
(2014) 12 JH CK 0004

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1575 of 2004

Manoj Soren and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2015) 2 AJR 102 : (2015) 1 JLJR 680

Hon'ble Judges : Virender Singh, C.J.;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Jitendra S. Singh, Advocates for the Appellant; Pankaj Kumar, A.P.P, Advocates for the Respondent

Judgement

Virender Singh, C.J.

1. Vide our short operative order dated 17th December, 2014, the instant appeal stands allowed disturbing the impugned judgment of conviction/sentence recorded by the trial court whereby all the three accused-appellants stand acquitted of the charges of section 302/201 I.P.C. The detailed judgment, however, follows as under.

2. Manoj Soren son of Motka Soren @ Sarkar Soren (for short Manoj), Sanatan Karmkar @ Biggi Maraiya @ Sanatan Maraiya (for short Sanatan) and Parmeshwar Tudu @ Boka Tudu (for short Boka Tudu), the appellants herein, alter being convicted for the charge of section 302/201 I.P.C. vide (the impugned judgment of 1st Additional Sessions Judge, Dumka dated 31st July, 2004, have preferred the instant appeal. The sentence slapped upon them is rigorous imprisonment for life and to pay a fine of Rs. 5000/-, in default thereof, further rigorous imprisonment for a period of six months for the offence punishable under section 302 I.P.C. However, they have not been separately sentenced for the offence punishable under section 201 I.P.C.

3. The case of the prosecution originates from the F.I.R No. 59/2001 registered in Police Station Kathikund. The deceased happens to be one Rambaran Prasad, Inspector of the said Police Station. The occurrence is of 27th December, 2001 and the F.I.R was lodged on 28th December, 2001. It was initially registered against unknown persons. The prosecution case thus hinges upon circumstantial evidence.

4. As per fardbeyan (statement recorded in the police station) of Umesh Kachhap, O/C of Police Station Gopikandar, it is alleged that on 27.12.2001, Police Inspector, Rambaran Prasad (deceased) had left his quarters for supervising the cases etc. but did not return till evening. He had gone on his Rajdoot Motorcycle number BHB - 3086. Umesh Kachhap took the police force with him and proceeded in search of Inspector Rambaran Prasad and when they had gone 4 kms away the Police Station Gopikandar, on the left side of the road, in the bush, the motor cycle of the Police Inspector was found lying in hilly area surrounded by forest. Police Station Kathikund was duly informed about the recovery of the motor cycle and thereafter vigorous search started for tracing Inspector Rambaran Prasad. In the afternoon, the police noticed the dead body of the Police Inspector Rambaran Prasad lying under the bridge known as Gumra Pul. There was injury on the forehead of the deceased on the left side. From it, the police formed an opinion that certain criminals were responsible for causing the death of the Police Inspector whose dead body was kept concealed under the bridge. On this information, F.I.R No. 59/2001 dated 28.12.2001 came to be registered in Police Station Kaftikund and the investigation started.

5. The police arrested accused Boka Tudu on 31.12.2001. Accused Manoj Soren was arrested on 2.1.2002 whereas accused Sanatan on 17.1.2002. Accused Boka Tudu suffered disclosure statement, pursuant to which recovery of certain official documents were effected by the police where the dead body of the deceased was found lying. At the instance of accused Monaj Soren, one bag, in which a knife was there, was recovered from the house of one Rajesh Murmu. From accused Sanatan, recovery of torch is allegedly shown on which the name of the deceased was engraved.

6. According to the prosecution, one Chotu Murmu was also involved in this occurrence but he could not be nabbed by the police, as such declared absconder.

7. It is worth-mentioning that during investigation, the prosecution agency took two footprints from the spot (place of occurrence) and after arrest of the present three accused, footprints of each of the accused (one set of left and right foot) was taken for comparison. The report in this regard is Ext. 13.

8. After completion of the challan, all the three accused were charged for the offence punishable under Section 302/201 I.P.C and faced trial.

9. The prosecution in support of the charge has examined as many as 17 witnesses. Those are PW1 Suresh Thakur, PW2 Alakh Dev Sah, PW3 Shivshankar Sah, PW4 Ram Bilash Bhagat, PW5 Ramesh Munnu, PW6 Suniram Munnu, PW7

Vijay Singh @ Vijay Shankar Singh, PW8 Krishna Das, PW9 Md. Habib, PW10 Subash Modi, PW11 Satilal Murmu, PW12 Md. Firoj, PW13 Stephan Hansda, PW14 Umesh Kachhap (First Informant), PW15 Dr. Shesh Narayan Jha, PW16 Sujata Kumari and PW17 Niranjana Kumar Ghosh (Investigating Officer of the present case).

