

(2017) 07 JH CK 0063
In the Jharkhand High Court
Case No : 177 of 1992(R)

Philip Hembrom son of Ranjan Hembrom	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 14-07-2017

Acts Referred:

Indian Penal Code, 1860, Section 302,
Section 328 - Punishment for murder - Causing hurt by
means of poison, etc., with intent to commit an offence

Citation : (2017) 07 JH CK 0063

Hon'ble Judges : H.C. Mishra, Ratnaker Bhengra

Bench : DIVISION BENCH

Advocate : Deepak Kumar, Sachin Mahato, Vijay Shankar Prasad

Judgement

1. Heard learned counsel for the appellant as also the learned counsel for the respondent-State.
2. This appeal is directed against the judgment of conviction dated 23.09.1992 and order of sentence dated 24.09.1992, passed by learned 1st Additional Sessions Judge, Hazaribagh in Sessions Trial No. 219 of 1988, whereby, appellant has been convicted for the offence under Sections 302 and 328 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and to undergo rigorous imprisonment for five years under Section 328 of the Indian Penal Code. Both the sentences were directed to run concurrently.
3. Prosecution case, as stated in the written report of informantMakbul Miyan, is that he used to work at bakery in Barhi. On 20.04.1987, at 6:00 a.m. his co-villager Sahdul Mian communicated to him that his two daughters Guddi, aged four years and Butkani, aged two years had died at about 2:00 a.m. On receiving this information, informant immediately rushed back to his village and learnt from his wife that on 19.04.1987, around 3:00 p.m., she had gone to visit her sister at village Dhamna for procuring some money from her, however, when she

returned from Dhamna, her eldest daughter, aged six years, informed that her that aunty (chachi), wife of Israil Mian, had given her sisters something to drink (sharbat) and after consuming the same, both the girls started vomiting and died at about 2:00 a.m. Four hens that had consumed the vomit, had also died. Eldest daughter had not consumed the drink offered. It is alleged that the aunt had offered poison laced drinks to the deceased daughters and committed murder. Thereafter, first information was registered as Chouparan P.S. Case No. 49/1987, corresponding to G.R. No. 203/87. Police investigated the same and submitted charge-sheet against the appellant. The case was committed to the Court of Session, and was ultimately tried by the learned 1st Additional Sessions Judge, Hazaribagh, who convicted the appellant for the offence under Sections 302 and 328 of the Indian Penal Code and sentenced her to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and rigorous imprisonment for five years under Section 328 of the Indian Penal Code vide judgment of conviction dated 23.09.1992 and order of sentence dated 24.09.1992. Both the sentences were directed to run concurrently.

4. Prosecution has examined altogether six witnesses. PW-1 is the wife of the informant; PW-2 is the eldest daughter of the informant, who at the time of the occurrence was about six years of age and at the time of deposing in the court was about eleven years of age and she is the material witness in this case; PW-5 is the Doctor, who conducted the post mortem on the dead bodies of the deceased; PW-6 is the informant. The other two witnesses are not very much material i.e. Nago Mahto, PW-3 and Sahadul Mian, PW-4. The Investigating Officer has not been examined in this case. The defence has not examined any witness in support of its case.

5. PW-6 is Makbul Miyan. He is the informant and father of the deceased girls. He has supported the prosecution case. In his examination-in-chief, he has deposed that Kitabani Khatun administered poisonous drink to his two daughters. He was not at home then and his wife had gone to visit her sister's house. After consuming poison, both the children commenced vomiting. Even four hens had consumed the vomit, due to which, they died. Both the children also died. Co-villager Sahdul Mian had informed him about the incident and on returning back to house, he came to know that Kitabani had given both the children poison, due to which, they had died. All the members of Kitabani's house had fled away. He further deposed that his wife had left both the children in the care of the eldest daughter and gone. In his cross-examination, he has deposed that the poison was not administered in front of him, but, the fact about administration of poison was informed to him by his eldest daughter. There are three to four houses adjacent to his house. In para-5, he deposed that his wife had fallen into a well and she was taken out of the well by a guest of a co-villager. Finally, he denied that it was not so that his wife is quarrelsome or giving threats to entrap someone and it is not so that his wife has committed the incident.

