
(2014) 04 JH CK 0018

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 1049 of 2004

Natu Hembrom

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 82
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2014) 3 JLJR 428

Hon'ble Judges : Dhirubhai Naranbhai Patel, J; Amitav Kumar Gupta, J

Bench : Division Bench

Advocate : Swami Nath Prasad Roy, Advocate for the Appellant; Krishna Shankar, A.P.P, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—This appeal has been preferred by the appellants against the judgment and order of conviction and sentence passed by the learned Sessions Judge, Sahibganj in Sessions Case No. 92 of 2002. These appellants have been convicted and sentenced on 27.2.2004 to undergo life imprisonment for the offence punishable u/s 302 of the Indian Penal Code read with Section 34 thereof.

2. The case of the prosecution is that P.W.-6 - grandson of the deceased, has given fardbeyan on 23.12.2000 at Barhait Police Station, District Sahibganj at about 4.00 P.M. i.e. on the same day when he had gone to his Khalian to thrash the paddy crop and his other relatives were also thrashing the crop of paddy at their Khalian and his old grandmother was alone at the house when he had gone to his house, he saw that these appellants were coming out with a blood stained dagger in their hand and when he entered into the house he saw his old grandmother was dead and blood was coming out from her neck, he immediately, went to call his step father Jisu Murrnu at the village Chutia, he came along with his step father by 10 A.M. it is further stated in the fardbeyan

that before IS days, the son of the accused No. 1 Natu Hembrom died due to illness and on previous night, daughter of the accused No. 1 had also died during the medical treatment and the accused persons started saying that the old grandmother of informant - P.W.-6 is a dian - witch and she has eaten away the son and the daughter of the accused No. 1 Natu Hembrom and therefore, they had murdered his old grandmother Chundi Hansda. Upon recording of his fardbeyan, F.I.R. was lodged, investigation was carried out, statement of the witnesses were recorded, inquest and panchnama was drawn, blood stained earth was seized from the place of occurrence and the dead body of the deceased was sent for postmortem before P.W.-2 Dr. Basant Kumar Saha. The accused persons were absconding and the investigating Officer had gone at the residence of accused on several occasions i.e. on 23rd December, 24th December, 26th December, 27th December, 28th December, 17th February, 19th February and 6th April etc. but, the accused were not available, request was also made on 19.02.2001 to issue warrant of arrest u/s 82 of the Code of Criminal Procedure and ultimately, the accused No. 2 was arrested on 09.08.2001 and accused Nos. 1 & 3 were arrested on 11.08.2001 and charge-sheet was filed and case was committed to the Sessions Court bearing Sessions Case No. 92 of 2002 and on the basis of the evidence given by P.W.-1 to P.W.- 7 and on the basis of documents and evidences on record, Sessions Judge at Sahibganj has convicted these appellants for the offence punishable u/s 302 of the Indian Penal Code read with Section 34 thereof and inflicted life imprisonment upon these appellants and against this judgment and order of conviction and sentence, the present appeal has been preferred.

3. It is submitted by the counsel for the appellants that there are major omission, contradiction and improvement in the deposition of the prosecution Witnesses, which have not been properly appreciated by the learned Trial Court and hence, the judgment and order of conviction and sentence passed by the learned Sessions Judge, Sahibganj deserves to be quashed and set aside.

4. It is also submitted by the learned counsel for the appellants that there is no eye witness of the incident and the whole case of the prosecution is based upon the hearsay evidence. The P.W.-1 has turned hostile, P.Ws. 3, 4 and 5 are co-villagers and they are also hearsay witnesses. The P.W.-6 is the grandson of the deceased and looking to the F.I.R. and his deposition given before the Court, he has never stated that he has seen these appellants committing murder of the deceased. Neither P.W.-7 - Investigating Officer stated that he has seized any blood stained cloth of the accused nor the weapon has been recovered. The so-called bloodstained soil recovered was not sent for Forensic Science Laboratory and no report has been given by the Forensic Science Laboratory matching the blood group with the blood group of the deceased. The prosecution has failed to prove the offence of murder committed by these appellants beyond all reasonable doubts. This aspect of matter has not been properly appreciated by the learned Trial Court. Moreover, the fardbeyan was recorded on 23.12.2000 and the F.I.R. was lodged on the same day but, the copy whereof sent to the

Judicial Magistrate on 26.12.2000, this aspect of matter has not been properly appreciated by the learned Trial Court and hence, the judgment and order of conviction and sentence passed by the learned Sessions Judge, Sahibganj deserves to be quashed and set aside.

