

(2017) 08 JH CK 0043
In the Jharkhand High Court
Case No : 526 of 2007

Shaira Bibi @ Sharun Bibi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 10-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 164](#) - Power to examine the accused - Recording of confessions and statements
[Indian Penal Code, 1860](#), [Section 176](#)

Citation : (2017) 08 JH CK 0043

Hon'ble Judges : H.C. Mishra, Ananda Sen

Bench : DIVISION BENCH

Advocate : Hemant Kumar Shikarwar, N.K. Sahani, Ashok Kumar Sinha, Pankaj Kumar

Judgement

1. These three appeals arise out of a common Judgment of conviction dated 26th February 2007 and Order of sentence dated 28th February 2007, passed by the Additional Sessions Judge, Fast Track Court-I, Bokaro in Session Trial No. 178 of 2004, by which all these appellants have been convicted under Sections 302/34 and 201 of the Indian Penal Code and have been sentenced to undergo imprisonment for life with fine of Rs.500/- each for offence under Sections 302/34 of the Indian Penal Code and rigorous imprisonment for three years with a fine of Rs.500/- each for offence under Section 201 of the Indian Penal Code.

2. Aggrieved by the aforesaid Judgment of conviction and Order of sentence, these three appeals have been preferred by the three convicts, which have been heard together and are being disposed of by this common judgment.

3. The prosecution case is based on the fardbeyan of one Patang Ram Mahto, the brother of the deceased. He stated that his brother Devendra Ram Mahto did not return to his house on 16.01.2004, as a result of which, search started on the next day. During the search, one Etwamunda, who was a neighbour, told that on

16.01.2004 at about 09.00 p.m. said Devendra Ram Mahto was seen in the house of one Munna Bari where he was having dinner. The informant, thereafter, went to the house of Munna Bari, when Munna Bari told him that after having dinner, his brother left. As the whereabouts of his brother was not being traced, search continued. Near the bridge of Cooling Pond No.2, on the ground, blood stains were found. On seeing blood stains, the informant suspected and he became tensed. On 17.01.2004, at about 03.00 p.m., the informant again went to meet Munna Bari, then Munna Bari told him that Babloo Bankira told him that Devendra Ram Mahto @ Dabbu had some altercation on the last night with Babloo Bankira. On hearing this, the informant got disturbed and started fanatically searching him. He stated that their younger brother Lakhindra Ram had given Devendra Ram Mahto Rs.2000/- to purchase grocery and money was with him. Thereafter, on 17.01.2004 in the evening the informant inquired from Babloo, but, Babloo did not disclose any information. The friends of Babloo Bankira, namely, Bhola Sharma was also asked, but, he also did not disclose anything. On 18.01.2004, when the search started again, near the bridge of Cooling Pond and beside the canal, one slipper was found, which belonged to Devendra Ram Mahto. On seeing this, the informant believed that his brother has been murdered. He again inquired from these appellants, but no satisfactory answer was given. The informant, thus, came to a conclusion that these appellants have committed murder of his brother because of the money, which he was carrying.

4. On the basis of the said fardbeyan, Harla Police Station Case No.5 of 2004 dated 18.01.2004 was registered under Section 302/201 and 34 of the Indian Penal Code. The police started investigation and in course of investigation, accused persons were arrested. It is alleged that the accused persons confessed their guilt and on the basis of the said confessional statement, the dead body of the deceased was recovered. During investigation, the investigating officer also got the statement of Sunil Kumar Sinha, Anju Kerketta and Etwa Tirkey recorded under Section 164 of the Code of Criminal Procedure. Police, after completion of investigation, submitted chargesheet against these appellants. The offence being triable by the Court of Session, the case was committed to the Court of Session. The Trial Court, thereafter, framed charge under Sections 302/201 of the Indian Penal Code. The appellants were put on trial as they pleaded not guilty.

5. Altogether, 10 witnesses were examined on behalf of the prosecution to prove its case, namely, P.W.1 Sunil Kumar Sinha, P.W.2 Anju Karketta, P.W.3 Jitendra Kumar Mahato, P.W.4 Ajay Kumar Choudhary, P.W.5 Lakhnan Mahato, P.W.6 Etwa Tirkey, P.W.7 Patang Ram Mahato (informant), P.W.8 Lakhinder Ram Mahato (another brother of the deceased), P.W.9 Braj Kishore Kumar (Investigating Officer) and P.W.10 Dr. Balkeshwar Prasad. After closure of the prosecution evidence, statement of accused persons was recorded under Section 313 of the Code of Criminal Procedure. No witness was examined by these appellants.

