
(2009) 02 JH CK 0122
In the Jharkhand High Court

Rope Kumari @ Ropni Devi and Others	APPELLANT
Vs	
The State of Bihar (now Jharkhand)	RESPONDENT

Date of Decision : 21-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 148, 149, 302, 354

Citation : (2009) 02 JH CK 0122

Hon'ble Judges : Pradeep Kumar, J; Narendra Nath Tiwari, J

Bench : Division Bench

Judgement

1. These appeals arise out of the common judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Simdega in Sessions Trial No. 246 of 1993. All the accused persons were charged and tried for the offences under Sections 148/ 354/ 149 and 302/ 149 of the Indian Penal Code.

2. All the appellants of Cr. Appeal No. 224 of 1998 (R) have been convicted under Sections 148/ 354/ 149 and 302/ 149 of the Indian Penal Code and are sentenced to undergo rigorous imprisonment for life and pay a fine of Rs. 10,000/- each and in default further to undergo rigorous imprisonment for one year each. In addition, all the appellants have been sentenced separately to undergo R.I. for three years u/s 148 of the Indian Penal Code and R.I. for two years for the charge under Sections 354/ 149 of the Indian Penal Code.

3. The appellant No. 1, Lachhu Mahto of Cr. Appeal No. 271 of 1998 (R), has been convicted under Sections 302/ 354/ 148 and 149 of Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/= and in default to undergo R. I. for further one year u/s 302/ 149, and further to undergo R.I. for three years u/s 148 and R.I. for two years under Sections 354/ 149. Another appellant, Chander Mahto of Cr. Appeal No. 271 of 1998 (R) has been convicted u/s 302 of the Indian Penal Code and sentenced to undergo R.I. for life and to pay a fine of Rs. 25,000/- (Twenty five thousand) and in default to further undergo R.I. for two years and to undergo R.I. for three

years u/s 148 of the Indian Penal Code and two years R.I. u/s 354/ 149 of the Indian Penal Code. All the sentences are to run concurrently.

4. Both the appeals have been heard together and are being disposed of by this common judgment.

5. The prosecution case in brief is that Domni Kumari, aged about 1 year, the daughter of the accused, Chander Mahto, was suffering from dysentery for sometime. Suspecting the illness caused by witchcraft practiced by Munni Devi (deceased) the accused persons allegedly went to the house of Munni Devi and asked her to recover the girl, Domni Kumari from her illness. When Munni Devi expressed her helplessness and denied to have any knowledge about it the appellant, Chotu Mahto rushed to his house and returned with a sword. The accused persons then allegedly pushed Munni Devi on earth and removed her sari. The wives of Chander, Tilak, Lachhu and Rope Kumari caught hold of the hands and feet. Lachhu Mahto forcibly pushed a club into her private part. Chotu Mahto gave sword to Chandar Mahto and exhorted him to kill Munni Devi. Chander Mahto then took the sword from him and inflicted fatal blow on Munni Devi resulting into her death. Chander Mahto thereafter rushed to the market where Ram Mahto father of the informant had gone to sell his earthen pot. There he gave two repeated sword blows, causing his instantaneous death.

6. The accused persons were charged for the said offences but they denied the charges and were put on trial.

7. In order to bring home the charges against the accused persons, the prosecution examined as many as 24 witnesses. Out of them P.Ws. 9, 10, 11, 17, 18, 20, 21, 22 and 23 were declared hostile. P.Ws. 8, 12 and 16 were tendered witnesses. P.Ws. 1, 5, 13 and 19 are formal witnesses. P.Ws. 3, 14 and 15 are the circumstantial witnesses whereas P.Ws. 2, 4 and 6 were examined as eye witnesses. P.W. 7 is the Doctor, who conducted the postmortem on the dead bodies. P.W. 24 is the Investigating Officer. The prosecution also proved certain documents, namely, formal F.I.R. (Ext. 1), Fardbeyan (Ext.2), Postmortem report (Ext. 3 and 3/1), two endorsement on Fardbeyan (Ext. 4 and 4/1), signature of Aklu Mahto on inquest report (Ext. 5 and Ext. 5/1), two inquest reports (Ext. 6 and 6/1), two seizure lists (Ext. 7 and 7/1) and two sketch maps (Ext. 8 and 8/1).

