

(2015) 04 JH CK 0034

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1814 of 2004

Ramesh Singh Munda and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

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

Citation : (2015) 2 AJR 747 : (2015) CriLJ 3138 : (2015) 2 JLJR 685

Hon'ble Judges : Virender Singh, C.J;P.P. Bhatt, J

Bench : Division Bench

Advocate : R.P. Gupta, for the Appellant

Final Decision : Dismissed

Judgement

Virender Singh, C.J—The present appeal arises out of the judgment dated 17.12.2013 and conviction dated 23.12.2003 passed in S.T. No. 416 of 2002 whereby both the appellants (for short hereinafter to be referred as the accused) are found guilty for the offence punishable under Section 302/34 of the I.P.C. and sentenced to undergo rigorous imprisonment for life.

2. Since the appellants are in custody for the last 13 years, preference has been given to the instant appeal for its final hearing.

3. Prosecution story, as set out in the fardbeyan of the informant Bagi Devi (wife of the deceased) (P.W.4), recorded on 06.06.2002, at about 08.00 p.m. is that on the same day, i.e., 06.06.2002, at about 10.00 a.m., a quarrel took place between the wife of accused Madan Singh Munda and a girl of Phakir Nayak of Sarigao. Jagarnath Singh (the deceased) went there and settled the dispute. At the same time, fight started between the deceased and accused Madan Singh Munda. It is thereafter, the informant brought her husband to her home. In the evening, when the deceased sitting in his courtyard with the first informant and their child, at about 5 O" clock, accused Madan Munda and Ramesh Singh Munda came there. Ramesh Singh Munda was holding a knife in his hand. As soon as

the accused persons came, Madan Singh asked "will you fight with me". In the meantime, accused Ramesh took a wooden stake (Balli) from the courtyard and hit on the back of the head of the deceased, consequently he fell on the ground and the wooden stake also divided in two pieces. The informant asked both the accused as to why they were fighting and told them to sit and talk, upon which accused Ramesh threatened to keep her mouth shut otherwise she would also be beaten. Thereafter both the accused persons stabbed the deceased with knife on his chest one by one when the deceased was already lying senseless on the ground. Thereafter both of them ran towards the informant to kill her, however, she along with her son (P.W. Lakshaman Singh) ran away. After some time, she came back to her house with Dharamnath Munda and saw the deceased lying dead with stabbed marks of knife on his person.

4. On the basis of the aforesaid fardbeyan F.I.R. was lodged being Murhu P.S. Case No. 32 of 2002 under Sections 302/34 I.P.C. against the accused. After investigation, police submitted chargesheet under Section 302/34 I.P.C. against both of them for which they faced trial under Section 302/34 I.P.C. and now convicted and sentenced as indicated hereinbefore.

5. In all, 7 witnesses, viz. P.W.1 Lohara Nayak, P.W.2 Dharamnath Munda, P.W.3 Lakshaman Singh Munda, P.W.4 Bagi Devi, P.W.5 Dr. Ajay Kumar Jha, who conducted Post Mortem examination of the body of the deceased, P.W.6 Dukhu Singh and P.W.7 Gonda Munda have been examined by the prosecution. The Investigating Officer of the case has not been examined.

6. On the other hand, the defence has not examined any witness in support of their case and it is a case of simple denial.

7. Heard learned counsel for both the sides and perused the trial court record.

8. Learned counsel for the appellants submitted that the learned Court below has failed to consider the fact that there is a contradiction in the statement of witnesses with regard to assault by the accused persons with different weapons. He further pointed out that as per the statement of P.W.4 at Para 2, it has been stated that accused persons assaulted the deceased with Baithi whereas she has stated in her fardbeyan that the deceased was assaulted by knife.

9. Learned counsel has also made an attempt to bring certain contradiction, vis-a-vis the medical evidence and the eye version account drawing the attention of the Court to the Post Mortem Report.

10. Learned counsel further submitted that due to non-examination of the Investigating Officer, the appellants could not bring on record the earlier statement of the witnesses recorded during the investigation, which has caused prejudice to them.

11. On the other hand, learned A.P.P. has supported the conviction and sentence, as already recorded in the trial court record. He submitted that P.W.4 is consistent in her version regarding the role of the accused persons in committing

murder. He further submitted that there is no dearth of injuries on the person of the deceased and this proves the intention of both the accused. He, thus, prays for upholding of conviction and sentence, as already slapped upon them by the learned Trial Court.

12. It transpires that P.W.4 is the star witness of the case, as such, her evidence requires a close scrutiny. P.W.4 deposed in her deposition that in the evening at about 05.00 p.m., the deceased was sitting in the courtyard and was taking water and she and her son were making jackfruit. At that time, both the accused came there, provoked the deceased to fight with them and then he was assaulted by both of them. Her statement appears to be most natural to us and at the same time, there cannot be no doubt about her presence in the house.

