
(2018) 08 JH CK 0052

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 693 of 2010

Panu Tuddu

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 109, 302, 304
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2018) 08 JH CK 0052

Hon'ble Judges : KAILASH PRASAD DEO, J

Bench : Single Bench

Advocate : Mahesh Tewari, Kumar Basant Narayan, Abhay Kr. Tiwary

Final Decision : Allowed

Judgement

1 .The instant Criminal Appeal has been preferred against judgment of conviction dated 07.07.2010 and order of sentence, dated 12.07.2010, passed

by learned Additional Sessions Judge, Fast Track Court No. IV, Dhanbad, in Sessions Trial No. 53 (A) of 1999, whereby the appellant Panu Tudu has

been convicted for the offence committed and punishable under Section 304 Part- II of the Indian Penal Code and has been awarded rigorous

imprisonment for five years and a fine of Rs. 5000/- and in default of payment of fine, to further undergo simple imprisonment for three months.Â

2. The prosecution case is based upon the fardbeyan of Sanu Soren (P.W. 1) recorded by S.I. Mahendra Singh Munda, Officer-in-charge of Rajganj

outpost, Dhanbad, on 12.08.1998 at 16.00 P.M. The informant has alleged that, on 09.08.1998 (Sunday), daughter of one Chhotu Hembram, aged

about three years, has died because of some disease but Chhotu Hembram called a panchayati, where it has been alleged, that his daughter has been

killed, because of some black magic. Subsequently, to ascertain that, who has played the black magic, the villagers went to ojha on 10.08.1998 namely

Shivlal Manjhi, who disclosed, that Sanu and his wife has played black magic, due to which the daughter of Chhotu Hembram died. Thereafter a

panchayati was convened and in the panchayati, it was decided that Sanu has to pay Rs. 1500/- to Chhotu, but the informant asked for time and

thereafter the informant went to his sasural to arrange the money. It is alleged that, on 12.08.1998 (Wednesday), the informant's son, Binod came

to the informant and disclosed, that yesterday on 11.08.1998, at around 04.00 P.M., while he along with his maternal grand-mother were in the

courtyard, the co-villagers Chhotu Hembram, Jaleshwar Hembram, Punnu Tudu, Nunu Marandi came with lathi, danda in their hands and asked the

mother-in-law of the informant, Tupli Devi about the whereabouts of the informant and his wife. When the mother-in-law of the informant has

disclosed, that both have gone to arrange the money, thereafter all the accused persons have alleged, that this old lady has allowed the accused

persons to flee away and they decided to assault Tupli Devi and thereafter Dinu Hembram, Karma Murmu and Bhandra Tudu having hot iron sickle

inflicted injury upon the back of Tupli Devi, mother-in-law of the informant. Chhotu Hembram hit the chest of the old lady by flunging a big stone, kept

in the courtyard, due to which the mother-in-law of the informant became seriously injured. She was taken inside the room and was put on a cot, who

died on 12.08.1998 at around 08.00 A.M. The informant was informed about the said occurrence by his son Binod Soren aged about 9-10 years at the

sasural of the informant, where the informant has gone for arranging the money. After hearing this, the informant along with his wife, son and brother-

in-laws Nunulal Kisku and Kistu Kisku, came to his village Seraidaha and saw the dead body of the old lady having injury of hot iron sickle on back,

arm, swelling on the chest and blood was oozing from the mouth. The informant has further alleged, that all eight accused persons namely Shivlal

Manjhi, Chhotu Hembram, Jaleshwar Hembram, Punu Tudu, Nunu Marandi, Dinu Hembram, Karma Murmu and Bhandra Tudu have entered into the

house of the informant, but the informant and his wife were not present and as such they have assaulted the mother-in-law of the informant Tupli Devi

by inflicting hot iron sickle and assaulted by flunging a big stone and also by lathi-danda.

3. On the basis of the fardbeyan of the informant, the police registered Katras (Rajganj) P.S. Case No. 265 of 1998 dated 13.08.1998, under Sections

302, 109/34 of the Indian Penal Code, consequent to G.R. No. 2822 of 1998.