8. The defence of the accused persons was total denial of the charges. In their examination u/s 313 Cr. P. C. they alleged their false implication in the case.

9. Learned trial court on conclusion of trial, found the evidences particularly, the evidences of P.Ws. 2, 3, 4, 6, 7, 14 and 15 corroborating and supporting the prosecution case. He considered the same along with the documentary evidences Ext. 1, Ext. 1/1, Ext. 2, Ext.3, Ext.3/1, Ext.4, Ext.6, Ext.6/1, Ext.8, Ext. 8/1, Ext. 7 and Ext. 7/1 and found the charges against the accused- appellant proved and held them guilty of the said charges.

10. Learned court below held the accused, Chander Mahto guilty of the charge u/s 302 of the Indian Penal Code for committing murder of Munni Devi and Ram Mahto and the remaining accused persons guilty for the charges under Sections 148, 354 and 149 of the Indian Penal Code. Accused, Lachhu Mahto, Chotu Mahto, Rope Kumari @ Rope Devi, Butan Devi, Nanki Devi and Lakhpattia Devi were further held guilty for the charges u/s 302 of the Indian Penal Code read with Section 149 of the Indian Penal Code. They were accordingly convicted u/s 148, 354/ 149 and 302/ 148 of the Indian Penal Code.

11. In these appeals, the appellants have assailed the impugned judgment of conviction on the following grounds:

(i) Learned trial court has erred in not taking into consideration the contradictions and development in the story of the prosecution narrated by P.W.2.

(ii) From the evidences on record role attributed to other accused/appellant except that of Chander Mahto has not been proved. But all of them have been convicted and sentenced under Sections 148/ 149/ 302.

(iii) The prosecution has not been able to prove common object of the accused-appellants.

(iv) The accused/appellant, Chander Mahto is the only assailant causing death of Munni Devi and Ram Mahto, but even in absence of common object other accused persons have also been held guilty u/s 302 of the Indian Penal Code.

(v) P.W.2 has made contradictory statement regarding the allegation of catching hold of deceased-Munni Devi by the accused persons- Rope Kumari @ Rope Devi, Lachhu Mahto, Butan Devi and Nanki Devi which caste serious doubts about their involvement in commission of the said offences. Their conviction is not supported by legal evidence and is perverse.

12. Learned A.P.P., on the other hand, supported the impugned judgment and submitted that P.Ws. 2, 4 and 6 are the eye witnesses and they have consistently corroborated and proved the prosecution case, Though there are some contradictions, the same are insignificant. P.W. 7, the doctor had found and corroborated the injuries inflicted on the person of the deceased. P.W., 24, Investigating Officer, has also corroborated the version of the eye witnesses in his evidence. All those evidences go to prove the prosecution case without any reasonable doubts. The defence failed to elicit any material contradiction in the cross-examination of the said witnesses. There is no illegality or infirmity in the impugned judgment, warranting intervention of this Court.

13. We have heard the learned Counsel and meticulously scrutinized the evidences on record. P.W.2 is the informant. In paragraph 1 she has given vivid account of the incident stating that Chotu Mahto brought sword and gave to Chandra Mahto and exhorted him to kill her mother. Chander Mahto took the sword and inflicted several injuries on different parts of the body of her mother and ultimately severed her neck causing her death. She has stated that "Sakhua

Danda" was inserted in the private part of her mother. She has also proved the statement made in the F.I.R. that Chander Mahto thereafter rushed to the market with the sword and killed his father by giving sword blow on his dead, feet and shoulder. However, we find several contradictions and development in her statement regarding the role of the appellants, Lachhu Mahto, Rope Kumari @ Rope Devi, Butan Devi, Nanki Devi and Lakhpatia Devi. She has contradicted her version and allegations made against these appellants in the fardbeyan. She has developed the story of catching hold of part of the body of the informant's mother by the other male members which was not in the fardbeyan.