6. Learned Trial Court, after hearing the arguments advanced on behalf of the

appellants and the Additional Public Prosecutor, and after analysing the evidence, found the appellants guilty for offence under Sections 302 and 201 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life for offence under Section 302 of the Indian Penal Code and rigorous imprisonment for 3 years for offence under Section 201 of the Indian Penal Code.

7. Aggrieved by the said judgment of conviction and the Order of sentence passed by the learned Additional Sessions Judge, the appellants have approached this Court by filing these appeals.

8. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the State and we have also gone through the Lower Court Records and also scanned the evidence adduced in this case.

9. P.W.1 happens to be one Sunil Kumar Sinha, who has stated that on 16.01.2004 between 10.30 and 10.45 p.m., he came out of his house, when he saw near the Hanuman Mandir, Munna, Bhola and Dabbu (the deceased) were quarreling. Thereafter, they climbed towards the dam. On the next day, the informant came and asked him about his brother, then this witness told him that he was seen on the last night with Munna, Babloo and Bhola. He stated that on 18.01.2004, below the bridge of cooling pond No.2, the dead body was recovered. He stated that he had given his statement before the Magistrate. In cross-examination, this witness has stated that before the Magistrate, he did not say that on 16.01.2004, at about 10.30 to 10.45 p.m. Munna, Babloo, Dabu and Bhola were talking amongst each other. He stated that he had not seen the occurrence. Nothing more was deposed by him.

10. P.W.2 Anju Kerketta is the cousin (sister) of the deceased. She stated that she was working with Babloo and Babloo often used to say that he will commit murder of Dabbu. In her cross examination, she stated that she does not know who were the friends of Dabbu. She stated that Dabbu did not quarrel with any one and used to live peacefully. She stated that once she had seen altercation between Dabbu and Babloo. She stated that except Babloo, she knows no one. Nothing more was extracted from her evidence.

11. P.W.3 Jitendra Kumar Mahato, stated that he was at his shop when the informant came and requested him to accompany him to the police station. He stated that at the police station, one person named Babloo Bankira was already present and police was interrogating him. He stated that Babloo told that after murdering Devendra, his dead body has been thrown in the canal of cooling pond No.2. He also confessed that Bhola and Munna were also with him. He stated that on pointing out of Babloo, the dead body was recovered. He stated that he has signed the inquest report and he identified his signature, which was marked as Exhibit 3/1. He stated that informant is his friend. He further stated that informant came to him to request him to accompany to the police station. He also stated that he had seen Babloo present at the police station, who was being interrogated by the police. He stated that when they reached cooling pond,

60-70 persons were present there. He stated that general public of that place could come to know that body was there. He stated that body was recovered from the canal.

12. P.W.4 is Ajay Kumar Choudhary, who stated that Dabbu @ Devendra went missing on 16.01.2004. On 19.01.2004, the body was recovered from a ditch near the bridge of cooling pond No.2. All three accused persons confessed that the body was thrown in the ditch. He stated that Babloo Bankira disclosed and identified the place where the body was concealed. He stated that when they reached the place of occurrence, Babloo was pointing out to the place where the dead body was kept. He also admitted that he has signed the inquest report. He stated that on 17.01.2004, he came to know that the deceased was missing. He also admitted that he had signed the seizure list. He stated that when he reached the place of occurrence, about 50 persons were assembled there. He stated that when he reached the police station, police was interrogating Babloo.

13. P.W.5 is Lakhan Mahto. He stated that deceased went missing on 16.01.2004. The informant came to him and they started searching the deceased. When they reached the house of Munna Bari, then Munna Bari told him that on the last night they had dinner together and thereafter deceased left his place. On 18.01.2004, during course of search, blood stains were found near the dam and when they went there, they found slippers of Devendra @ Dabbu. He stated that they carried the slippers and handed it over to the investigating officer. The slippers were seized and he along with the informant signed on the seizure list. These signatures on the seizure list were marked as Exhibits 4, 4/1 and 4/2. He stated that on 19.01.2004 body was recovered at the instance of these appellants. He stated that the deceased was his friend. Nothing more was extracted from his evidence.

14. P.W.6 is Etwa Tirkey. He stated that on 16.01.2004 at night, he went to the house of Munna to have dinner where Dabbu and Munna were consuming alcohol. Babloo and Bhola were also present. He ate mutton and thereafter started vomiting and returned to his house. On the next date, when the mother of Dabbu inquired about Dabbu, this witness told her about what happened last night and thereafter went to the house of Munna when Munna told him that Dabbu returned to his house. He stated that there were talks in the village that Dabbu had been murdered. He stated that his statement was recorded before the Magistrate and he identified his signature. He stated that his statement was recorded by the police. He stated that he did not narrate in his statement, under Section 164 of the Code of Criminal Procedure, that he had gone to eat and drink. He stated that he alone went to the house of Munna to inquire about the whereabouts of Dabbu. He stated that he had not seen the occurrence.

