

(2009) 01 JH CK 0075

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 126 of 2000 (R)

Patrik Kindo

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

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

Citation : (2009) 57 BLJR 1396

Hon'ble Judges : R.K. Merathia, J; Prashant Kumar, J

Bench : Division Bench

Advocate : R.K. Prasad, for the Appellant; APP, for the Respondent

Final Decision : Allowed

Judgement

1. This is a part heard matter. Today no body appears.

This appeal is directed against the judgment of conviction and order of sentence passed by learned Sessions Judge Gumla on 9.8.1999 in S.T. No. 193 of 1994 whereby and whereunder he convicted the appellant u/s 302 and 201 of the I.P.C. and sentenced him to undergo imprisonment for life for the offence u/s 302 of the IPC and rigorous imprisonment for five years for the offence u/s 201 of the I.P.C.

2. The case of prosecution in short as per the fard beyan of informant William Toppo is that on 20.3.1994 he along with Ranjit Xaxa, Pius Toppo, Wilfrad Minz, Lalit Ekka, Jagdius Ekka, Rajendra Xaxa had gone to the house of Ishwar Ekka in connection with a function of engagement (Lotapani). It is further alleged that on that day itself at about 7 P.M. the informant along with deceased and others had gone for strolling in the village. During that period itself the appellant Patrik Kindo met them and demanded Raw Tobacco from them to which they stated that they do not have, upon which some altercation took place in between the appellant Patrik Kindo and deceased Ranjit Xaxa. It is also alleged that in course of the said altercation deceased Ranjit Xaxa had assaulted the appellant.

However, later on, the informant and his friends fled away and took shelter in the house of Ishwar Ekka. It is further alleged that in the night they have gone to see dance and later on they went for sleeping. It is further stated that in the night when the informant and his friends were seeing dance the appellant was sitting behind the house of Ishwar Ekka and he was seen by the mother of Ishwar Ekka, namely, Jusphina Minz. At that time appellant has covered himself with a blanket. It is further stated that when Jusphina Minz caught hold him and asked him to follow her he fled away. It is further stated that in the morning some children found that dead body of a person was floating in the village pond, whereupon the villagers and informant and his other friends went there and they found that the said dead body was of deceased Ranjit Xaxa. It is further alleged that near the pond they found some trailing mark which shows that the occurrence might have taken place at some other place and later on the dead body was brought and fell in the pond. It is further stated that after seeing the trailing mark they tried to search the place of occurrence and in course of that they found blood mark on the ridge of the field of Paskal. On the basis of aforesaid fard beyan, the police instituted the present case and took up the investigation. After investigation, the police submitted charge sheet against the appellant on the basis of same learned CJM, Gumla took cognizance of the offence. Later on the case was committed to the court of Sessions as the offence u/s 302 of the IPC is exclusively triable by the court of sessions. After the commitment the charges were framed against the appellant u/s 302 and 201 of the IPC and the same was explained to him to which he pleaded not guilty and claimed to be tried. Thereafter the prosecution had examined altogether 14 witnesses in support of its case. The prosecution had also exhibited and proved Post Mortem Report, Fard Beyan, Seizure List, Inquest Report and FIR in support of its case. After hearing the parties, the learned Sessions Judge by the impugned order convicted and sentenced the appellant as aforesaid against which the present appeal has been filed.

3. While assailing the judgment of the court below, the learned Counsel for the appellant Sri R.K. Prasad submitted that there is no eye witness of the occurrence and the circumstances relied upon by the court below for convicting the appellant are not such from which it can be inferred that the appellant has committed the present crime. Accordingly, it is submitted that the judgment of conviction and order of sentence passed by the court below cannot be sustained in this appeal.

4. On the other hand, the learned Additional P.P. submits that there is confession of appellant before the police which leads to recovery of instrument used in commission of crime. It is also submitted that the prosecution had proved the motive for the said crime and other circumstances relied upon by the prosecution also shows that the crime was committed by the appellant and none else. Accordingly he submits that the impugned judgment does not require any interference by this Court in the present appeal.

5. After hearing the counsel for the parties, we have gone through the evidence available on the record. Admittedly, there is no eye witness of the occurrence. From perusal of medical evidence, P.M. report as well as inquest report it is clear that the deceased died of a homicidal death and it is also not disputed by the learned Counsel for the appellant. Thus the fact remains to be seen in this appeal is as to whether alleged crime was committed by this appellant or not.

6. In the instant case the prosecution had tried to prove the charges leveled against the appellant on the following circumstances.

(a) There is altercation between the deceased and the appellant in the evening of 20.3.1994 at 7.30 with respect to demand of Row-tobacco and after the altercation the appellant had threatened to kill the deceased.

(b) The appellant was seen by P.W. 2 Jusphina Minz in the night behind the house of Ishwar Ekka.

(c) The appellant was also seen in the night at about 11 P.M. coming from the side of pond by P.W. 8 and 10.

(d) The appellant was seen by P.W. 6 at the house of Etwā at about 12 in the night in a suspicious condition.

(e) The appellant had confessed his guilt before the P.W. 14 (a police officer) which lead to recovery of a knife alleged to be used in commission of present crime.

