

(2016) 09 JH CK 0094

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 1760 of 2003 (Against the judgment of conviction dated 22.11.2003 and order of sentence dated 25.11.2003 passed by the learned 2nd Addl. Sessions Judge (Fast Track Court), Jamtara, in S.T. No. 29 of 2002/06 of 2002).

Paltan Mandal, S/o Mohar Mandal - Appellant @HASH State of Jharkhand

Date of Decision : 07-09-2016

Acts Referred:

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 302, Section 364A

Citation : (2017) 1 ECRC 584 : (2016) 4 JBCJ 565 : (2016) 4 JLJR 643

Hon'ble Judges : Pradip Kumar Mohanty and Ananda Sen, JJ.

Bench : Division Bench

Advocate : Mr. B.M. Tripathi, Sr. Advocate and Mr. Kaushal Kishore Mishra, Advocate, for the Appellant; Mr. Pankaj Kumar, A.P.P, for the State

Final Decision : Allowed

Judgement

1. Since all the aforesaid Criminal appeals arise out of the common judgment of conviction and order of sentence as such, they have been heard together and are being disposed of, by a common judgment.

2. These criminal appeals are directed against the judgment of conviction dated 22.11.2003 and order of sentence dated 25.11.2003 passed in Sessions Trial Case No. 29 of 2002/06 of 2002 by learned 2nd Addl. Sessions Judge (Fast Track Court), Jamtara, whereby, the appellants have been convicted under Section 364-A/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life besides a fine of Rs. 2,000/- each but, no separate sentence has been passed under Section 302/34 of the Indian Penal Code.

3. The case of the prosecution is that on the basis of the written report given to the Officer-in-Charge, Jamtara, by the informant (Bhukri Devi), who happens to be the mother of the victim (Bhudeo Mandal), alleging therein that in the morning of 22.07.2001, accused Rajen Mandal, Ganga Sagar Mandal, Shibu Mandal and Kishan Mandal enticed away deceased Bhudeo Mandal from his

house to "Karmatar" and thereupon they started demanding Rs. 20,000/- illegally which was refused by the informant and her son, as a result of which, these accused kept confined Bhudeo Mandal with a view to kill him. The informant tried to search his son Bhudeo Mandal but failed to find him and then she gave a written application to the Officer-In-Charge, Jamtara on 27.07.2001 in the morning with an earnest request to get her son released from the wrongful confinement of the said persons and to legal action against them, otherwise, his son will be killed by the accused persons.

4. On the basis of the aforesaid "Fardbeyan given by the informant, Jamtara P.S. Case No. 157 of 2001 was registered for the offence under Section 364A and 302/34 of the Indian Penal Code, against the accused persons.

5. The police started investigation. The dead body of the deceased was recovered on 27.07.2001 at platform no. 1 of Gorakhpur railway station. The dead body of the deceased was sent for postmortem examination which was conducted by Dr. H.R. Yadav - P.W.14.

6. After obtaining the postmortem report and examining the witnesses, the police ultimately filed charge-sheet as against the present appellants under Section 302/34 of the Indian Penal Code and under Section 364-A of the Indian Penal Code and thereafter the case was committed to the Court of Sessions.

The plea of the defence is completely denial of the allegation.

7. The prosecution has examined as many as 15 witnesses including Medical Officer and Investigating Officer, and one court witness has also been examined who is Gopalji Jha.

8. Mr. B.M. Tripathi, learned Senior counsel appearing for the appellants submitted that the trial court has convicted these appellants under Section 364-A/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- by each convicts with the finding that there are overwhelming oral direct unimpeachable evidence and further held that the deceased was lastly seen with the accused person on 22.07.2001. Learned Senior counsel for the appellants has challenged the judgment and order of conviction and sentence on the following grounds:

(i) The prosecution has not been able to prove the ingredients of Section 364-A of the Indian Penal Code and there is no material to prosecute the present appellants under other sections. There is no evidence that threat was given by the accused persons and in fact, it was a case of enmity between the parties, inasmuch as the parties belonged to the same village.