10. All the accused, however, denied their involvement in toto as is evident from their statement recorded under section 313 Cr.P.C. and did not produce any evidence in defence. Learned trial court, considering all the planks of prosecution evidence, unerringly leading to the conclusion that the present three accused are the persons responsible for committing the murder of the Police Inspector Rambaran Prasad, convicted and sentenced them as detailed hereinabove.

11. Heard Mr. Jitendra S. Singh, Advocate, appearing for all the three accused and Mr. Pankaj Kumar, learned Assistant Public Prosecutor representing the State.

12. Mr. Singh submitted that the case of the prosecution is hinging upon circumstantial evidence, therefore to be tested on the touch stone of the settled principle of law that each of the plank of evidence produced by the prosecution is required to be proved to the hilt and when taken collectively, it should unerringly lead to the complicity of the accused. According to Mr. Singh, the fact situation in the case on hand is otherwise.

13. Mr. Singh submitted that the main evidence collected by the prosecution is the alleged recovery from each accused and the prosecution is banking upon this plank of evidence very heavily. He submitted that interestingly witnesses to the disclosure statement, which led to the recovery, have not been examined, whereas from the witnesses to the recovery memo examined, the recoveries allegedly effected appear to be totally false.

14. Learned counsel submitted that so far as accused Boka Tudu is concerned, the disclosure statement suffered by him is Ext. 24 and the recovery memo effected with regard to the recovery of official documents from nearby place where the dead body was lying is Ext. 22. The witnesses to the recovery memo are PW9 Md. Habib, PW10 Subash Modi and PW17 Niranjana Kumar Ghosh (I.O). He submitted that similarly with regard to Sanatan, the Torch is allegedly recovered, vide Ext. 20 and the witnesses to the recovery memo are PW5 Ramesh Murmu, PW6 Suniram Murmu and PW17 Niranjana Kumar Ghosh (I.O). With regard to accused Manoj, learned counsel submitted that admittedly no disclosure statement of this accused was recorded as no document in this regard is available on the trial court record. However, vide recovery memo, one bag in which the knife is shown is allegedly recovered from the house of one Rajesh Murcnu. Learned counsel submitted that since the bag was recovered from the house of Rajesh Murmu, his statement was also got recorded under section 164 Cr.P.C. by Judicial Magistrate.

15. Demolishing the recovery effected at the instance of Boka Tudu, I learned counsel submitted that none of the witnesses has stated that the documents of

the deceased were actually recovered pursuant to the disclosure statement of accused Boka Tudu and even PW9 Md. Habib and PW10 Subash Modi have also not stated that the recovery of the documents of the deceased was made at the instance of any disclosure statement suffered by the accused.

16. Dislodging the case of the prosecution vis-?-vis Sanatan, learned counsel submitted that the recovery of Torch of the deceased at the instance of this accused turns out to be of doubtful character, reason being that PW5 Ramesh Murmu and PW6 Suniram Murmu, the two witnesses to the said recovery, when stepped into the witness box, categorically stated that Niranjan Kumar Ghosh, Investigating Officer of the present case, had. shown them the Torch of the deceased and then asked them to sign on a blank paper.

17. With regard to recovery of bag containing knife in it, learned counsel submitted that even this recovery appears to be totally false, as neither Rajesh Murmu in whose house the bag is allegedly recovered has stepped into witness box nor the Judicial Magistrate who recorded the statement of Rajesh Murmu. Learned counsel submitted that seizure of the aforesaid article (bag) is allegedly made by PW14 Umesh Kachhap, whereas the recovery memo is prepared by S.I. Monoj Singh and S.I Monoj Singh has not stepped into the witness box to prove the recovery memo. Learned counsel submitted that one of the attesting witnesses to the recovery namely PW13 Stephan Hansda, however, stepped into witness box and he altogether tells a different story.