7. It is by now well settled that the standard of proof required to convict a person on circumstantial evidence is well established by a series of decisions of Supreme Court. According to the standard, the circumstances relied upon in support of the conviction must be fully established and chain of evidence furnished by those circumstances must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and further it must be such as to show that within all human probability the act must have been done by the accused. Thus in view of the aforesaid settled principles of law, we are proceeding to consider as to whether the prosecution have been able to prove the circumstance as stated above beyond the shadow of all reasonable doubts or not.

8. So far the first circumstance is concerned, it is worth to mention that informant who is the witness of altercation between the deceased and appellant with respect to demand of row-tobacco has not been examined in this case. From the perusal of record, we find that the other persons, namely, Wilfrad Minz who accompanied the informant and deceased at the time of the said altercation had also not been examined. Thus, we find that so far the factum of altercation is concerned it had not been proved by the prosecution by any direct evidence. In this respect, it is stated that the learned court below in the impugned judgment had stated at paragraph No. 16 at page 12 that P.W. 1, 2, 4, 6, 8 and 10 has fully corroborated the statement made in the fard beyan but we find that these

witnesses are not present at the scene of occurrence where the aforesaid altercation took place. Thus, the finding of the court below in this respect does not inspire confidence. Under the circumstance, we are of the view that the first circumstance relied upon by the prosecution to prove the guilt of the appellant has not been established.

9. Now coming to the second circumstance, it appears that the prosecution had tried to prove the same from the evidence of P.W. 2. P.W. 2 Josphina Minz had stated that in the night when she went to the back of her house for easing she saw that the appellant was sitting there after covering himself with a blanket whereupon she challenged as to who is sitting there and then she caught hold the hand of the said person. She further states that then the said person had only stated that "Main Hun". She further stated that thereafter the aforesaid person fled away after releasing himself from the hand of this witness. Thus from perusal of the aforesaid portion of the evidence of P.W. 2 it is not clear as to how she had identified the appellant because she herself categorically stated that at that time the person had covered himself with a blanket and because of that she asked as to who was sitting there. Even on challenge made by the witness, the said person had not disclosed his name rather had only stated that "Main Hun". Under the said circumstance, claim of identification by P.W. 2 appears to be doubtful and in that view of the matter, we are of the view that this circumstance also not fully established by the prosecution beyond all reasonable doubts.

10. Now coming to the third circumstance relied upon by the prosecution that the appellant was seen coming from the side of pond at about 11 O'Clock in the night by P.W. 8 and 10, we find that the said circumstance is also not established beyond all reasonable doubts because the aforesaid two witnesses had stated that in the night at about 11 P.M. in the night while they were sitting in the house of Karmila Ekka (P.W.10) they saw that one person was coming from the side of pond who has covered himself with a blanket. They have also stated that from some distance when the said person saw these witnesses he fled away after taking "U" turn. Thus we are of the view that in the night when a person had covered himself with a blanket it is difficult to identify him from some distance.

11. So far the fourth circumstance is concerned; the P.W. 6 had only stated that the appellant had come to the house of Etwa in a nervous condition at about 12 in the night. It is further stated that Etwa is the maternal uncle of the appellant. This witness had also stated that Etwa and appellant had talked something at a lonely place and thereafter the appellant went away. Thus this circumstance, even assuming to be proved, does not have any link with the present crime.

12. Now coming to the confession, it is stated that the said confession is made before the police i.e. P.W. 14. P.W. 14 in his evidence had stated that he took the accused on police remand and then took his statement. During the statement before him, the appellant accepted his guilt. P.W. 14 further deposed that on the basis of said statement and also on being indicated by the accused, 7" long dagger was recovered from the house of the appellant in presence of witnesses.

P.W. 4, namely, Yakub Oraon had stated that the police had recovered the blood stained dagger from the house of appellant which was wrapped in a mat. From perusal of Ext. 5 (Production-Seizure List) we find that the I.O. who prepared the said seizure list had not stated any where in it that the dagger which was recovered from the house of appellant had any blood stain. P.W. 14 had also not stated so in his deposition. So far the first part of confession that the appellant had accepted his guilt is not admissible in evidence. Thus that portion of confessional statement of the accused (appellant) cannot be taken into consideration for proving the charges leveled against the appellant. Since, there is contradiction in the statement of P.W. 4 and P.W. 14 as to whether there was any blood stain on the dagger or not, we are of the view that whether the said dagger has been used in commission of crime or not is not proved beyond all reasonable doubts. Thus we are of definite view that this circumstances also not proved beyond the shadow of all reasonable doubts.

13. In view of the discussion made above, the finding of the court below that the circumstantial evidence adduced in this case complete a chain which points out that the accused alone has committed the said crime is not correct, rather we are of the definite view that the circumstances relied upon by the prosecution has not been proved in this case beyond the shadow of all reasonable doubts. Hence, we find that the prosecution had not proved the charges leveled against the appellant beyond all reasonable doubts. Hence the impugned judgment cannot be sustained in this appeal.

In the result, this appeal is allowed. The judgment of conviction and order of sentence is set aside. The appellant is acquitted from all the charges leveled against him. It appears that the appellant is in custody, thus we direct that he must be released forthwith, if not wanted in any other case.