
(2015) 05 JH CK 0070

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) Nos. 1224 of 2006 and 665 of 2003

Santre Oraon

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34, 376, 511

Citation : (2015) 3 AJR 551 : (2015) 3 JLJR 640

Hon'ble Judges : Rakesh Ranjan Prasad, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Yogesh Modi, AC, Mohit Prakash and Vani, for the Appellant

Final Decision : Allowed

Judgement

1. These appeals are directed against the judgment of conviction dated 22-4-2003 and the order of sentence dated 24-4-2003, passed by the then learned Sessions Judge, Gumla in Sessions Trial No. 66 of 2000, whereby and whereunder the appellants, having been found guilty for committing murder of Ranjana Kumari and also for making an attempt to commit rape upon her, convicted them for the offence punishable under Sections 302/34 and Section 376/511 of the Indian Penal Code and sentenced each of them to undergo rigorous imprisonment for life for the offence punishable under Sections 302/34 of the Indian Penal Code and further to undergo rigorous imprisonment for three years or the offence punishable under Sections 376/511 of the Indian Penal Code. The case of the prosecution, as has been made out in the fardbeyan (Ext. 1/1) is that on 4-7-1999, Ranjana Kumari, the daughter of the informant-Manga Oraon (P.W.4) had gone to Toto to see Rath Mela. She came back home at about 6.30 p.m. Thereafter, she came to river side for easing herself. After sometime, when the informant heard distress sound, he along with his wife came to river side where his daughter-Jasmani Kumari alias Nauri Kumari (P.W. 1) had already reached there along with Eteshwar Oraon (P.W. 2) and Khuria Oraon (P.W. 3).

There they found Ranjana Kumari submerged in the water. They took her out of river. They found several injuries on her person. She was brought home in the injured conditions and there Ranjana Kumari (deceased) disclosed them that while she had gone to river side for easing herself, the appellants came and wanted to have sex with her but when she refused, they tried to strangulate her but when she shouted, they inflicted several Chura injuries.

2. On the next date i.e. on 5-7-1999, when Nageshwar Prasad Singh (P.W. 11), Officer-in-Charge of Gumla Police Station on hearing rumour that one girl has died in course of her treatment, came to the clinic of the Doctor, he recorded the fardbeyan of Manga Oraon, who made the same statement which has been stated above, on the basis of which, a formal first information report was drawn.

3. Thereupon Nageshwar Prasad Singh, Officer-in-Charge, took up the investigation. During Investigation, he held inquest on the dead body of the deceased and prepared an inquest report (Ext. 3/2) and thereafter he sent the dead body for post-mortem examination, which was conducted by the Doctor K.N. Tiwari (P.W. 5), who, on holding autopsy, did find the following injuries on the person of the deceased:--

- (i) Incised wound 3" x 1/2" x muscle deep present over the right temporal area of the skull.
- (ii) Incised wound 4" x 1/2" x bone deep present over the vertex of the skull.
- (iii) Incised wound 3" x 1/2" x muscle deep present over the vertex in front of injury No. 2.
- (iv) Incised wound 1-1/2" x 1/2" x muscle deep present over the right parietal area of the skull.
- (v) Incised wound 3" x 1/2" x muscle deep present over the occipital area of skull.
- (vi) Incised wound 1" x 1/2" x muscle deep present over the occipital area in front of injury No. V.
- (vii) Incised wound 2" x 1/2" x muscle deep present over the mid forehead.
- (viii) Incised wound 2" x 1/2" x muscle deep present over the lateral aspect of right upper arm near the elbow.
- (ix) Incised wound 4" x 1" x abdominal cavity present over the right lateral aspect of abdomen.

Upon dissection, the Doctor found brain and meninges pale. Both lungs were intact and pale, both chambers of the heart were empty, abdominal cavity was full of blood, incised wound 3" x 1/2" x cavity deep present over the duodenum, mesenteric vessels are also cut, stomach empty, uterus normal in size, bladder contains about 15 c.c. of urine.

According to Doctor, all the injuries were ante-mortem in nature caused by sharp cutting weapon like "Chaku". The Doctor issued post-mortem examination report with an opinion that the death was caused due to shock and abdominal haemorrhage, particularly on account of injury No. IX.

4. Meanwhile, the I.O. recorded the statement of the witnesses. On completion of the investigation when the charge-sheet was submitted, the cognizance of the offences was taken against the appellants.

