

(2017) 10 JH CK 0014
In the Jharkhand High Court
Case No : 484 of 2005

Santosh Kumar Sahu @ Santosh Sao

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 14-10-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused

[Indian Penal Code, 1860](#), [Section 302](#) - Punishment for murder

Citation : (2017) 10 JH CK 0014

Hon'ble Judges : Harish Chandra Mishra, Ananda Sen

Bench : DIVISION BENCH

Advocate : Satish Kumar Keshri, Ravi Prakash

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant and learned counsel for the State.
2. This criminal appeal is directed against the Judgment of conviction and Order of sentence dated 07.03.2005 passed by the learned 4th Additional Sessions Judge, Dumka, in Session Case No. 294 of 2004 / 142 of 2004, whereby the Trial Court below has found the sole appellant guilty and convicted him 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 rigorous imprisonment for life and fine of Rs.1000/-. In default of payment of fine, the appellant was directed to undergo rigorous imprisonment for a period of six months.
3. The prosecution was instituted on basis of the fardbeyan of the informant Nandu Lal Hembram (P.W.1), informing that Milu Hembram, the daughter of the informant was married to the accused Sunishar Murmu and they were residing together. There was some quarrel between the husband and the wife, as a result of which, two days prior to lodging of the FIR, Milu came to her paternal home

and started residing there. On 1.6.2004, Milu Hembram along with her cousin Gungri Hembram (PW.4), aunt Panmuni Hembram (P.W.2) and grand-mother Folo Marandi (PW.3) at about 3:30 p.m. went to hatia bazar at Masalia. At about 8:45 p.m., Sandip Tudu (P.W.6) of village Bansjora came to the informant and informed him that all those persons were returning from the market and when they reached near the Electricity Office, at about 8:30 p.m., Sunishar Murmu, the husband of Milu, came from behind and stabbed Milu and fled away, as a result of which, Milu Hembram died at the spot. Upon getting the said information, the informant rushed to the place of occurrence and saw his daughter lying dead by the side of the road with blood oozing out from her wound. Gungri Hembram, Panmuni Hembram and Folo Marandi informed him that the husband of Milu came from behind with knife and stabbed Milu and fled away, as a result of which, she died.

4. On the basis of the aforesaid fardbeyan, Masalia P.S. Case No. 30 of 2004 corresponding to G.R. No. 533 of 2004 was registered under Section 302 IPC against the accused appellant. After investigation, the police submitted the charge-sheet against the appellant. Cognizance of the offence was taken and the case was committed to the court of Session, where charge was framed against the appellant for the offence under Section 302 IPC, to which he pleaded not guilty and claimed to be tried.

5. In order to prove the charge against the accused, the prosecution has examined altogether nine witnesses, including the Investigation Officer and the Medical Officer, conducting the post-mortem examination on the dead body of the deceased. The fardbeyan, the formal FIR, the inquest report and the post-mortem report, were also proved and marked exhibits.

6. P.W.1 Nandu Lal Hembram is the father of the deceased and the informant of this case. He deposed that his daughter was married with the accused and after marriage, there was some quarrel between the two. He deposed that about two days prior to the occurrence, she came to his house. On 1.6.2004, at about 3 to 3.30 p.m., she had gone to hatia along with Gungri Hembram, Panmuni Hembram and Folo Marandi. At about 8.15 p.m., Sandeep Murmu and Barun Murmu informed him that near the electricity office, the accused came and stabbed his daughter, as a result of which, she died. He went to the place of occurrence and saw the dead body, where the Police Officer recorded his fardbeyan, upon which he had put his signature, which upon his identification was marked Exhibit-1. He has identified the accused in the Court. In his cross-examination, he admitted that his daughter was returning from hatia at about 7 p.m. and as it was raining, she stayed in someone's house. He has also admitted that he had not seen the occurrence. He has also denied the suggestions that Sandeep Tudu wanted to marry his daughter, that his daughter did not want to live with her husband and that she use to visit hatia with Sandeep.