6. PW-2 is Jainul Khatoon. She is the eldest daughter of the informant- PW-6.

She deposed that her mother had gone to visit her aunt at Dhamna for getting some money. Her mother had left all the three daughters in the house itself. Her younger aunt, who is the wife of Israil had taken the younger girls and given them drinks (sharbat) and boiled potatoes. She had also offered the drink to her, but, she did not drink. Both the sisters started vomiting. When her mother came then, she told her mother everything, at which, her mother started screaming and people collected. Both her younger sisters died and also four of her hens died after consuming the vomit. In cross-examination, she deposed that on the day, her mother had given them rice with potato curry. Her brother had gone to his nana's place. She also deposed that her aunty had taken her sisters away. In para-5, she deposed that due to her mother and aunty, panchayati had taken place in the village. Her mother had jumped into the well, but, not with an intention to implicate the accused. She further deposed that her sisters had vomited in her presence. Finally, she deposed in the court that she deposed so without being tutored by anybody or by her mother.

7. PW-1 is Khairun Khatoon. She is the wife of PW-6 and mother of the deceased girls. She deposed that incident is of three to four years ago. She had gone to get money from her sister at Dhamna. She left her three daughters at home and returned from Dhamna by 6:00 p.m. PW-2, Jainul Khatoon informed her that her younger aunt gave drinks and boiled potatoes to both the younger sisters. She was also offered the same, but, she did not drink. She has further deposed that she saw both her younger daughters lying on the ground. On asking the wife of Israil, she did not tell anything. She subsequently raised an alarm, at which, persons of the locality assembled. Her father-in-law brought the Doctor at 2:00 a.m., by which time, one daughter had already expired. Doctor gave some medicines to other daughter, but, she also died. She then deposed that her gotni (wife of husband's brother) had administered poison to her children, which resulted in deaths. Her four hens have also died. In cross-examination, she deposed that she also had quarreled with her gotni, for which, panchayati had taken place. She admitted that she had fallen into the well.

8. PW-5 is Dr. Baleshwar Prasad Verma. On 21.04.1987, he was posted at Sub Divisional Hospital, Koderma and on that day, at 9:35 a.m., he did post mortem examination of Butkani, daughter of Makbul Miyan, who was aged two years. He found froth coming out from the mouth and nostril of the girl. On dissection, he found mucosa of stomach burnt at places in patches. The contents of the stomach were emitting bitter smell. He found mucosa of small intestine also burnt at several places in patches. In the opinion of the Doctor, death occurred due to respiratory and circulatory failure, as a result of intake of some poison orally. In para-3, the Doctor deposed that on the same day at 10:00 a.m., he held post mortem examination on the dead body of Guddi, daughter of Makbul Miyan, aged four years. He found froth coming out from the nostril of the deceased. On dissection, the Doctor found exactly the same injuries, which were present in the case of deceased Butkani. In the opinion of the Doctor, this girl also died due to respiratory and circulatory failure, as a result of intake of some

poison orally. He has proved the post mortem reports, which were marked Exts. 1 and 1/1.

9. PW-3 is Nago Mahto. He has deposed that at about 6:00 p.m., Khairun Khatoon, wife of the informant had come to him and had taken away her she-goats. She had stated on interrogation that because she had gone to Dhamna, her she-goats had untied themselves. She also stated at that time that her daughters were vomiting. On the next day, he learnt that two daughters of Makbul Miyan had died.

10. PW-4 is Sahadul Mian. He has deposed that he heard an alarm to the effect that two daughters of Makbul Miyan had died. He rushed to the house of Makbul Miyan, where he saw both the daughters of Makbul Miyan lying dead. He further deposed that he learnt that both daughters were administered poison.

