
(2018) 08 JH CK 0046

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No.505 of 2018,I.A. No.5744 of 2018

Robin Mohali

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 14-08-2018

Acts Referred:

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

Citation : (2018) 08 JH CK 0046

Hon'ble Judges : H. C. MISHRA, J;B.B. MANGALMURTI, J

Bench : Division Bench

Advocate : Jitendra Tripathi, Suraj Mohan

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the appellant and learned counsel for the State.
2. Though this matter is listed for orders for hearing on interlocutory application for granting bail to the appellant during the pendency of this appeal, but we find from the record that the entire appeal may be disposed of at this stage itself. Accordingly, heard learned counsels for both the sides on the merits of this appeal.
3. The sole appellant is aggrieved by the impugned Judgment of conviction dated 24th January 2018 and order of sentence dated 29.01.2018, passed by the Additional Sessions Judge-I, Pakur, in S.T. No.25 of 2017, whereby the appellant has been found guilty and convicted for the offence under section 302 of the Indian Penal code. Upon hearing on the point of sentence, the appellant has been sentenced to undergo imprisonment for life and fine of Rs.10,000/- for the said offence.

4. The prosecution case was instituted on the basis of the fardbeyan of the informant Saheb Ram Marandi, who claimed to be an agnate of the

deceased lady, recorded on 26.11.2016 at about 9:00 A.M., stating that on the same day at about 6:00 A.M., he was informed that lady, who was

living in the same village, was being assaulted by her grandson Robin Mohali. Upon the information, he reached the place of occurrence at about 6:15

A.M., and found the deceased dead. She had been assaulted by stone on her head. The accused was also present there in drunken state. Claiming

that the deceased had been killed by the accused, the fardbeyan was given by the informant, on the basis of which, Pakuria P.S. Case No.54 of 2016,

corresponding to G.R. No.830 of 2016, was instituted for the offence under Section 302 of the Indian Penal Code, against the sole accused and

investigation was taken up. After investigation, the police submitted the charge-sheet in the case.

5. After commitment of the case of the Court of Session, the charge was framed against the accused for the offence under Section 302 of the Indian

Penal code, and upon the accused's pleading not guilty and claiming to be tried, he was put to trial.

6. From the record, we find that in all, eight witnesses have been examined in the case by the prosecution, including the I.O. and the Doctor, who had

conducted the post mortem examination on the dead body of the deceased. P.W.-1 Shyamal Mohali, P.W.-2 Saheb Ram Marandi @ Saheb Ram

Mohali, the informant in the case, P.W.-3 Somi Mohali @ Sonamani Mohali, P.W.-6 Santosh Bhandari @ Santosh Thakur, P.W.-7 Binod Marandi

and P.W.-8 Parmeshwar Hansada, are the only material witnesses in the case who were examined by the prosecution, and all these witnesses,

including the informant P.W.-2 Saheb Ram Marandi @ Saheb Ram Mohali, have turned hostile and have not supported the prosecution case at all.

None of these witnesses have even stated about the presence of the accused at the place of occurrence. P.W.-5 is Dr. Sanjay Kumar Jha, who had

conducted the post-mortem examination on the dead body of the deceased and has proved the post-mortem report.

7. P.W.-4 is Khaddi Kujur, who is the I.O. of the case. Even the evidence of this witness shows that there is nothing in his evidence, so as to rope

the accused for the offence charged. Though he has stated that he had arrested the accused, but he has not stated about the recovery of any

incriminating article on the basis of the confessional statement, if any, of the accused, nor his evidence shows that there is recovery of the weapon of

offence, i.e., the stone, by the I.O. of the case.Â Â

8. The statement of the accused was recorded under Section 313 of the Cr.P.C., wherein, he has denied the evidence against him. Though he has

stated that he was living with the deceased, who was her grandmother, but he has stated that he was living there with his family, i.e., wife and

children, and he has also stated that on the date of occurrence, he was not present.Â Â

9. On the basis of the materials on record, we are surprised as to how the Court below has convicted and sentenced the appellant for the offence

under section 302 of the Indian Penal code, as there was absolutely no material for convicting and sentencing the appellant for the offence charged.Â

The Court below has held that the prosecution in a given case was not expected to give the exact manner in which, the deceased woman was killed,

rather the adverse inference was needed to be drawn against her grandson, i.e., the accused as he failed to explain how the deceased, who was living

together in the same house, was found dead with injuries, as shown in the post mortem report, and the appellant has been convicted and sentenced by

the Trial Court below only on that basis.Â Â

10. The impugned Judgment shows complete lack of criminal jurisprudence by the learned Trial Judge. It is well settled principle of law that the

prosecution has to prove its case beyond all reasonable doubts.Â Even though, in his statement under Section 313 of the Cr.P.C., the appellant has

stated that he was living with the lady, but he was not alone in the house, rather he was living with his wife and children. There is no evidence on

record that the accused was present at the time of occurrence, or he was apprehended by the villagers for committing the crime. We are of the

considered view that the impugned Judgment of conviction and Order of sentence passed by the Trial Court below, depicts a sorrow picture of

complete non application of judicial mind, and the same cannot be sustained in the eyes of law.

11. For the foregoing reasons, the impugned Judgment of conviction dated 24th January 2018 and Order of sentence dated 29.01.2018, passed by the

Additional Sessions Judge-I, Pakur, in S.T. No.25 of 2017, convicting and

sentencing the sole appellant Robin Mohali, for the offence under section 302 of the Indian Penal code, are hereby, set-aside.Â The appellant Robin Mohali is found not guilty and he is acquitted of the charge.Â The appellant is in custody.Â Let him be released and set at liberty forthwith, if his detention is not required in any other case.Â

12. This appeal is accordingly, allowed. The aforesaid interlocutory application also accordingly, stands disposed of. Let a copy of this Judgment be sent to the Court concerned forthwith.