5. We have heard the counsel appearing for the State ? A.EE, who has submitted that no error has been committed by the learned Trial Court to appreciate the evidences on record. The incident had taken place on 23.12.2000 at about 9 A.M. and the informant P.W.-6, who is the grandson of the deceased is not looking to the murder of the grandmother, he rushed to call his step father who was at a different village and they came at the house and immediately, fardbeyan was given to the police on the same day and F.I.R. was also lodged on the same day wherein, these appellants were named. 23.12.2000 was Saturday, 24.12.2000 was Sunday and 25.12.2000 was holiday because of Christmas Day and therefore, on 26.12.2000 F.I.R. was reaching to the Judicial Magistrate 1st Class. There is no delay on the part of the investigating agency, because of holiday, there was time gap, which is not fatal of the prosecution. It is also submitted by the A.EE that without any exaggeration, P.W.-6 grandson of the deceased has given his fardbeyan that he was in his Khaliyan and was thrashing paddy crop and when he reached to his house, he saw that these appellants were coming out from tire house of P.W.-6 with blood stained dagger and when he entered into the house he saw his grandmother having a neck injury and she had expired, immediately, he rushed to his step father, who was at different village and they came at their house and thereafter fardbeyan was given, thus, P.W.-6 has given his fardbeyan without any exaggeration. Whatever he has seen, have been stated in the fardbeyan and also in his deposition. There is no major omission contradiction, or improvement in his deposition neither in his cross examination, he has given any statement in favour of the appellants-accused. Thus, there is no reason not to disbelieve P.W.-6. Moreover, other witnesses have also given deposition corroborative to the deposition given by P.W.-6 including P.W.-7, who is Investigating Officer. Blood stained soil was also recovered from the place of occurrence and looking to these evidences on record and also looking to the medical evidence given by P.W.-2, Dr. Basant Kumar Saha, who has carried out the postmortem of the body of the deceased there is enough corroboration to the deposition given by the P.W.-6 and no error has been committed by the Trial Court in appreciating these evidences on record. The prosecutions have proved the murder of Chundi Hansda committed by these appellants and no error has been committed by the Trial Court in convicting these appellants for the offence of murder of the deceased. Hence, this appeal may not be entertained by this Court.

6. Having heard counsel for the both sides and looking to the evidences on record, we see no reason to entertain this criminal appeal, mainly for the following facts:--

(i) The case of the prosecution is that Charan Hembrom, P.W.-6 who is grandson

of the deceased, given his fardbeyan on 23.12.2000 at about 4.00 P.M. that on the same day at about 9.00 A.M. when he has returned from his Khaliyan where he was threshing paddy crop, he saw these appellants coming out from the house with blood stained dagger in their hand and when he entered into the house he saw his old grandmother dead and having a neck injury and blood was coming out, he immediately rushed to call his step father, who was at different village. Both of them returned to their house and thereafter, fardbeyan was given at police station on the same day at about 4:00 P.M in which these appellants were named. F.I.R. was lodged and investigation was carried out. The appellants were not trustworthy and not available to the Investigating Officer for interrogation and investigation. On several occasions, the Investigating Officer has gone to the residence of these appellants and they were found absconding. On 19.02.2001, a prayer was made to the trial Court for issuance of warrant u/s 82 of the Code of Criminal Procedure and ultimately, these appellants were arrested on 9th and 11th of August, 2001, charge-sheet was filed and the case was committed to the Sessions Court being Sessions Case No. 92 of 2002 and on the basis of the evidence on record, these appellants were convicted for the offence of murder and they have been punished for life imprisonment.

(ii) Looking to the evidence on record, it appears that the P.W.-6 is an important witness, who is grandson of the deceased, who has first saw these appellants coming out from his house with blood stained weapon in their hand. Looking to his deposition before the Court, there is no major omission, contradiction or improvement. He is a rustic witness and without any exaggeration, he has given deposition though he has not seen these appellants committing murder of the deceased but, he has stated that they all were coming out from his house with blood stained dagger. Thus they were sharing common intension and in furtherance of their common intension murder has been committed. He immediately, rushed into the house, where he saw his grandmother Chundi Hansda died and there was neck injury and blood was oozing out. Looking this position of his grandmother immediately, he rushed to call his step father, who was at different village and both of them returned at about 10:00 A.M. at their house and ultimately, on the same day at about 4:00 P.M fardbeyan was given to the police. Thus, these appellants were seen immediately after the murder within a couple of seconds and they were having blood stained dagger in their hand and they all three were together.

(iii) Looking to the F.I.R. motive has also been stated from the very beginning that earlier the son of the accused No. 1 Natu Hembrom had expired and on previous day of the incident i.e. on 22.12.2000, daughter of the accused No. 1 has expired during her treatment and they were apprehending that the grandmother of P.W.-6 i.e. informant is witch or dian and she has eaten away the son and the daughter of the accused No. 1 Natu Hembrom and therefore, they have committed murder of the grandmother of P.W.-6. These appellants were also identified by P.W.-6. Looking to the cross-examination of P.W.-6, nothing is coming out in favour of these appellants.