4. After investigation, the police submitted chargesheet against all eight accused persons vide chargesheet No. 322 of 1998 dated 19.11.1998, under

Sections 302, 109/34 of the Indian Penal Code.

Â The appellant Panu Tudu remained absent and thus his case was separated vide order dated 08.05.2002 from S.T. No. 53 of 1999 by instituting

separate case, as S.T. No. 53 (A) of 1999 and subsequently, he was arrested on 07.05.2004 and thus charge against Panu Tudu has been framedÂ

on 06.08.2005, under Sections 109 and 302/34 of the Indian Penal Code, to which the appellant has pleaded his innocence and thus he has been put

under trial.Â

6. The prosecution has examined altogether nine witnesses and also exhibited a number of documents.Â

7. Sanu Soren, informant of the case has been examinedÂ as P.W. 1, Saniya Devi @ Sani Devi, being the wife of the informant and daughter of the

deceased, has been examined as P.W. 2, Binod Soren, being the sole eyewitness of the occurrence and on the basis of disclosure made by him, the

entire case revolves, has been examined as P.W. 3, Heno Murmu has been examined as P.W. 4, Danto Kisku has been examined as P.W. 5, Dr.

Shailendra Kumar, Medical Officer has been examined as P.W. 6, Kistu Kisku has been examined as P.W. 7, Lakhi Ram Kisku has been examined

as P.W. 8 and Nunulal Kisku has been examined as P.W.9.

8. The prosecution has proved and marked the post-mortem report of the deceased as Exhibit- 1, signature of Kistu Kisku, on the seizure list, has been

proved and marked as Exhibit- 2, carbon copy of inquest report has been proved and marked as 'X' for identification, signature of Nunu Lal

Kisku, on the seizure list, has been proved and marked as Exhibit- 2/1, signature of Nunu Lal Kisku on the inquest report has been proved and marked

as Exhibit- 3 and signature of Nunu Lal Kishku on the fardbeyan has been proved and marked as Exhibit- 4.

9. After closure of the prosecution evidence, the statement of the appellant has been recorded under Section 313 Cr.P.C. on 05.06.2010, to which he

denied the allegations levelled against him and claimed himself to be innocent.Â

10. After hearing the parties, the learned Trial Court convicted the appellant Panu Tudu under Section 304 Part- II of the Indian Penal Code and

passed the impugned judgment of conviction and order of sentence.Â

Â Â Â Being aggrieved and dissatisfied with the impugned judgment of conviction and order of sentence passed in S.T. No. 53 (A) of 1999, the

present criminal appeal has been preferred before this Honâ??ble Court by the appellant.

11. Heard, learned counsel for the appellant Mr. Mahesh Tewari assisted by his junior, Mr. Kumar Basant Narayan, Advocates. Learned counsel for

the appellant has submitted, that entire case revolves around the evidence of P.W. 3 Binod Soren, who has given information to his father and other

witnesses namely Saniya Devi @ Sani Devi (P.W. 2), Heno Murmu (P.W. 4), Danto Kisku (P.W. 5), Kistu Kisku (P.W. 7), Lakhi Ram Kisku (P.W.

8) and Nunulal Kisku (P.W. 9) and all are hearsay witnesses, who have got the knowledge of the occurrence on the basis of disclosure made by

Binod Soren (P.W. 3). Learned counsel for the appellant has further submitted, that the investigating officer of this case has not been examined to

elucidate the facts of the case and thus, the same has caused serious prejudice to the appellant, as the appellant could not draw the attention with

respect to the contradictions in the prosecution witnesses nor he has been given opportunity to cross-examine the investigating officer with respect to

the place of occurrence and manner of occurrence. Learned counsel for the appellant, Mr. Mahesh Tewari has further submitted, that the medical

evidence proved by Dr. Shailendra Kumar (P.W. 6) has been marked as Exhibit- 1 but the medical evidence found in the postmortem report is

contradictory to the allegation made by Binod Soren (P.W. 3), non-explanation of the injury on the forehead of the victim, which is cross mark 2" x 2",

has not been alleged by Binod Soren (P.W. 3) and allegation which has been levelled by Binod Soren, that his maternal grandmother has been inflicted

injury by hot iron sickle or hot iron rod on the leg, has not been found by the doctor and as such, the conviction of the appellant on the basis of solitary

witness cannot sustain in the eyes of law. The learned Trial Court has not scrutinized the evidence nor draw the attentions towards the vital

contradictions in the evidence of other witnesses, who are hearsay witnesses, such as P.W. 1, P.W. 2, P.W.4, P.W.5, P.W. 7, P.W. 8 and P.W.9.