13. With regard to the motive, P.W.4 deposed that on the same day when the occurrence took place, in Mela Tand, there was a quarrel between the wife of accused Madan and one girl of Sarigao in which the deceased intervened and then a fight took place between the deceased and the accused Madan. Thereafter, the informant took the deceased to her house. No doubt, the motive appears to be a trivial one, nevertheless murder can take place even on a trivial motive, especially, in the villages.

14. P.W.3 (son of the deceased) is a child witness and claimed to have seen the occurrence. It is a settled principle of law that a child witness is competent to testify if he is able to understand the question put to him and give rational answer to those questions. In the instant case before recording of evidence of child witness, the learned Court below has assessed the capacity of understanding of child witness. From the evidence of P.W.3, it reveals that he corroborated the statement of P.W.4 with regard to the role of the accused in committing murder. It further reveals that P.W.3 in his evidence specifically stated that his father was taking water in the courtyard and his mother was making jackfruit, when both the accused persons came there and assaulted his father with Danda on the back side of the deceased and when the deceased fell down then again assaulted him with Baithi. We are aware of certain contradictions crept in the evidence of child witness, but, these are just insignificant and ignorable.

15. Learned counsel for accused has given much stress that P.W.4 in her deposition before the Court had stated that the injuries were caused by Baithi and P.W.5 (Doctor of autopsy) in his opinion has stated that the injuries No. 1 to 5 were inflicted by Chhura, as such, there is vital contradiction on the point of injuries inflicted on the person of the deceased. The argument advanced by the learned counsel for the appellants have no legs to stand for the reason that P.W.5 in his cross examination in Para 8 deposed that injury No. 1 to 5 may be caused by Chhura and like this weapon Baithi is also a sharp cutting object made with iron. Chhura and Baithi are the sharp edged weapons and there is no much difference between the two. Besides this, P.W.4 is a rustic illiterate lady and one cannot expect a lot from her. What we have noticed is that her statement does

not suffer from any infirmity on any vital aspect when tested on the yardstick of appreciation.

16. So far on non-examination of Investigating Officer is concerned, in the case of Ram Gulam Chaudhury and Others Vs. State of Bihar the Hon"ble Supreme Court held as follows:-

26. In the case of Ram Dev V. State of U.P. this Court has held that it is always desirable for the prosecution to examine the investigating officer. However, non-examination of the investigating officer does not in any way create any dent in the prosecution case much less affect the credibility or the otherwise trustworthy testimony of the eyewitnesses.

27. In the case of Behari Prasad V. State of Bihar this Court has held that for non-examination of the investigating officer the prosecution case need not fail. This Court has held that it would not be correct to contend that if the investigating officer is not examined the entire case would fall to the ground as the accused were deprived of the opportunity to effectively cross-examine the witnesses and bring out contradictions. It was held that the case of prejudice likely to be suffered must depend upon the facts of each case and no universal straightjacket formula should be laid down that non-examination of investigating officer per se vitiates the criminal trial.

28. In the case of Ambika Prasad V. State (Delhi Admn.) it was held that the criminal trial is meant for doing justice not just to the accused but also to the victim and the society so that law and order is maintained. It was held that a Judge does not preside over the criminal trial merely to see that no innocent man is punished. It was held that a Judge presides over criminal trial also to see that a guilty man does not escape. It was held that both are public duties which the Judge has to perform. It was held that it was unfortunate that the investigating officer had not stepped into the witness box without any justifiable ground. It was held that this conduct of the investigating officer and other hostile witnesses could not be a ground for discarding evidence of PWs 5 and 7 whose presence on the spot was established beyond any reasonable doubt. It was held that non-examination of the investigating officer could not be a ground for disbelieving eyewitnesses.

29. In the case of Bahadur Naik V. State of Bihar it was held that non-examination of an investigating officer was of no consequence when it could not be shown as to what prejudice had been caused to the appellant by such non-examination.

17. In the case in hand also the appellants have not been able to project as to what prejudice has been caused to them due to the non-examination of the Investigating Officer, as such, merely by saying that the prejudice has been caused, does not ipso facto become fatal to the case of the prosecution when on the other hand there are witnesses who have given credible and believable evidence providing the case of the prosecution to the hilt.

18. For the reasons, as stated hereinabove, we are of the view that the prosecution has been able to prove its case against both the accused for the charge of Sections 302/34 I.P.C. without any tinge of doubt in it, as such, their conviction and sentence for the said charge, as already recorded by the learned Trial Court, deserves to be reaffirmed. Ordered accordingly.

19. Net result is that the appeal, on hand, stands dismissed.