7. P.W.2 Panmuni Hembram is the sister of the informant. She stated that she had gone to hatia along with Milu Hembram, Gungri Hembram and Folo Marandi

at about 3:00 p.m. When they were returning from hatia, it started raining, therefore they stayed at a village. When they were returning after about two hours, Barun Murmu and Sandeep Tudu were also coming on bicycle. She further deposed that when they reached near the electricity office, the accused Sunishar came out from the bushes and asked from where they are coming and stabbed Milu. She identified the accused in the lightening and by his voice. She has identified the accused in the Court. In her cross-examination, she deposed that it was a dark night and it was raining and she could not say the name of the place where the bushes were, and by which weapon, the assault was made. She has stated that the accused was alone, but she did not try to apprehend him because they were female folks. She has denied the suggestion of giving false evidence, being the sister of the informant.

8. P.W.3 Folo Marandi, has also deposed that she had gone to hatia along with Milu Hembram, Panmuni Hembram and Gungri Hembram at about 3:00 p.m. When they were returning from hatia, it started raining, therefore they stayed at a village. After the raining stopped, they were returning and when they reached near the electricity office, the accused Sunishar came out from the bushes of custard apple (sharifa) and asked from where they are coming and stabbed Milu on her chest, due to which she died at the spot. She stated that she identified the accused in lightening and from his voice. In her cross-examination, this witness has stated that she is the mother-in-law of the informant. Only one assault by knife was made by the accused Sunishar and he took out the knife and fled away. She has denied the suggestion of giving the false evidence, being the mother-in-law of the informant.

9. P.W.4 Gungri Hembram has also deposed that she had gone to hatia along with Milu Hembram, Panmuni Hembram and Folo Marandi at about 3:00 p.m. When they were returning from hatia, it started raining, therefore they stayed at a village. When they were returning and they reached near the electricity office, the accused Sunishar came out from the bushes of custard apple (sharifa) and asked from where they are coming and stabbed Milu on her chest, due to which she died at the spot. She stated that she identified the accused in lightening and from his voice. There is nothing of much importance in her cross-examination.

10. P.W.5 Barun Murmu has stated that he was returning from Masalia hatia along with Sandeep Tudu on a cycle at about 8.30 in the night and he met Milu Hembram, Panmuni Hembram, Gungri Hembram and Folo Marandi on the way. He and Sandeep were few steps behind them. He heard the screams and saw in lightening that the accused Sunishar was fleeing away. Panmuni told him that Sunishar had stabbed Milu and fled away, as a result of which, the deceased died. He along with Sandeep went to inform her father and returned back to the place of occurrence along with the parents of Milu. In his cross-examination, he stated that it was dark night and it had stopped raining at that time. He had not seen the assault made upon Milu and he was informed by Panmuni about the assault. He has admitted that Milu was related as sister-in-law of Sandeep, but

he denied the suggestion that Milu used to live with Sandeep and there was illicit relationship between them.

11. P.W.6 Sandeep Tudu has deposed that at about 8 pm in the night, he was returning from hatia on cycle along with Barun and they met Milu, Panmuni, Gungri and Folo Marandi on the way. When they reached near the electricity office, Sunishar came out from the bushes and stabbed Milu and fled away. He identified the assailant in the lightening. Milu died at the spot. He deposed that he informed the parents of Milu about the occurrence. He has identified the accused in the Court. In his cross-examination, this witness has stated that he had not gone to hatia along with Milu, nor had he met Milu in the hatia. He met Milu near the electricity office. Milu was walking ahead of all and he was 5-6 meters behind them. He had seen the accused stabbing the deceased in the left side of the chest. He could not say the size of the knife. He had not tried to apprehend the accused. He has stated that the deceased was his sister-in-law and she had visited his house once and the accused had also visited his house. He has denied the suggestion that he had illicit relation with the deceased, and she used to live with him and not with her husband. He has also denied the suggestion to have falsely implicated the accused.