Their evidences are contradictory, so far death of deceased, Tupli Devi is concerned, as per the evidence, some of the witnesses are saying that

deceased died at 4.00 p.m. Sonu Soren, informant of the case, who has been examined as P.W. 1 has stated, that deceased died at 8.00 a.m. on the

next day. Learned counsel for the appellant has further submitted, that under such background, the appellant cannot be convicted under Section 304

Part II of the Indian Penal Code. Learned counsel for the appellant has further submitted, that the impugned judgment of conviction and order of

sentence is contradictory to the material available on record and the findings given by the learned Trial Court are perverse. Learned counsel for the

appellant has further submitted, that P.W.3 Binod Soren is not an eye-witness to the occurrence but with ulterior motive, he has claimed himself to be

an eye-witness to falsely implicate the covillagers, with whom he has animosity.Â

12. Learned counsel for the State, Mr. Abhay Kr. Tiwary, Additional Public Prosecutor has vehemently argued the case and has submitted, that the

evidence of Binod Soren (P.W. 3) is impeachable and the learned Trial Court has rightly passed the impugned judgment of conviction and order of

sentence, on the basis of materials found on record. Learned counsel for the State has further submitted, that deceased died because of the assault

made by the appellant and other co-accused persons, who have also been convicted by the learned Trial Court and their appeal is also pending before

this Honâ??ble Court and as such, learned counsel for the State has stated that the impugned judgment of conviction and order of sentence does not

require interference by this Honâ??ble Court.

13. After hearing the learned counsel for the appellant, Mr. Mahesh Tewari assisted by his junior Mr. Kumar Basant Narayan, Advocates and Mr.

Abhay Kumar Tiwari, Additional Public Prosecutor appearing for the State and on perusal of the record including the First Information Report,

framing of the charge, evidence of nine prosecution witnesses, Exhibits- 1 to 4 and the statement of the appellant recorded under Section 313 Cr.P.C.,

this court is of the opinion, that the evidence of P.W. 3, Binod Soren is not in consistence with the medical evidence i.e. Exhibit- 1, post-mortem report

of the deceased and the doctor (P.W. 6) has not found any injury on the leg of the victim, rather an injury of superficial burn was found on the middle

of forehead like cross mark in an area of 2"" x 2"", which has not been alleged by

the prosecution. The evidence of other hearsay witnesses are contradictory to each other and it is also true, that non-examination of the investigating officer has caused serious prejudice to the appellant, as the appellant could not cross-examine him to elucidate the facts with regard to the place of occurrence and manner of occurrence and the injuries found on the deceased.

Â Â Â On the basis of discussions made above, this Court is of the opinion, that conviction of the appellant Panu Tudu under Section 304 Part II of

the Indian Penal Code cannot sustain in view of the evidence of P.W. 3, Binod Soren and P.W. 6, Dr. Shailendra Kumar, Medical Officer, who has proved the post-mortem report as Exhibit- 1.Â

14. Considering all these above facts and circumstances of the case, this court is of the opinion, that the appellant Panu Tudu is entitled for benefit of doubt.Â Â Â Â Â Â Â

15. Thus, the judgment of conviction dated 07.07.2010 and order of sentence, dated 12.07.2010, passed by learned Additional Sessions Judge, Fast

Track Court No. IV, Dhanbad, in Sessions Trial No. 53 (A) of 1999 in connection with Katras (Rajganj) P.S. Case No. 265 of 1998, consequent to

G.R. No. 2822 of 1998, is hereby set aside and the appellant Panu Tudu is acquitted of the charge under Section 304 Part II of the Indian Penal Code by giving benefit of doubt.

16. The present criminal appeal is allowed.Â

17. The appellant, who is on bail, is discharged from liability of his bail bond.

18. Let the lower court record be sent along with a copy of this judgment to the court concerned, at once for necessary action.Â