record in the testimony of PW 7, the I.O. does not conclusively lead to the hypothesis of the guilt of the appellant. The learned court below did not consider.

14. There is merit in this appeal and it succeeds. The appeal is hereby allowed. The impugned judgment is hereby set aside. The appellants are not found guilty of the charges leveled against them and they are, accordingly, acquitted and they also discharged from the liability of the bail bonds.