(iv) It is submitted by the counsel for the appellants that this P.W.-6 had not seen these appellants running away from the house. This contention is also not useful to the appellants because, the behaviour of the accused can be explained only by the accused why they were not running away that depends upon the confidence of the accused and nothing has been stated in their statement, recorded u/s 313 of the Code of Criminal Procedure, whereas, P.W.-6 already stated in the F.I.R. that he has seen these appellants coming out from his house with blood stained dagger in their hand. Whether they were walking or running makes no difference because the fact remains that within the couple of seconds, they were coming out of the house of P.W.-6 either by walking or running. On this point, there is cross-examination, which has also been stated in the impugned judgment, passed by the learned Sessions Judge, Sahibganj, thus, nothing material is coming out in favour of these appellants in cross-examination of P.W.-6. P.W.-6 is the trustworthy and reliable witness, who has clearly narrated the role played by these appellants in committing murder of Chundi Hansda, grandmother of P.W.-6 and no error has been committed by the Trial Court in appreciating the evidence of P.W.-6.

(v) Looking to the deposition given by P.Ws.-3, 4 & 5 though they are not eye witness of the incident but, they are witnesses of the facts immediately after the murder had taken place, P.W.-6 immediately informed P.Ws. 3, 4 & 5. From their cross-examination also nothing is coming out in favour of these appellants.

(vi) Looking to the deposition given by P.W.-7 who is Investigating Officer, who has stated that P.W.-6 has given fardbeyan on the same day and these appellants were also named in the F.I.R. He started investigation immediately and this Investigating Officer has recorded several statements of the witnesses. The appellants were not available for interrogation and investigation. They were traceable much latter on and they were arrested in the month of August 2001. He has also stated that that he had seen the dead body in the house of P.W.-6 and inquest and panchnama was drawn and the dead body was sent for postmortem report, which has been given by P.W.-2 and the place of occurrence has also been narrated by this Investigating Officer. Looking to his cross-examination nothing is coming out in favour of these appellants. On the contrary deposition of P.W.-7 is corroborated to the deposition given by PW-6.

(vii) Looking to the deposition given by P.W.-2 Dr. Basant Kumar Sana, who is Assistant Civil Surgeon, had carried out postmortem of the body of the deceased at 3.00 P.M. on 24.12.2000 at Sadar Hospital Sahibganj and has recorded following injuries upon the body of the deceased:--

One cut injury in front of the neck 6" x 2 1/2" x larynx deep. The skin tissue, deep fassa, muscles, vessel's larynx and trachea all are cut down except (purfical) vertebra bruises on face and eye lids.

Time passes since death 24 to 36 hours. In my opinion the cause of death was due to haemorrhage and shock as a result of above mention injury. This is the

postmortem report in my pen and bears my signature. Mark it Ext.-1. The above injuries were caused by sharp cut weapon.

Thus, there was a cut injury on neck which is the cause of death. Injury was capable of being caused by sharp cutting weapon and the time of death within 24 hours to 36 hours from the postmortem. Thus, looking to the overall deposition given by P.W.-2 there is enough corroboration of the deposition given by P.W.-6.

(viii) Thus, looking to the evidences on record, it appears that these appellants were immediately coming out from the house of P.W.-6 with blood stained dagger in their hand. P.W.-6 saw his grandmother died, there was a neck injury upon the body of grandmother and blood was coming out. Blood stained earth was also recovered by the Investigating Officer as medical evidence which is corroborative to the deposition given by P.W.-6 and nothing is coming out in cross-examination of any of the prosecution witnesses in favour of these appellants. The prosecution has proved the murder of the deceased committed by these appellants beyond any reasonable doubts and no error has been committed by the Trial Court in convicting and sentencing these appellants for the offence punishable u/s 302 of the IPC read with Section 34 thereof. They all came together and they were believing that the son and the daughter of the accused No. 1 Natu Hembrom have died because of the deceased, who was a Dian-witch. Thus, they all were sharing common intention and furtherance of common intention these appellants accused have committed murder of the deceased and the intention is being gathered from their behaviour which has been proved by PW-6.

7. As a cumulative effect of the aforesaid fact and reasons stated hereinabove, there is no substance in this Criminal Appeal. Hence, we hereby, upheld the decision rendered by the learned Sessions Judge, Sahibganj dated 27.2.2004 passed in Sessions Case No. 92 of 2002.

8. Accordingly, this criminal appeal is, hereby, dismissed.