(ii) There is no chain of events for convicting the present appellants under Section 364-A or Section 302/34 of the Indian Penal Code.

(iii) There was four days time gap, when the accused and deceased were last seen alive and when the deceased was found dead on Gorakhpur Chawani

Railway Station Platform, and thus, it would be hazardous to come to a conclusion of guilt in the above case.

(iv) There is an inordinate delay in lodging F.I.R.

(v) The prosecution has developed story from time to time in as much as originally the FIR was lodged against four persons subsequently six other persons were added and, therefore, the prosecution has not come with a clean hand.

(vi) Learned trial court has failed to appreciate that it was a case of circumstantial evidence and chain of circumstances was not at all complete in this respect.

(vii) The evidence of P.W.1, 2 and 7 who are witnesses to the last seen theory, are very clear and cogent and they subsequently stated that they saw accused-appellants along with the deceased and when the above witnesses questioned the deceased, the deceased said that he was going to visit fair (mela) at Deoghar with the accused persons and further he had stated that he would return in the evening. The evidence of P.W.10 (who is a tea stall owner) at Gorakhpur Railway Station Platform is very specific. This witness has specifically stated that a boy came running from the west direction and fell down on the platform near the tea-stall. He immediately informed the Station Superintendent. The Station Superintendent (P.W.9) also corroborated the above facts and he called the doctor immediately. A senior Medical officer examined the deceased and he declared him dead and the doctor who conducted post-mortem opined that it is a case of cardio-respiratory failure.

(viii) No specific question was put to the accused persons under Section 313 of the Cr.P.C.

9. With the above submissions, learned Senior counsel for the appellant submits that there are major contradictions in the evidence of the prosecution witnesses and therefore, it is not a fit case of conviction.

10. Mr. Pankaj Kumar, learned A.P.P. appearing on behalf of the State vehemently controverts the arguments and contention of Mr. Tripathy, learned Senior counsel and submits that there was a demand of ransom of Rs. 20,000/- which was demanded by Rajan Mandal through Jagdish Mandal and Binod Mandal. The evidence of P.W.1 (brother-in-law), P.W.2 (an independent witness) and P.W.(7) are very clear. They have specifically stated that all the accused persons were seen together with the victim and this fact was told to the informant on the next day when she came there in search of the deceased. Therefore, the learned trial court has rightly convicted the present appellants under Section 364A of the Indian Penal Code and there is no material to discard the evidence of P.Ws.1, 2, 3, 5 and 7.

11. Perused the Lower Court Records. This Court has gone through the evidence of the prosecution witnesses minutely.

12. P.W.1 (Prakash Mandal) is the brother-in-law of the deceased. He deposed that on 22.07.2001, he saw the deceased at Jasidih Station going along with the accused persons, Rajan Mandal, Ganga Sagar Mandal, Kisan Mandal, Binod Mandal, Jagdish Mandal, Gobar Mandal, Bishwanath Mandal, Raja Mani Mandal and Paltan Mandal who were surrounding the deceased, but the deceased appeared to be nervous. P.W.1 in examination-in-chief, further deposed that in response to his question, the deceased said that he was going to visit the fair (mela) at Deoghar with the above accused persons and the deceased further stated that he would return in the evening.

13. P.W.2 (Ram Kishun Mandal) is an independent witness. While he was going to market, he saw the deceased along with Rajan Mandal, Gangadhar Mondal, Kishun Mondal, Shibu Mondal and others at 8.15 a.m. on 22.07.2001. He deposed that fear got developed on the face of the deceased. When he inquired from the deceased where he was going, the deceased told that he is going to visit fair (mela) at Deoghar. He told this fact to the mother of the deceased on 27.07.2001, when the mother of the deceased came to his house. He further deposed that on 29.07.2001, mother of the deceased sent message to him that the Police personnel came from Gorakhpur and told that the deceased died at Gorakhpur and on the same day, he along with others visited Jamtara Police Station and identified the photographs of the deceased and thereafter he also proved the photographs as Ext.-1 to Ext.1/b. Thereafter they went to Gorakhpur Hospital along with others and identified the dead-body of the deceased and also proved the carbon copy of Jimanama marked as Ext.X. In cross-examination, he deposed that his statement was not recorded by the Police.