5. When the case was committed to the Court of Sessions, the appellants were put on trial during which prosecution examined altogether 11 witnesses. Of them:-- P.W. 1 - Jasmani Kumari alias Nauri Kumari, the sister of the deceased, P.W. 2 - Eteshwar Oraon and P.W. 3 - Khuira Oraon have testified that when they went to river side in search of Ranjana Kumari they could locate her, who was submerged in the water. When they took out her they found several injuries on her person and then brought her to the house. P.W.1 - has further testified that at home when Ranjana Kumari disclosed to her mother that the appellants had inflicted injuries on her person, she was also present over there. P.W. 4 Manga Oraon (informant) has testified that when he, his wife, P.W. 2, P.W. 3 and P.W. 1 came to river side in search of Ranjana Kumari, they found Ranjana Kumari in severely injured condition, who was unconscious. Later on when she regained consciousness she did not disclose anything to them. On account of that, Manga Oraon-P.W. 4 was declared hostile. P.Ws. 6 and 7, Bandhana Oraon and Budheshwar Oraon are the witnesses to the inquest whereas P.W. 8-Tamba Oraon is hearsay witness. P.Ws. 9 and 10, Rati Oraon and Mikho Oraon did not support the case of the prosecution and, thereby, they have been declared hostile.

6. After the case of the prosecution was closed, incriminating evidences appearing against the appellants were put to them under Section 313, Cr.P.C. to which the appellants denied. Thereupon, learned trial court putting reliance upon the testimony of P.W 1, finding corroboration from some part of the evidences of P.Ws. 2 and 3, recorded the order of conviction and sentence, which is under challenge.

7. Mr. Mohit Prakash, learned counsel and Mr. Yogesh Modi, appointed as Amicus Curiae, submitted that when the informant, who happened to be the father of the deceased, did not support the case of the prosecution that the deceased had ever disclosed about the culpability of the accused persons. P.W. 1, who happens to be the daughter of the informant cannot be said to be trustworthy.

8. Further it was submitted that admittedly no one had seen the occurrence. However, the conviction is based upon dying declaration said to have been made by the deceased before her mother in presence of the P.W. 1 but the mother has not been examined and thereby uncorroborated version of P.W. 1, cannot be relied upon when vital discrepancies are there in the testimony of P.W. 1 but the court below did not consider this aspect of the matter, in right perspective, and hence, judgment of conviction and order of sentence be set aside.

9. As against this, learned counsel appearing for the State submits that there has been no reason to discard the testimony of P.W. 1, who did testify that when she along with P.Ws. 2 and 3 located her sister in the river side, they brought her home where Ranjana Kumari regained consciousness and stated about the culpability of the appellants and hence, judgment of conviction and order of sentence never warrants to be interfered with.

10. Having heard learned counsel appearing for the parties and on perusal of the record, it does appear that P.W. 1 - Jasmani Kumari alias Nauri Kumari, daughter of the informant and also P.W. 2 - Eteshwar Oraon as well as P.W. 3 - Khuria Oraon have testified that when they went to river side in search of Ranjana Kumari, the daughter of the informant, they found Ranjana Kumari submerged in the river. When they took her out they found several injuries on her person. Thereupon they brought her home where according to P.W. 1, Ranjana Kumari disclosed before the father and mother that it was the appellants, who inflicted injuries upon her but P.Ws. 2 and 3 who had also brought Ranjana Kumari to her home, have never said so that Ranjana Kumari had ever disclosed anything to her family members. Further, we do find that P.W. 1 in her examination-in-chief did testify that when she brought her sister home, her sister Ranjana Kumari (deceased) disclosed everything at home but in her cross-examination at para-5, she deposed that when she took her sister out from the river, she was unconscious but at the time when she died, she had regained consciousness. Further she has said that while she was being taken to hospital from home, she had regained consciousness.

11. Thus, it appears that at one place she says that the deceased was unconscious at home, which fact does not find corroboration from the testimony of P.Ws.2 and 3, but at another place she says that she regained consciousness when she was taken to hospital. Under the circumstances, P.W. 1 does not appeal to be trustworthy.

12. Further it be recorded that P.Ws. 1, 2, and 3 have testified that when they did locate Ranjana Kumari they found her submerged in the water. In spite of that, the Doctor did not find water in the stomach rather stomach was found empty, which in our view, belies the entire prosecution case and, thereby, judgment of conviction and order of sentence is hereby, set aside.

12A. Consequently, the appellants, above named are acquitted of all the charges and are directed to be released forthwith, if not wanted in any other case.

Thus, these appeals stand allowed.