

(2006) 03 JH CK 0096

In the Jharkhand High Court

Case No : Criminal Appeal No. 184 of 1990 (P)

Manu Soren and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 24

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

Citation : (2006) CriLJ 3570 : (2006) 3 Crimes 293 : (2006) 2 EastCriC 389 :
(2006) CriLJ 3870 : (2006) 2 AIRJharR 622

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Advocate : Abdul Hakim and Uday Choudhury, for the Appellant; Arvind Kumar Jha, APP., for the Respondent

Final Decision : Allowed

Judgement

1. The appellants 1 to 7, who were arrayed as A-1 to A-7 before the Additional Sessions Judge, Pakur, on being tried under Sections 302/34 of the Indian Penal Code and 201 of the Indian Penal Code, were found guilty and sentenced to imprisonment for life u/s 302/34 of the Indian Penal Code. They were acquitted of the offence u/s 201 of the Indian Penal Code.

2. The facts, necessary to dispose of the appeal, are briefly stated thus:

The deceased, Ramchandra Ghosh was having illicit relationship with two women, which according to the prosecution, infuriated the accused. According to the prosecution, in order to prevent the deceased from continuing his illicit relationship with two women, he was murdered at 7.30 p.m. on 27.4.1983 by the accused.

3. On 27.4.1983 at about 7.30 p.m., the deceased Ramchandra Ghosh left his house after informing his son (PW-8) that he is going to the river. PW-8 after

taking his meal went to bed thinking his father, Ramchandra Ghosh, will return after irrigating his lands. On the next day, he found that his father had not returned. He went in search of his father and Bhavesh Murmu (died pending trial) informed him that he had seen Ramchandra Ghosh lying dead in the field towards west of Bistopur village. PW-8 went to the field and found the dead body of his father and realizing that his father had been murdered, raised alarm. The villagers gathered there. Later, PW-8 went to the police station and gave Ext. 3, the Fardbayan, at 9 a.m. on 28.4.1983. A crime was registered by the police against unknown person and investigation was taken up by police officer, who, during investigation, conducted inquest and sent the dead body for post mortem with his requisition.

4. On receipt of the requisition, PW-5, Dr. Madan Mohan Prasad Sinha conducted autopsy on the dead body of Ramchandra Ghosh and he found the body to be highly decomposed. Foul smell was emanating, skin was seen peeling off and frothy dark coloured fluid was coming out from mouth and nostril. The doctor did not notice any external injury. On dissection of scalp and right side of Maxilla, the doctor found fracture on temporal region.

5. The doctor issued Ext. 2, the Post mortem certificate, with his opinion that death is on account of intra-cerebral haemorrhage and death must have occurred about 96 hours prior to autopsy.

6. In the meantime, the 3rd accused, Naiki Hembrom, met PW-1 and 2 and told him that the deceased Ramchandra Ghosh was murdered by A-4, Dhona Soren, thrusting bamboos in his rectum. The accused were later arrested and after the completion of investigation, the final report was filed against the accused, who, when questioned u/s 313 of the Code of Criminal Procedure on the incriminating circumstances, appearing against them, denied all the incriminating circumstances. No witness was examined on their side.

7. The learned Counsel appearing for the accused-appellants contents that the oral extra-judicial confession, alleged to have been given by the A-3 to PW-1 and PW-2, is not supported by the medical evidence and further the 3rd accused had no reason to give the said alleged statement to PWs 1 and 2.

8. We have heard Mr. Arbind Kumar Jha, learned A.P.P., appearing for the State, on the above contention.

9. At the outset, we may have to say that the Investigating Officer of this case was not examined. It is, therefore, not clear as to whom PWs 1 and 2 informed about the alleged extra-judicial confession made by A-3, Naiki Hembrom, to the two witnesses.

10. Be that as it may, the evidence of PWs 1 and 2 is to the effect that A-3 told them that A-4 thrust bamboos into the rectum of the deceased and, therefore, the deceased Ramchandra Ghosh died. If this is to be accepted then the doctor, PW-5, who conducted autopsy on the dead body would have noticed injury in the

rectum of the deceased. The doctor in his evidence, given in court, categorically stated that he did not notice any external injury and that only on dissection, he found intra-cerebral haemorrhage. As the doctor did not notice any external injury, it becomes doubtful whether the 3rd accused, Naiki Hembrom made statement implicating A-4, Dhona Soren, as the person, who thrust the bamboos into the rectum of the deceased. Even according to the PWs 1 and 2, A-3 never implicated himself in the crime, but on the contrary, it was stated that it was A-4, who thrust the bamboos in the rectum of the deceased. If that be the case, A-3 ought to have been made as witness and not an accused. But, it is not even the case of the prosecution that A-3 abetted or shared the common intention of A-4 in causing the alleged injury, which the doctor did not even find. We, therefore, find that the evidence of PWs-1 and 2 that the 3rd accused gave a statement implicating A-4 in the crime, is of no use and, in fact, it will not attract Section 24 of the Evidence Act as it is not an extra-judicial confession of an accused implicating himself with the crime.

11. It is to be remembered at this stage that we have already held that the Investigating Officer was not examined in the court and we do not know the material on which the officer came to the conclusion that the above accused committed the offence and it is also not known as to whom PWs 1 and 2 informed about the statements made by A-3.

12. In view of the discussions made above, we find it unsafe to accept the evidence of PWs-1 and 2 to uphold the conviction of the accused. We, therefore, set aside the conviction and sentence imposed upon them.

13. The appeal is allowed and the appellants are acquitted. It is reported that the appellants are on bail; they are discharged from the liabilities of their bail bonds.