18. In order to create doubt with regard to the footprint report (Ext. 13), learned counsel submitted that perusal of the said report indicates that it connects accused Sanatan only, that too with one of sample footprints (left leg) and that the remaining two accused cannot be even remotely connected with this piece of evidence. Learned counsel submitted that this piece of evidence cannot be used against accused Sanatan even as the sample footprints were taken on the date of lodging of the F.I.R in presence of PW7 Vijay Singh @ Vijay Shankar Singh and PW8 Krishna Das and both the witnesses have not supported the case of the prosecution. Not only that, even PW2 Alakh Dev Sah, the photographer who had inspected the site and clicked certain photographs including the photographs of sample footprints, when stepped into the witness box, stated that the photographs with regard to the sample footprints were clicked by him in the police station itself on the asking of the police.

19. Learned counsel submitted that but for the aforesaid planks of evidence on which the prosecution is harping very heavily, no other plank of circumstantial evidence has been collected by the prosecution which could possibly be read against any of the accused and evidence available on record, if appreciated minutely, cannot be said to be proved to the hilt either individually or collectively pointing towards the guilt of any of the accused, therefore, the impugned judgment of conviction and sentence as recorded by the trial court deserves to be set aside and all the three accused may be acquitted of the charges framed against them.

20. Per contra Mr. Pankaj Kumar, learned A.P.P, submitted that the accused are facing very serious charge of murdering a Police Officer of the rank of Inspector and finding an opportunity of robbing the deceased of his valuables, ultimately committed his murder and thereafter concealed the dead body also under the bridge and even his motor cycle. Learned State counsel submitted that so far as accused Boka Tudu is concerned, he was arrested within three days of the occurrence and after his arrest only, the police could get certain clues about the rest of the accused including the accused Chotu Murmu, since declared absconder. Learned State counsel submitted that recovery of official documents at the instance of accused Boka Tudu and a Torch from the accused Sanatan is a very important circumstance pointing towards their guilt and that even the footprint report also connects the accused Sanatan with the commission of the offence. Learned State counsel, however, fairly submitted that but for these circumstances, the prosecution has not collected any other circumstance against any of the three accused.

21. We are conscious of the fact that in this case the deceased is a Police Inspector, who was done to death. Graver the crime, greater should be the standard of proof. The accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. Moral conviction has no place in criminal jurisprudence. Since the present case is resting upon the circumstantial evidence only, therefore to be tested within the parameters of the settled legal parameters and where the chain of circumstances is leading to the possibility of more than one inference, the benefit of doubt must go to the accused. It is well settled that final inference of guilt against the accused has to be made only if the proved fact is wholly inconsistent with the innocence of the accused and is entirely consistent with the guilt and not otherwise. We, after rescanning the prosecution evidence of the present case on the said touch stone, are of the considered view that the prosecution has not been able to prove its case to the hilt beyond any shadow of reasonable doubt against any of the accused. We now enter into a detailed discussion in this regard.

22. Admittedly the prosecution could collect only two planks of circumstantial evidence against the accused, viz (i) recovery of certain articles at the instance of the present three accused pursuant to their disclosure statements; (ii) footprint report (Ext. 13). Beyond collecting these two circumstances, the prosecution has not travelled any more. Therefore, the entire discussion has to revolve around these two circumstances only.

23. Against accused Manoj Soren, no disclosure statement is proved on record and it is only the recovery memo, Ext. 21, available on trial court file. As per the recovery memo, one bag is allegedly recovered from the house of one Rajesh Murmu. Since he was a very important witness for the prosecution, his statement was got recorded by a Judicial Magistrate during the investigation. In this factual backdrop, it was incumbent upon the prosecution to bring this material witness into witness box to prove the recovery of the bag which was containing a knife

allegedly used at the time of occurrence for the reason that the injury on the person of the deceased as noticed by PW15 Dr. Shesh Narayan Jha are incised wounds. Neither Rajesh Murmu has stepped into the witness box, nor the Judicial Magistrate, who had recorded the statement of Rajesh Murmu. However, a feeble attempt is made to get the statement exhibited from the mouth of the Investigating Officer. It cannot be said to be a formally proved document. The matter does not rest here. Seizure of the aforesaid article is made by PW14 Umesh Kachhap, whereas recovery memo was prepared by S.I Manoj Singh. S.I Manoj Singh has not stepped into the witness box to prove the recovery memo. This also turns out to be a flaw staring at the prosecution. Not only that, another fact, which creates a lot of doubt about the genuineness of the recovery allegedly effected at the instance of accused Manoj Soren is the evidence of PW13 Stephan Hansda, who, when stepped into the witness box, stated that he did not go inside the house when the recovery of bag and knife was effected, whereas this witness happens to be an attesting witness to the recovery memo. All these facts, when taken collectively, go to show that the recovery allegedly effected at the instance of accused Manoj Soren with regard to the bag which was having a knife in it, vide Ext. 21, is not a genuine or true recovery in real sense and appears to have been planted subsequently upon the accused.