12. P.W.9 Mati Soren is the mother of the deceased. She deposed that the deceased was married to the accused Sunishar. On the day of occurrence, Milu, Panmuni, Gungri and Folo Marandi had gone to hatia. Milu had gone from the house of this witness. At night at about 9 p.m., Sandeep Tudu and Barun came and informed that Sunishar had stabbed Milu, as a result of which, she had died. She went to the place of occurrence with her husband and villagers, where Panmuni, Gungri and Folo Marandi informed them that Sureshar had assaulted the deceased. She stated that the deceased had a quarrel with her husband due to which she had come to her parents' home. She has identified the accused in the Court. In her cross-examination she has stated that she was in her house when her daughter had gone to hatia. She had not seen the occurrence. She has denied the suggestion to have falsely implicated the accused.

13. P.W.7 Dr. Shiv Shankar Bhagat, had conducted the post-mortem examination on the dead body of the deceased on 2.6.2004. He has found one ante-mortem incised and penetrating wound over the intercostal space on left side of chest 1"x 1/2"x 2/1/2" deep. He stated that the injury had caused incised wound on the left ventricle of the heart. The adjoining area was full of blood and other chambers were empty. Death was due to hemorrhage and shock as a result of the said injury, which was sufficient to cause death in normal circumstances. The nature of weapon was sharp cutting and penetrating, such as chhura or knife. He has identified the post-mortem report to be in his pen and signature, which was marked as Ext.2.

14. P.W.8 Arbind Kumar is the Investigating Officer of this case. He deposed that on 1.6.2004 he was posted as Officer-Incharge of Masalia Police Station, on which date he received telephonic information at 9 p.m., that one girl had been

murdered near the electricity office at village Haroraidih. On receipt of such information, he reached the place of occurrence, entering the information in the Station Diary as entry No. 15. He recorded the fardbeyan of the informant. He identified the fardbeyan bearing his signature, which was marked as Ext.3. The formal FIR was proved and marked as Ext.-4. He prepared the inquest report by carbon process, which he proved and was marked as Ext.-5. He recorded the re-statement of the informant. He inspected the place of occurrence and gave the details of the place of occurrence. He stated that there were bushes of custard apple (Sharifa) on the side of the road near the place of occurrence. He stated that there is electricity office within 500 ft. form the place of occurrence. He sent the dead body for post-mortem examination. He recorded the re-statement of the informant at the place of occurrence and he also recorded the statements of the other witnesses. He handed over the charge of investigation on his transfer. In his cross-examination he stated that he had gone to the house of the appellant in the night of the occurrence, but did not find any objectionable material. He had not searched the house of the accused, nor he inquired from the neighbours. He had not seized any material from the place of occurrence.

15. The statement of the appellant was recorded under Section 313 Cr.P.C., wherein he has denied the evidence against him and has claimed to be falsely implicated. However, no evidence was adduced by the defence.

16. The learned counsel appearing for the appellant has submitted that the appellant is innocent and the prosecution has miserably failed to prove the case beyond all reasonable doubts. It is submitted that in the evidence there are major contradictions, which go to the root of the prosecution case. He also submitted that there was strained relationship between the appellant and the deceased wife and only because of this reason, the appellant has been falsely implicated in this case. He further submitted that there is contradiction in the post-mortem report and the inquest report with regard to the injury caused to the deceased and the investigation has been done in perfunctory manner, which has seriously prejudiced the case of the appellant. Learned counsel also submits that from the evidence, it is clear that there was no intention to cause the death of the deceased, as there was only one blow inflicted on the deceased, and as such, the conviction under Section 302 IPC is absolutely bad. It is also submitted that admittedly it was a dark cloudy night and there was no source of light, as such, the identification of the appellant is absolutely doubtful. It is further submitted that all the witnesses are the interested witnesses related to the deceased, which creates a serious doubt about the case of the prosecution, particularly in view of the suggested alleged illicit relationship of the deceased with one of the witnesses. It is also submitted that there is no recovery of the weapon of offence, and accordingly, it is submitted that the prosecution has failed to prove the guilt of the appellant beyond all reasonable doubts and in any event, the appellant is entitled at least to the benefits of doubt.

