

(2016) 04 JH CK 0124

In the Jharkhand High Court

Case No : Cr. Appeal(DB) No.47 of 2007 (Against the judgment of conviction and order of sentence dated 22nd November, 2006 and 24th November, 2006 respectively passed by learned Additional Sessions Judge, F.T.C.-I, Ghatshila in connection with Sessions Trial Case no

Sankhai Murmu

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

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

Citation : (2016) 3 JCR 688 : (2016) 4 JLJR 591

Hon'ble Judges : Mr. D.N. Upadhyay and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. Sachin Mahato, Advocate, for the Appellants; Mr. Sanjay Kr. Pandey-2, Addl. P.P, for the Respondent

Final Decision : Allowed

Judgement

Mr. D.N. Upadhyay, J.—; This criminal appeal been directed against the judgment of conviction and order of sentence dated 22nd November, 2006 and 24th November, 2006 respectively passed by learned Additional Sessions Judge, F.T.C.-I, Ghatshila in connection with Sessions trial Case no.213 of 2005 corresponding to G.R. Case no. 40 of 2005 arising out of Chakulia P.S. Case no. 5 of 2005, whereby the appellants have been held guilty for the offence punishable under section 302/34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The facts reveal from written report lodged by Shankro Hansda(P.W.3) are that on 23.01.2005, Pahar Hansda(son of the informant) left home at about 9 P.M. to answer call of nature. At about 12.00 mid-night, Pahar Hansda returned back with bleeding injury on his person and he died on 24.01.2005 at about 11 A.M. The informant could learn that her son-Pahar Hansda was assaulted near the house of Sankhai Murmu(appellant no.1). She further learnt that Pahar Hansda

after having injury had consumed a glass of water at the house of Kapra Murmu(P.W.2). The informant suspecting hands of appellants in the alleged murder of her son-Pahar Hansda, lodged a written report with Chakulia Police Station and a case being P.S. Case no.5 of 2005 under section 302/34 I.P.C. was registered against the appellants.

The police, after due investigation, submitted charge-sheet against appellants. Accordingly cognizance was taken and the case was committed to the court of Sessions and registered as Sessions Case no. 213 of 2005.

3. Charge under section 302/34 I.P.C. was framed against the appellants to which they pleaded not guilty and claimed to be tried. The prosecution in order to substantiate charge, examined altogether eleven witnesses including Yogendra Nath (doctor), who conducted autopsy on the dead-body of Pahar Hansda and Shrikant Upadhyay (P.W.11) Investigating Officer. Learned Additional Sessions Judge, F.T.C.-I, Ghatshila at the conclusion of trial, placing reliance on the evidence and documents available on record, held the appellants guilty for the offence punishable under section 302/34 I.P.C. and inflicted sentence as indicated above.

4. Learned counsel for the appellants assailed the impugned judgment on the ground that prosecution miserably failed to prove its case beyond shadow of all reasonable doubt as neither circumstantial nor direct evidence against the appellants are available on record. Only on suspicion, surmises and conjecture, learned Additional Sessions Judge held the appellants guilty and the impugned judgment could not be upheld. Learned Trial Judge considered the statement of P.W.1 and relied on the oral dying declaration made before her by the deceased, but that part of statement of P.W.1 was introduced at the time of trial, which she had not given in her statement under section 161 Cr.P.C. and that would be apparent from the statement of P.W.11 in paragraph-5. The prosecution witnesses have tried to develop the story during trial and the development so made during trial requires to be excluded from any consideration. P.W. 1 stated that when she returned home, she could learn about the occurrence and then she had gone to the house of appellants and found the deceased lying injured and blood was fallen on the ground. The informant did not support such contention of P.W.1, rather she stated that her son-Pahar Hansda returned home at mid-night having injury on his person. She did not say that names of assailant was ever disclosed by the deceased before her. She says that in the morning at about 11 A.M. her son died in her house itself. The surprising part of the prosecution case is that P.W.1 is the daughter of informant (P.W.3) and vital contradictions are appearing in their statements and both of them have given different story in their deposition. The other witnesses are either formal or hearsay.

5. Learned counsel appearing on behalf of the State opposed the argument and submitted that circumstantial evidence brought on record suggests that the appellants had committed murder of Pahar Hansda and reason behind murder

been assigned by P.W.1.

6. We have considered the rival submissions and perused the case record, evidence and document available. We do not find that prosecution successfully proved the charge of murder against the appellants beyond reasonable doubt. Learned counsel for the appellants rightly pointed out that vital contradictions are appearing in the statement of P.Ws. 1 & 3, who are non-else, but daughter and mother. The daughter says that she had seen the deceased lying in the house of appellants having injury on his person and blood was fallen on the ground whereas the mother (P.W.3) says that her son after having injury came home in the mid-night and died in the morning at about 11 A.M. She did not say that her son had disclosed names of appellants. Kapra Murmu (P.W.2) also exaggerated the occurrence in his deposition in court. The statement made by P.W.2 in paragraph-1 of her examination-in-chief does not find support from the evidence of Investigating Officer (P.W.11) in paragraph-5. Therefore, story of oral dying declaration made by the deceased before P.W.2 does not find support from the statement of Investigating Officer (P.W.11). He said that no such statement by P.W.3 was given to him during investigation. In the circumstances, we are not ready to accept the story of dying declaration allegedly made by the deceased before P.W.2 and the same stands rejected. Rest of the witnesses, except doctor and Investigating Officer are either formal or hearsay. It cannot be denied that death of Pahar Hansda was homicidal, which find support from the evidence of Doctor-Yogendra Nath (P.W.10) and Post Mortem report (Ext.2), but then who killed Pahar Hansda not been proved by the prosecution. The informant simply raised suspicion against the appellants but suspicion however, it may strong, cannot take place of evidence.

7. Since evidences to prove the charge against the appellants are lacking, we feel inclined to allow this appeal. Accordingly, the impugned judgment of conviction and order of sentence recorded by the Additional Sessions Judge, FTC-I, Ghatshila in connection with S.T. Case no.213 of 2005 is hereby set aside. The appellants, named above, who are lodged in jail, are hereby directed to be released forthwith, if not wanted in any other case and for that the convicting/ successor court shall issue appropriate direction, if needed.