14. P.W.3 is the wife of the deceased. She deposed in her examination that on 22.07.2001 at about 7.00 a.m. morning, Rajan Mandal, Ganga Mandal, Shibu Mandal, and Kishan Mandal came at her house and asked her husband (deceased) to accompany them to fair (mela). For this, she forbade her husband, but Rajan Mandal told that he would return in the evening. She further stated in examination that Binod Mandal and Jagdish Mandal returned from Deoghar Mela (fair) on 23.07.2001, but her husband did not return. In response to her query, they told her that 12 months ago, Rajan has asked for Randgari of Rs. 20,000/- and if the amount is not paid, the deceased would be killed. In her cross-examination, she deposed that accused persons and deceased went to Karmatar by four Motorcycles.

15. P.W.4 (Jainarayan Mandal) is the brother of P.W.5. He deposed that P.W.5 (informant) came to his house and said that the deceased was traceless and Rajan Mandal is demanding Rs.20,000/- from her. In cross-examination, he admitted that no demand was made from P.W. 5 (informant) by Rajan Mandal in his presence.

16. P.W.5 (Bhukri Devi) is mother of deceased and informant in this case. In her deposition she said that Rajan Mandal, Gangasagar Mandal, Shibu Mandal and Kishan Mandal came to her house and called her son Bhudeo (deceased) and

said that they have to visit Sawan fair, at the same time Jagdish Mandal, Binod Mandal, Paltan Mandal, Gobar Mandal, Vishwanath Mandal and Rajmani Mandal were outside the house. She further said that when she forbade her son to visit Sawan fair then Rajan Mandal insisted and said that they will return home by evening and after that along with her son, they all went towards "Karmatanr" with bike. She further deposed that her son did not return in the evening. Then on the next day, she went to the house of Binod and Jagdish and enquired about the same. Both of them told that Rajan Mandal demanded Rs. 20,000/- before one year, and if she would not give the said money then her son would remain traceless. Thereafter she went to the house of Gopi Mandal. Gopi Mandal told her that he saw the deceased and all the accused persons at Karmatand Station along with all the accused persons on Sunday. In cross-examination, she admitted that her brother told her that he saw the deceased at Karmatand Station along with the 10 accused persons.

17. P.W.6 (Ram Niwas Yadav) is the Head Constable of GRP, Gorakhpur Police Station. He received the information at 16.45 hours that a person fell down at Gorakhpur Railway Station. He also prepared the inquest report. He also proved the panchnama, forwarding letter and other relevant documents under Ext.2 to Ext.6a.

P.W. 7 (Gopi Mandal) is the maternal-uncle of the deceased and brother of P.W.5. In his examination-in-chief, he stated that on 22.07.2001 at about 8 a.m., he had gone to Karmatand Station where he saw the deceased along with ten accused persons. On the next day, he informed the fact to his sister (informant)

18. P.W.8 (Ram Shanker Singh) is the Investigating officer of this case. He under instructions of the superior officers, got the viscera preserved by Dr. Yadav (P.W.14) and sent the same with a forwarding letter of the CJM, Jamtara for its F.S.L., Ranchi for examination. He proved the formal FIR. In cross-examination, he admitted that he did not know who wrote the written application of the informant.

P.W.9 (Yantri Prasad) is a Station Superintendent who received the information to the effect that a boy fell down on platform no. 1 at Gorakhpur railway Station and sent telephonic information to Dr. D.K. Singh.

19. P.W.10 (Sumay Prasad) is the Tea stall owner. In his examination-in-chief, he stated that a boy came running from the West direction and fell down on the platform near his tea-stall. He immediately informed this fact to the Superintendent of that Railway Station.

P.W.11 (Ashish Kumar Dubey) is the Constable, who went to the Jamtara Police Station along with photographs of the deceased and he narrated the incident to P.Ws.2, 4, and 7 and went with them to Gorakhpur.

