
(2010) 01 JH CK 0134
In the Jharkhand High Court
Case No : Criminal Appeal No. 35 of 1993R

Marianus Kharia @ Gandur	Vs	APPELLANT
The State of Bihar (now Jharkhand)		RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

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

Citation : (2010) 01 JH CK 0134

Hon'ble Judges : Jaya Roy, J;J.C.S. Rawat, J

Bench : Division Bench

Advocate : Navin Jaiswal, for the Appellant; Amaresh Kumar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.C.S. Rawat, J.—This appeal is directed against the judgment of conviction and order of sentence dated 29.01.1993 passed against the appellant by the Additional Sessions Judge, Simdega in Sessions Trial No. 130 of 1989 whereby the accused- appellant has been convicted u/s 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The facts of the case, in brief, are that on 26.3.1989 at village Kiabira (Bhubhutoli), P.S. Simdega, district-Gumla, the appellant-accused had gone to the house of his Samdhi, the deceased, Samuyal Kharia on the occasion of Paska (Estar) festival where both the persons, that is, the appellant and the deceased consumed Hariya (a kind of Deshi liquor). At the time of taking the said liquor the wife of the deceased and his son, Jifri Kharia including both the daughter-in-laws of the deceased were all in the house where they also took the said liquor. Thereafter, the accused-appellant asked the deceased to accompany him to his house where they would take the said liquor in their house. The deceased was a bit reluctant to accompany the accused-appellant but, later on, the appellant took the deceased to his house to take the said liquor. The wife of the deceased

also insisted not to go with the appellant but since the insistence of the appellant persisted upon the deceased, the deceased accompanied the appellant. Both the persons reached near the mission ground. The informant, the wife of the deceased also followed them to see where they were going. At the place of incidence, that is, the mission ground, she saw that the appellant snatched the lathi from the deceased which the deceased was holding in his hand and yielded the said lathi on the deceased due to which the deceased fell down on the ground. The informant, the wife of the deceased, (PW3), Smt. Mariyum Khariain, made hue and cry upon which the son and the daughter-in-laws of the deceased reached at the spot and they also saw the appellant running away from the place of occurrence. They also found that the deceased was lying on the ground there. On the next day fardbeyan of PW 3, Mariyum Khariyain was recorded by the police and thereupon a case was registered against the appellant. After completion of investigation charge sheet was submitted.

3. The accused- appellant was committed to the court of sessions. He was charged u/s 302 I.P.C who claimed to be tried and denied all the allegations levelled against him. He further pleaded that he has been falsely implicated in this case.

4. The prosecution, in support of its case, examined as many as nine witnesses. PW1, Narayan Mahto is a formal witness who has proved the FIR, Ext: 1. PW2, Gloria Khariain is the daughter-in-law of the deceased. She has stated that she reached at the place of occurrence after the incidence had occurred and she saw the dead body of the deceased lying on the ground at the spot. She also saw the accused- appellant fleeing away from the place of occurrence. PW3, Mariyam Khariyain claims to be the eye witness of the occurrence. She has said that she followed the appellant and the deceased and she saw the incidence by her own eyes. PW4, Jasmani Khariain who is also the daughter-in-law of PW3 and the deceased, has stated the same thing as stated by PW2. She said that she reached at the spot after the incidence. PW6 Chauthu Singh is a formal witness who stated that he visited the spot and saw the dead body of Samuyal Khariya and also prepared the inquest report. Dr. R.P. Singh, PW9 is the doctor who conducted autopsy over the dead body of the deceased on 28.3.89. He found that the dead body was decomposed and blood was oozing from the mouth. Blister were present all over the dead body. He found the following internal and external injuries:

(I) Bruise and swelling on whole of left side of head, forehead and left side of face, (ii) blood present under the skin, (iii) mussels and blood vessels found lacerated, (iv) left temporal bone and frontal bone were found fractured, (v) the left maxillary bone were also found fractured. (vi) Multiple scratches and bruise 2"x2"x1/2" on the left side of front nick, blood clots were found under skin.

5. The doctor has opined that the injuries were ante mortem in nature and were caused by blunt object. He has further opined that the injuries could be caused by lathi. According to the opinion of the doctor the cause of death was concersion

of brain shock due to the result of injury caused on the person of the deceased. The doctor also proved the post mortem report. He further opined that injury No. 1 was sufficient to cause death of the deceased in the ordinary course of nature which could have been caused by several blows.