17. On the other hand, learned Addl. P.P. submits that all the eye witnesses

categorically supported the case of the prosecution and merely because they are related to each other, their depositions cannot be thrown away. He further submits that there is nothing on record which even remotely suggest that the appellant has falsely been implicated in this case. It is lastly submitted that the ocular evidence of the eyewitnesses is fully supported by the medical evidence of P.W.7 Dr. Shiv Shankar Bhagat, and accordingly, the prosecution has been able to prove the guilt of this appellant beyond all reasonable doubts, and this appeal is fit to be dismissed.

18. Having heard the learned counsels for both the sides and after going through the record, we find that P.W.2 Panmuni Hembram, P.W.-3 Folo Marandi, P.W.4 Gungri Hembram, P.W. 5 Barun Murmu and P.W.6 Sandeep Tudu are the eye witnesses to the occurrence, in whose presence, the incident had taken place. Though P.W. 5 Barun Murmu had stated that he had not seen the accused assaulting the deceased, but he stated that upon hearing the screams of the deceased, he saw the accused fleeing away from the place of occurrence. Admittedly, the occurrence had taken place in a rainy night and it was a dark night, but all those witnesses have stated that they had seen the accused in lightening and they also identified the accused with his voice. P.W.1 Nandu Lal Hembram and P.W. 9 Mati Soren are the parents of the deceased, who are not the eye witnesses of the occurrence, but they have stated that due to quarrel with her husband, their daughter had come to their place two days prior to the occurrence, and on the date of occurrence, she had gone to hatia, and in the night they were informed about the occurrence by P.W. 5 Barun Murmu and P.W.6 Sandeep Tudu. The ocular evidence of these witnesses are fully corroborated by the medical evidence of P.W.7 Dr. Shiv Shankar Bhagat and the post-mortem report proved by him as Exhibit-2. Though in the inquest report, it is stated that the stabbed wound was on the left side of the back, but the witnesses have stated that the assault was made on the left side of the chest of the deceased, and the post-mortem report as well as the evidence of P.W. 7 Dr. Shiv Shankar Bhagat show that the incised wound was found over the intercostal space of left side of chest. Intercostal space in the left side of chest may be approximately near the back, and we do not find this discrepancy in the post-mortem report and the inquest report to be fatal to the prosecution case. The suggested alleged illicit relationship of the deceased with one of the witnesses, P.W.6 Sandeep Tudu, is not proved by the defence, and even otherwise, this suggested alleged illicit relationship cannot be a reason for the parents and the other relatives of the deceased to falsely implicate the husband of the deceased, had the offence been committed by Sandeep Tudu. The fact remains that the ocular evidence of the eye witnesses is fully corroborated by the medical evidence of P.W.7 Dr. Shiv Shankar Bhagat and the post-mortem report proved by him as Exhibit-2.

19. For the foregoing reasons, we are of the considered view that the prosecution has been able to prove its case beyond all reasonable doubts, and as such, we do not find any illegality in the impugned Judgment of conviction

and Order of sentence passed by the Trial Court below.

20. Accordingly, the impugned Judgment of conviction and Order of sentence dated 07.03.2005, passed by the learned 4th Additional Sessions Judge, Dumka, in Session Case No. 294 of 2004 / 142 of 2004, convicting and sentencing the accused appellant Sunishar Murmu, for the offence under Section 302 of the Indian Penal Code, are hereby, affirmed. The appellant is already in custody serving out the sentence.

21. There is no merit in this appeal, which is accordingly, dismissed. Let the Lower Court Record be sent back forthwith to the Trial Court concerned, along with a copy of this Judgment.