14. P.W.4, who is another eye witness in the case, has also proved and corroborated the prosecution case of bringing sword by Chhotu Mahto killing of Munni and Ram Mahto by Chandar Mahto by inflicting sword injuries. P.W.6 is also an eye witness. In paragraph 1 of his deposition, he has clearly proved the killing of Ram Mahto by the accused/appellant, Chander Mahto by inflicting sword injuries. However, these witnesses have not said anything about the involvement of the other accused/appellant. The evidence of the eye witnesses are supported by the evidence of P.Ws. 3,14 and 15. The Doctor who conducted the post-mortem and prepared the report (Ext. 3 and Ext. 3/1) has found the following injuries:

(i) One incised wound on forehead just right to middle, passing from upper portion of forehead to just above the root of nose. 8 cm. x 1 cm. X scalp deep.

(ii) One incised wound on right side of face passing just in front of upper portion of right ear to downward upto right angle of mount underlying bone muscle, blood vessels and nerves were cut.

(iii) One incised wound on left side of Thorax 7 cm. X 20m x 2mm. (iv) One incised wound on lower part of left thigh 1 cm. x 1 cm. X 1 cm.

(v) One incised wound on lower part of right thigh 5 cm. x 1.5 cm. 1 cm. As per his opinion all the injuries were ante mortem in nature caused by sharp cutting weapon. The age of the injuries within 36 hours. Injuries No. (i) (ii) (iv) and (v) were simple and injury No. (ii) was dangerous to life. In his opinion the death of the deceased was caused due to excessive hemorrhage specially from injury No. (ii). Injury No. (i) (ii) and (iii) were possible by sword as Tangi and injury No. (iv) and (v) were also possible by the pointed portion of sword and also by Tangi.

15. P.W.24 is the Investigating. On going through his deposition, we find that he has corroborated the prosecution version so far as the accused-appellant, Chander Mahto is concerned, in course of investigation he collected the evidences. He had prepared inquest report of the dead bodies (Ext. 6 and Ext. 6/1). He also proved the seizurelist. From the inquest report, it is evident that he has found cut injuries on several places and "Sakhua Danda" inserted into the private part of the dead body of the deceased, Munni Devi. He has given clear account of place of occurrence and found bloodstain on the earth. He had prepared sketch map of the place of occurrence (Ext. 8 and 8/1). He had also

inspected the place where Ram Mahto was murdered. He has fully corroborated the prosecution case. The defence had cross-examined the said witnesses extensively but nothing adverse could be elicited to doubt the prosecution case against Chander Mahto and Chhotu Mahto. The documentary evidences i.e. fardbeyan (Ext.2), postmortem (Ext. 3 and 3/1), inquest report (Ext. 6, 6/1), the seizurelist (Ext. 7 and 7/1) also corroborate the prosecution version and the charge against Chander Mahto and Chhotu Mahto. Thus we find sufficient evidence on record to establish charges under Sections 302, 354 and 149 of the Indian Penal Code against Chander Mahto and Chhotu Mahto.

16. However, we do not find cogent evidence in support of the conviction of Rope Kumari @ Rope Devi, Lakhpatia Devi, Butan Devi, Nanki Devi and Lachhu Mahto. There are vital contradictions in the prosecution evidence regarding the alleged role attributed to them. From the first part of the prosecution version, we do not find the presence of common object attracting Section 149 of the Indian Penal Code. In view of absence of common object and positive evidence regarding their complicity, it is not safe to convict these appellants. Learned trial court without taking into consideration the vital contradictions, in the prosecution evidence regarding the alleged role of these appellants has also erroneously convicted them along with the appellant-Chander Mahto and Chhotu Mahto.

17. In view of the above discussions and in absence of sufficient evidence on record and doubtful situation the appellants, Rope Kumari @ Rope Devi, Nanki Devi, Lakhpati Devi, Butan Devi and Lachhu Mahto deserve to be acquitted of the charges.

18. We, accordingly, uphold the impugned judgment of conviction of the appellants, Chander Mahto and Chhotu Mahto and set aside the conviction and sentence of the appellants, Rope Kumari @ Rope Devi, Lakhpatia Devi, Butan Devi, Nanki Devi and Lachhu Mahto.

19. As the appellant, Chander Mahato is on bail, his bail bond is cancelled. He is directed to surrender in the court below to serve out the sentences. On his failure to surrender, the court below shall take all coercive steps to take him in custody and lodge him to prison. The appellants, Rope Kumari @ Ropni Devi, Lakhpatiya, Butan Devi, Nanki Devi and Lachhu Mahto are discharged from liability of their bail bonds.