6. After closure of evidence the accused-appellant was examined u/s 313 of the Code of Criminal Procedure who denied the allegations levelled against him. He pleaded that he has been falsely implicated in this case and he has committed no offence as charged against him.

7. The accused-appellant did not examine any witness or led any evidence, either oral or documentary in support of his defence.

8. The trial court, on appraisal of entire evidence, convicted the appellant and sentenced him to suffer imprisonment in the manner, as indicated above.

9. We have heard learned Counsel appearing on behalf of both the parties and have perused the entire records of the case. At the very outset it needs to be mentioned that there is no dispute that the deceased died on 26.3.1989 in village Kiabira, P.S. Simdega, district-Gumla. It is also not in dispute-that the deceased died due to the injuries sustained by him. The doctor, Dr. R.P. Singh, PW9 has stated that the duration of death was 40 to 48 hours at the time of post mortem. The prosecution has also led evidence that the deceased died due to the injuries sustained by him. It is amply established that the deceased had died at the spot and on the date and time, as indicated by the prosecution.

10. Now, we have to examine whether the appellant was the author of the injuries on the person of the deceased or not. The whole prosecution case rests on the direct and ocular testimony of the witnesses. PW3, Mariayum Khariain who is the wife of the deceased has categorically stated in her evidence that the accused-appellant came to their house and he told the deceased to accompany him to his house for taking Hariya. It has also come in evidence that they consumed Hariya in the house of the deceased. The wife of the deceased was not ready to accompany the appellant but on the insistence of the appellant he took him to his house. PW3 also followed them. When both of them reached near the mission ground the appellant snatched the lathi from the hand of the deceased which he was holding in his hand and started yielding it upon the deceased. Due to the assault given by the accused- appellant her husband fell down on the ground and then the accused-appellant fled away from the place of occurrence. Thereupon PW3 raised alarm upon which her son, Jifri Kharia and daughter-in-laws reached at the spot. Her daughter in-law, PW2 was also produced before the trial court who stated in her evidence that on the date of occurrence Mariyum Kharia came to their house and he took the deceased to his house for consuming Hariya in his house. Her mother -in-law, PW3, also followed them. After some time she heard alarm raised by her mother -in-law. She rushed to the place of occurrence and saw that the appellant was fleeing away from there and her father-in-law was lying dead on the ground. PW4, Jasmani Khariain who is

another daughter in-law of the deceased and Zafari Khariain, PW6, have also corroborated the version of PW2, Gloria Khariain. Thus, these four witnesses are the main witnesses of the incidence out of which PW3, the wife of the deceased, claims that she had seen the incidence.

11. Learned Counsel appearing for the appellant contended that the evidence of PW3, Mariayum Khariain is not credible and cogent as she has not seen the occurrence at the spot. Her evidence, therefore, cannot be relied upon to convict the accused-appellant. He further contended that the trial court has erred in relying upon the evidence of PW3, Smt. Mariyum Khariain.

12. On the other hand, learned Counsel appearing on behalf of the State refuted the contention of the appellant and contended that the inconsistencies pointed out by the learned Counsel for the appellant are minor and are of no avail to the appellant. In the cross examination PW3, Mariyum Khariain has stated that when the appellant came to her house, she was taking her meals but soon after she left taking meal and followed her husband when the accused-appellant compelled the deceased to go with him. In her further cross examination she has stated that her eye sight is very weak and she could not see things in the night. She has further said that there was darkness and she had not taken Hariya. She has further said that she had no light with her and there was no quarrel between the accused- appellant and the deceased on the way. Her husband was very old, infirm and weak. He could walk very slowly. She has stated that she also left her house after some time when her husband and the appellant had left her house. She said that she could not see easily in the night. There was no any person at the spot. She went to her house and thereafter she called her daughter in-laws at the spot. She stated that the distance between the school and her house is about 100 yards. She had not stated about the incident to any other persons in the village. It has also come in the evidence of P.W.2, Gloriya Khariain that the appellant accused came to his house at about 5. P.M. and they remained there for some time and thereafter consumed liquor. Both of them were under the influence of Hariya. They were highly intoxicated. The source of light has been introduced during the course of evidence. According to P.W.3, Mairyum Khariain there was no source of light at the place of occurrence. Admittedly, the incident occurred after 5. P.M. It has come in the evidence that after about 1-2 hours they left from house to the place of occurrence. Thus, it can be easily held that the darkness would have been there and therefore it was not possible to see the incidence by the witnesses as has been pointed out by us while dealing the evidence of PW3, Mariyum Khariain in cross-examination as indicated above. P.W.3, Mariyum Khariain is the only eye-witness of the prosecution who has categorically stated that she had no source of light and she could not see things exactly. She has also stated that at the time of incidence there was darkness. Rest of the two witnesses i.e. the daughter-in-law of P.W.3, Mariyum Kharian P.W.4, Jasmani Khariain and P.W.5, Jibri Khariain are not the eye witness to the occurrence as according to them they reached at the spot after the incident occurred and when P.W.3, Smt. Mariyum khariain raised alarm. Both the

