
(2006) 02 JH CK 0028

In the Jharkhand High Court

Case No : Criminal Appeal No. 546 of 1989 (P)

Prem Lal Mandal and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 24

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2006) 2 JCR 117

Hon'ble Judges : N. Dhinakar, C.J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : Subarato Ghosh, Amicus Curiae, for the Appellant; M.B. Lal, Addl.PP, for the Respondent

Final Decision : Allowed

Judgement

1. Appellants Prem Lal Mandal and Dhola Mandal were arrayed as A-1 and A-3 before the Sessions Court along with Bhuneshwar Mandal who was acquitted by the trial Court in Sessions No. 79 of 1988/6 of 1989. The appellants on being found guilty u/s 302/34, IPC, were convicted and sentenced to rigorous imprisonment for life, which is challenged in this appeal.

2. The case of the prosecution can be "briefly summarized as follows.

3. PW 2 Babulal Mandal is the father of the deceased Anil Mandal. PW 3, aged about 7 years at the relevant period, is the sister of the deceased. Two months prior to the date of the incident, a dispute had arisen regarding irrigation of the field between PW 2 and Dhola Mandal, the 2nd appellant and at that time Dhola Mandal had threatened PW 2 that his son will be killed. This is stated to be the motive for the occurrence. On 4.3.1988 at about 3.00 p.m. PW 2 Babulal Mandal went to sell potato at market. PW 3 Rinku Kumari and the deceased were asked to go to the field for the purpose of keeping a watch over the crops raised. Appellants 1 and 2 went there and after sending PW 3 to the house, took the

deceased along with them to witness a movie. The deceased accompanied the appellants and thereafter PW 3 returned to the house and informed her father PW 2 that the deceased had gone to cinema along with the appellants. The deceased did not return home on the night. They started searching for the deceased and at about 8 p.m. the dead body of the deceased was found on a cot lying in front of his house. Thereafter PW 2 gave Jardebayan Ext. 2 to the police which was recorded by the Investigating Officer PW 10. The investigation was taken up by PW 10 who conducted inquest over the dead body of the deceased and prepared inquest report (Ext. 6). After inquest, the dead body was sent to the hospital with the requisition to conduct autopsy. The police officer also prepared seizure list (Ext. 7) attested by the witnesses.

4. On receipt of the requisition, PW 9 Dr. Ashok Kumar, Civil Assistant Surgeon (CAS) attached to the Government Hospital at Godda conducted autopsy on the dead body of the deceased and he found the following injuries :

(i) "An incised wound on the left side of chin closed to inferior border of jaw 1-1/4" x 3/4" deep.

(ii) A gutter like wound on the anterior aspect of neck encroaching both lateral aspects. Size 4" x 1-1/2" x 1-1/2". Margin of the wound was incised in the central portion about K-2" area but margins were lacerated laterally.

(iii) On dissection the brain matter was found to be very pale. The neck portion was posteriorly intact but cut interiorly and on sides as described above. The tracheal cartilage wind pipe and hyoid bone were cut. All the major vessels of neck were cut. Sternocleidomastoid was cut on both sides. Body of third servical vertebra was slightly cut. The heart was completely empty with no blood and was small sized. The lungs, liver and spleen were all pale. The stomach contained about 3 of partially digested food materials. The intestine contained fice matter and Bladder contained about 1/2 Ozs of lurine.

The doctor issued Ext. 4, post-mortem certificate, opining that the death is on account of injuries to the neck. In the meantime, PW 2 caught hold of the 1st appellant Premlal and on being questioned he informed PW 2 that the 2nd appellant committed murder of the deceased. Premlal, 1st appellant, was later produced before the Investigating Officer, PW 10 by PW 2.

5. After completion of the investigation, final report was filed against these appellants, and the other accused who was acquitted.

6. When questioned u/s 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against the appellant, he denied all the incriminating circumstances. They did not examine any witness on their side.

7. Counsel appearing on behalf of the appellants as arrucus curiae submits that the prosecution having relied upon the circumstantial evidence failed to establish all links in the chain of circumstances to prove that the appellants caused the death of the deceased. Learned counsel further submits that the evidence of PW

2 that he caught hold of the 1st appellant Premlal and handed him over to the police is not supported by PW 10 the Investigating Officer and in fact the trial Judge also gave a finding against the prosecution on this aspect. The counsel therefore, submits that the trial Court was not justified in convicting the appellants.