24. Let us now advert to the evidence connecting accused Boka Tudu. We, at least, are not in agreement with the arguments advanced by Mr. Singh that simply witnesses to the disclosure statements have not stepped into the witness box, therefore the recovery allegedly effected pursuant to the said disclosure statement should be discarded. In the present case, the Investigating Officer has proved the disclosure memo (Ext. 24) and that the recovery memo (Ext. 22) whereby the documents of the deceased were allegedly recovered has been proved by two witnesses PW9 Md. Habib and PW10 Subash Modi. We, however, find certain weaknesses in the statements of these two independent witnesses vis-?-vis recovery of the documents of the deceased and that aspect by itself dents the recovery allegedly effected at the instance of accused Boka Tudu. We are otherwise going to doubt the recovery allegedly made at the instance of this accused for the reason that an accused after committing murder would not conceal the documents of the deceased, that too official documents at a particular place to create a piece of evidence against himself at any subsequent stage knowing very well that those documents were of no rise to him ultimately. It was not that type of property of the deceased like official pistol or gun which the accused could conceal for sometime in order to save himself from being arrested. Coupled with other weaknesses which have crept in the prosecution case vis-?-vis recovery allegedly effected at the instance of Boka Tudu, this aspect also goes deep to the roots of the case to hold that this recovery memo is a false document manufactured subsequently by the police in order to complete the chain.

25. Let us now advert to the recovery memo Ext. 20 concerning accused Sanatan, which again turns out to be of a very weak character. The independent

witnesses to the said recovery memo are PW5 Ramesh Murmu and PW6 Suniram Murmu, besides the Investigating Officer. Both these independent witnesses have categorically stated that the Investigating Officer had shown them the Torch of the deceased and asked them to sign on a blank paper. This goes to show that the recovery of Torch is not effected in presence of these witnesses and that Investigating Officer has prepared this document subsequently. This flaw by itself is sufficient to dislodge this piece of evidence.

26. We are now left with another plank of evidence, viz collecting of the sample two footprints from the place of occurrence by the Investigating Officer on 28.12.2001, which was sent along with the actual footprints of all the three accused to the expert for examination. As per the footprint report (Ext. 13), but for Sanatan, it does not connect other two accused namely Manoj Soren and Boka Tudu. Sample footprints are taken in presence of PW7 Vijay Singh @ Vijay Shankar Singh and PW8 Krishna Das and these witnesses have not supported the prosecution case. As stated by Mr. Singh, even the photographer is categoric in stating that he had clicked photographs of sample footprints in the police station. This by itself creates doubt about the taking of sample footprints on the date of lodging of the F.I.R. Why only two sample footprints were taken is again a mystery, for which the prosecution has to tender explanation. Be that as it may, the sample footprints, which were taken on 28.12.2001 are sent on 23.3.2002 only along with the footprints of the accused, i.e. few days less than three months from the date of occurrence. Had the footprints been sent to F.S.L within one or two days of their lifting from the spot or at least before taking the actual footprint of the accused, one could not doubt the investigation of the present case vis-?-vis this plank of circumstantial evidence, which otherwise cannot be said to be a conclusive piece of evidence to hold the accused guilty. But in the present case, the footprints taken from the spot and the actual footprints of the accused are sent together on 23.3.2002. This huge delay can be said to be a good ground for rejecting this plank of evidence as possibility of tampering with it by the Investigating agency cannot be ruled out. Therefore, in our considered view, it would not be safe to rely upon even this plank of evidence.

27. Perhaps no other piece of evidence is left for our discussion.

28. After rescanning the entire prosecution evidence in its right perspective, being the first appellate Court of appeal, we are of the considered view that prosecution, in this case, has not been able to prove its case beyond any shadow of reasonable doubt for maintaining the conviction of the present three accused for the charge of Section 302/201 I.P.C. All the three accused thus deserve benefit of doubt.

29. The net result now surfaces is that the instant appeal is allowed and the impugned judgment dated 31st of July, 2004 rendered by 1st Additional Sessions Judge, Dumka, is set. aside. AH the three accused who are stated to be in custody for the last about 13 years stand acquitted of the charges for which they faced the trial. They shall now be released forthwith in this case, if not required

in any other case.

30. The release order in this regard be sent immediately to the concerned authority(s).

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