11. Mr. Deepak Kumar, learned counsel for the appellant, has argued that as per the post mortem report of the Doctor, nature or the exact nature of the substance, alleged to be poisonous, should be decided by the chemical analysis of the viscera. Admittedly, there is no such record of the chemical analysis, therefore, if no such report has been produced or exhibited in court, it goes against the case of the prosecution and therefore, the allegation of poisoning of the children cannot be proved. Learned counsel has further submitted that poison could have been taken orally by the children. Learned counsel has also argued that since there is no chemical analysis report, it is not possible to say that any poison was administered by drink or sharbat. Learned counsel for the appellant has also submitted that there was prior enmity between PW-1, who is the wife of PW-6 & mother of the deceased girls, and the appellant, for which, even panchayati was held and, therefore, the appellant has been falsely implicated in this case. Learned counsel for the appellant has also questioned the authenticity of the evidence of PW-2 because incident is of 1987, while she has deposed in 1990. It means she has given her evidence after considerable lapse of time and she most probably was tutored and therefore, her deposition or evidence should not have been believed. Learned counsel has further argued that the cause of death can only be ascertained after receipt of the viscera report, which has not been done so and therefore, the case is not proved against the appellant. Finally, learned counsel for the appellant has argued that the IO has not been examined in this case and due to nonexamination of the IO, appellant has been seriously prejudiced.

12. Learned APP, appearing on behalf of the State, has argued that this is an obvious case of murder by poisoning children, by a vicious and jealous aunty. There is clear cut evidence against the appellant by the eldest daughter of PW-6 Makbul Miyan, who is an eye-witness to the administration of poison and she, being the child witness and present at the place of occurrence, is absolutely natural and believable witness. On the basis of this child witness itself, allegations are proved against the appellant. Corroboration of poisoning is done so by the examination of PW-5 Dr. Baleshwar Prasad Verma.

13. Having heard learned counsels for both the sides, going through the records of the case and in the facts and circumstances of the case, it is clear that deaths by poisoning had occurred and two children were the victims of this crime. Allegation is that the appellant Kitabani Khatun had administered poison to minor girls Butkani & Guddi and committed murder. It is clear from the arguments of the learned APP as well as the evidence on record that the material witness PW-2, Jainul Khatoon, who is an eye-witness to the actual occurrence of administering poison to the two deceased young children, was left in the house with her younger sisters because her mother had gone to collect money from her aunty (mousi). According to this witness, appellant served drink and boiled potato to her younger sisters and also requested her to drink, but, she declined the same. After drinking, immediately her sisters started vomiting. This witness has also stated that even four hens, who ate the vomit, had also died. The strength or efficacy of the poison seems to be borne out by the fact that immediately or soon after taking the drinks, the girls had started vomiting. It was most fortunate that she had not taken the drink; otherwise, there would have been no such material witness available to pinpoint the crime of the appellant. The fact that the four hens also died proves that the poison had been administered to the daughters. Administering poison to the young girls is corroborated by the evidence of PW-5 Dr. Baleshwar Prasad Verma, who has opined that death occurred due to respiratory and circulatory failure, as a result of intake of some poison orally. He has given this opinion about both the daughters. Hence, ocular evidence is corroborated by the medical evidence and the allegation against the appellant is totally proved. Since PW-2 Jainul Khatoon is a minor, natural and reliable witness, there is no reason to disbelieve her evidence. Regarding, the non-examination of the IO and the prejudice caused to the appellant, given the natural and trustworthy evidence of the child witness, PW-2, which is also corroborated by the medical evidence of the Doctor, in the total facts and circumstances, it cannot be said that lack of examination of IO has caused prejudice to the appellant.

14. On the basis of reliable evidence, as discussed aforesaid, we find that the appellant is guilty of the double murder of two young children, therefore, we hold that the judgment of conviction dated 23.09.1992 and order of sentence dated 24.09.1992, passed by learned 1st Additional Sessions Judge, Hazaribagh in Sessions Trial No. 219 of 1988, convicting and sentencing the appellant for the offence under Sections 302 and 328 of the Indian Penal Code, is fully sustainable and are also upheld.

15. Since appellant is on bail, her bail bond is cancelled. The appellant Kitabani Khatun is directed to surrender in the court-below to serve out the sentence. Learned successor or concerned court is also directed to issue the process to arrest her for serving out the sentence.

16. Accordingly, this appeal is dismissed. Let the L.C.R. be sent back forthwith with the copy of this Judgment.