8. We have heard the counsel for the State and perused the materials on record.

9. Though there can be no dispute as regards the death of the deceased since the same stands established through the evidence of PW 9 who conducted post-mortem and issued Ext. 4, the post-mortem certificate, we hold that the deceased died of homicidal violence, and the prosecution in our view failed to establish the case against the appellants.

10. The case of the prosecution is that on account of a quarrel which took place a month prior to the incident between PW 2 father of the deceased and the 2nd appellant, the deceased Anil Kumar Mandal was murdered after he was taken from the field to a theatre. The prosecution in order to establish the said fact relied on the circumstantial evidence as the occurrence was admittedly not witnessed by any one. Now the question to be decided by us is whether the prosecution has succeeded in establishing all the links in the chain of the circumstances for the Court to hold that the appellants are guilty of the murder of" the deceased Anil Kumar Mandal.

11. PW 3, sister of the deceased came out with a version before the trial Court that while she was at the field with his brother Anil, the deceased, the appellants came there and took him to the theatre and later she informed her father PW 2. This evidence of PW 3 therefore, shows that the deceased left along with the appellant to see the movie and that when the deceased did not return, search was mounted and they found the dead body of the deceased in front of their house on a cot and that he (PW 2) gave/ardbayan (Ext. 4) to the police. The evidence of PWs 2 and 3 at best shows that the deceased left from the field in the company of the appellants. But there is no evidence as to what transpired subsequent to that. It is also unbelievable for the Court to accept the prosecution version that after committing the murder of the deceased, the appellants had taken pains to bring the dead body of the deceased to be placed on a cot near the door of the house of the deceased. No accused who commits murder will take the risk of bringing the dead body to the house of a deceased so that it could be seen by others. The evidence of PW 2 and the other witnesses show that the dead body, was actually lying on a cot in front of the door-step of the house and this leads us to believe that the deceased must have been cut while he was lying on the cot in front of his house and that he could not have been murdered by the appellants after he was taken from the field as claimed by the prosecution. In this background, we hold that the evidence of PWs 2 and 3 is of no help to the prosecution. As regards the other evidence as to the apprehension of the 1st appellant by PW 2, according to PW 2, he apprehended the 1st appellant when he saw him in the village and that after some persuasion 1st appellant told him

that the deceased was killed by the 2nd appellant. This evidence of PW 2 that he apprehended 1st appellant and that he blamed Dhola, 2nd appellant, for the death of the deceased is not supported by the evidence of the Investigating Officer PW 10. When examined in Court, PW 10 stated on the basis of his memory that Premlal Mandal (1st appellant) must have been produced before him by PW 2. The trial Court found that PW 10 gave evidence from his memory and the said evidence of PW 10 gave evidence from his memory and the said evidence of PW 10 was not supported by any material entries made in the case diary by the Investigating Officer during the course of the investigation.

12. The trial Court in fact went to the extent of holding that there is no evidence to show that accused Premlal Mandal was kept confined by PW 2 after he was apprehended and that later he was produced before the Investigating Officer. This evidence of PW 2 is not supported by PW 10, the Investigating Officer and the finding of the trial Judge therefore, shows that the 1st appellant could not have been apprehended by PW 2. The alleged statement of 1st appellant to PW 2 does not also fall within the ambit of Section 24 of the Evidence Act, since for any statement to be admissible u/s 24 of the Evidence Act, it must be a statement made by the person without any inducement, threat or promise having reference to the charge against him. Admittedly, the confession by the 1st appellant, even according to PW 2, was given after persuasion and therefore, the statement was obtained by inducement.

13. Even assuming that the statement of the 1st appellant to PW 2 is considered to be true, the confession of a co-accused can be admitted as an evidence against the other accused to lend assurance to the other circumstances available. We have noted that the prosecution did not let in any evidence to show that the appellants caused death of the deceased and therefore, the extra judicial confession alleged to have been made by the first appellant to PW 2 cannot be put against the 2nd appellant Dhola Mandal. Therefore, we find that the prosecution not only did not establish all the links in the chain of the circumstances but failed to prove that the 1st appellant made statement to PW 2 blaming 2nd appellant for murder of the deceased. In view of the discussion above, we are of the view that the appellants are entitled to acquittal.

14. For the reasons aforesaid, we allow this appeal and acquit the appellants of the charge setting aside the conviction and sentence imposed upon the appellants. It is reported that the appellants are on bail. They are discharged from the liabilities of the bail bonds.

We appreciate and put on record the assistance rendered by the learned counsel appearing as amicus curiae during the course of the hearing of this appeal.