witnesses have stated that when they reached at the spot they saw the dead body lying on the ground and the accused fleeing away from the place of occurrence. According to P.W.3, Smt. Mariyum Kharian, the star witness, the other witnesses, P.W.2, Gloria Kharian and P.W.3, Smt. Mariyum Khariain and P.W.6, Zafari Khariya reached at the spot when she went to her house and called them at the place of occurrence. Thus, these two witnesses cannot be the eye witnesses of the occurrence by their own narration and also by the narration made by P.W.3. Mariyum Kharian. Therefore, the evidence of P.W.1, P.W.2 and P.W.3 cannot be relied upon.

13. It has also come in the evidence that the FIR was lodged on the next day i.e. on 27.3.1989. The distance between the police station and the place of occurrence is about 42 KM. Thus, it is apparent that though from the circumstances, it cannot be gathered that there was delay in lodging the F.I.R but one thing is clear that the Fardbeyan was recorded in the village when the police reached there. There was sufficient time in between recording of the Fardbeyan and the time of incident. It is always to be kept in mind that where prompt F.I.R is recorded, it inspires confidence that true version has been received by the police about the participation of the accused-appellant, the weapons used and the manner of incidence. Where an information is lodged at some delay, though it is explained, it cannot inspire confidence because there are occasions or chances to embellish and to give an afterthought version in the F.I.R. Thus, the learned Counsel for the appellant pointed out that the F.I.R. has been lodged after thoughtful consideration given by the parties.

14. The learned Counsel appearing for the appellant further contended that the motive alleged by the prosecution is not believable because the motive is totally contradictory with the conduct of the accused-appellant.

15. The learned Counsel appearing for the State, on the other, hand refuted these contentions stating that the prosecution has fully established the motive also. It has come in the evidence of the prosecution witnesses that the niece of the appellant was married to the son of the informant-Jafri Kharian who died one year ago from the date of incident. It has also come in the evidences of P.Ws 2, Gloriya Kharian 3, Mariyum Khariain, 4, Jasmali Khariain and 5, Jibri Khariya that the accused appellant used to blame the deceased that his niece had died due to the negligence of the deceased and he used to threaten him and in consequence thereof, the appellant committed the murder of the deceased. P.W.3, Mariyum Kharian has also stated in her cross examination that after the death of the niece of the appellant both families had a good relation and they used to visit the house of each other. The appellant used to say that proper care had not been taken of his niece and therefore she died. It is thus apparent from the evidence of P.W.3 and other witnesses that both the families i.e the appellant as well as the deceased had good relation. If there were a good relations, there could not have been any occasion to complain about the death of the niece of the appellant. Had the appellant any grievance against the deceased, he would not

have used to go to the house of the deceased and there could not have been a good relation between them. It is also apparent from the evidence that on the date of the incidence the appellant himself came to the house of the deceased and they together took Hariya and celebrated the festival jointly. In these circumstances, the motive projected by the prosecution is doubtful and it cannot be held that there was any malice against the appellant.

16. In view of the above discussions, we are of the view that the prosecution has failed to prove its case beyond all reasonable doubts. The trial court has erred in holding the guilt of the appellant u/s 302 I.P.C. We hereby set aside the findings of the learned trial court about the conviction as well as the sentence. The appeal is liable to be allowed which is accordingly allowed: The appellant is on bail. The appellant is discharged from the liabilities of sureties of bail bond and he need not surrender before the trial court.