20. P.W.12 (Shakil Ahmed) is Assistant Station Master, Gorakhpur Camp who later on turned hostile.

P.W.13 (Yugal Kishore Gupta) is junior Sub Inspector of Police at Jamtara. He received the written information and thereafter First Information Report being Jamtara P.S. Case No. 157 of 2001 was registered about the abduction.

P.W.14 (Dr. H.R. Yadav) is a Medical Officer who conducted the autopsy of the deceased and found the following injuries:-

Ante-mortem injuries :-No external marks of injury seen.

Internal Examination :- Membranes and brain was congested. Both lungs were congested. Stomach mucosa was congested. In stomach fluid "3" ounce present.

Small Intestine : - Empty. Large Intestine :- full of acid and gases. Liver :- 2.2 pounds congested. Gall-bladder was full. Spleen :- 4 ounce- congested. Both Kidneys 5 Ounce & congested. Bladder-empty.

Time of Death :- About one day before the time of examination.

He has also proved the post-mortem report. He did not whisper a single word about the cause of death. In cross-examination, he admitted that it was not a case of starvation death and it was also not a case of heart attack.

P.W.15 (Dr. D.K. Singh) is the Sr. District Medical Officer, Gorakhpur Chhawani, He declared the deceased dead and issued a death certificate. In cross-examination, he admitted that he failed to diagnose the deceased.

21. After scanning the above evidence, it is crystal clear that no evidence of abduction is there and prosecution has not whispered a single word with regard to threat. Neither P.W.3 and P.W.5 has stated about the enticement nor there is any element of doubt with regard to Section 302 of the Indian Penal Code. It appears that the deceased was called on 22.07.2001 from his house and all the witnesses i.e. P.W.1, P.W.3 and P.W.7 saw the deceased along with the accused and all the above three witnesses asked the deceased where he was moving and the deceased told them that he is going to fair (mela) and he would return on the next day evening. P.W.10 is a Tea stall owner and an independent witness who specifically deposed that the deceased was running from the West direction and fell down on the platform near his tea-stall. He also informed the above fact to the Station Superintendent (P.W.9). He has not stated about presence of any of the accused nor he stated that the deceased was accompanied by any one. P.W.9 came and called the Railway doctor. P.W.12 declared him dead.

22. It is settled principle of law that the last-seen theory comes into play where the time gap, between the point of time when the accused and the deceased were last seen alive, and when the deceased is found dead is so less that possibility of any person other than the accused being the author of the crime, becomes impossible.

In the instant case, this Court also examined the matter in the above aspect and found that accused and deceased were seen together lastly on 22nd July, 2001, the deceased fell down near a Tea stall on platform no. 1 of Gorakhpur on 27th

July, 2001. There was a long gap of more than 4 days. There is no positive evidence that any of the appellants were seen with the deceased between 22nd July, 2001 to 27th July, 2001. Within this time gap, there is much possibility that the deceased may be in company of many persons. Nothing incriminating against the appellants at the time of question under Section 313 Cr.P.C., with regard to the last seen theory surfaced. No other circumstances were established by the prosecution to link the chain, rather the prosecution has introduced four accused persons in the FIR and subsequently six persons were added.

23. Considering the facts and circumstances in its entirety, this Court is of the view that the prosecution has miserably failed to prove the case as against the present appellants as the author of the crime. Thus, it is difficult to uphold the findings arrived at by the learned trial court, in as much as merely on suspicion, a person cannot be held guilty.

24. After considering the submissions of learned counsel for both the parties, this Court is of the view that the prosecution can never be said to have proved its case beyond all reasonable doubts. The trial court did not take into account all these aspects of the matter in its right perspective and thereby, it committed illegality in recording the judgment of conviction and order of sentence against the appellants.

25. As such, the instant appeals are allowed and the judgment of conviction dated 22.11.2003 and order of sentence dated 25.11.2003 passed by learned 2nd Addl. Sessions Judge (Fast Track Court), Jamtara in Sessions Trial Case No. 29 of 2002/06 of 2002 stands set aside. The appellants who are on bail, are discharged from the liability of their bail bonds.