15. P.W.7 Patang Ram Mahato is the informant, who narrated the entire story as it has been mentioned in the first information report. He has stated that fanatic search was made, but, the deceased was not found. He stated that during search blood stains were found over the bridge on the cooling pond. He stated that the

slippers of the deceased were also found. He stated that his brother was carrying Rs.2000/-. He stated that he went to the police station to hand over the slippers where the slippers were seized. He identified his signature on the seizure list which was earlier marked as exhibit. He stated that he was the author of the fardbeyan. He stated that Munna, Bhola and Babloo were arrested and on confession of Babloo, the body was recovered from the ditch. Babloo confessed that he along with others had committed the murder of the deceased. He stated that he along with many persons had went to the place of occurrence. He stated that he had shown the blood stains. He admitted that he had not seen the occurrence. He stated that rarely his brother used to consume liquor. He gives the description of the place from where the dead body was recovered.

16. P.W.8 is Lakhindra Ram Mahato, who is also a brother of the deceased. He stated that on 17.01.2004, they saw blood stains near the cooling pond No.2. He stated that on quarry, Munna Bari told him that his brother was with him till 10.30 and thereafter he left. He stated that Etwā was also with them, who left earlier. Etwā also confirmed the aforesaid fact and told him that Babloo Bankira and Bhola Sharma were also with them. He stated that Munna Bari told him that his brother was having some altercation with Babloo Bankira. On 18.01.2004 when he went near the dam, slippers of the deceased were found. Police was also informed about the recovery of the slippers. Police interrogated Babloo, Munna and Bhola and they confessed that after killing the deceased, they threw the body near the cooling pond. On pointing out by these appellants, the dead body was recovered on 19.01.2004 in the morning. He also gives the description of the place where the blood stains were found.

17. P.W.9 Braj Kishore Verma is the investigating officer. He stated that on the basis of fardbeyan of Patang Ram Mahato, Harla Police Station Case No.5 of 2004 was instituted. The FIR was marked as Exhibit 6/1. The formal FIR was marked as Exhibit 7. He started investigation and stated that the informant brought the slippers of the deceased, which was seized. The seizure list was marked as Exhibit 4/3. The investigating officer, then recorded the statement of the witnesses and thereafter Babloo Bankira confessed his guilt on his arrest. His confessional statement was recorded by him, which was marked as Exhibit 8. He stated that Babloo Bankira confessed that he, Munna Bari and Bhola Sharma committed murder of the deceased and threw the body in a ditch near the cooling pond No.2. Babloo Bankira then led them near the cooling pond and on his pointing, the body was recovered. The inquest report was prepared and body was sent for postmortem examination. The inquest report was also marked as exhibit. Bhola Sharma was arrested and his confessional statement was also recorded, which was also marked exhibit. Munna Bari also confessed his guilt and his confessional statement was also recorded. He gave detail description of place of occurrence and from where the body was recovered. He obtained the postmortem report and thereafter got the statement of witnesses recorded under Section 164 of the Code of Criminal Procedure. He stated that the slippers which was seized, which has not been brought to the Court and he cannot say the size

and colour of the slippers. He has stated that in the diary it has not been mentioned about the name of the manufacturer of the said slippers. He stated that the blood stains were not in a position to be seized, as a result of which, it was not seized. He stated that several persons had assembled near the cooling pond. Nothing more has been stated by him.

18. P.W.10 is the doctor who conducted the postmortem. He stated that he conducted the postmortem of the deceased Devendra Kumar Mahto @ Dabbu, aged about 30 years. He stated that he found the following on external examination: - R.M. was absent. Eye was closed, Pale; Mouth closed tongue in oral cavity, muds over different parts of body, wrinkling of skin on palm and soles. Dry blood stains over both ears and nostril.

He found the following injuries on the person of the deceased: -

(i) Lacerated wound 3" x 3/4" over left temporal part of skull;

(ii) Diffused swelling 4" x 3" over rt. occipital region and skull;

On dissection Subcutaneous tissues over skull under injuries were contused and external vassation of blood clots present;

On further dissection, there was fracture of frontal bone and skull;

The membranes and brain were contrused and lacerated. Thorasic cavity was filled with blood and blood clots.

As per his opinion, the injuries are ante-mortem in nature and about three weeks old, caused by projectile fired from fire arm weapons. The cause of death is cardio respiratory failure due to massive hemorrhage and injury to the vital organs and the shock. He stated that time elapsed since death is three weeks from postmortem time. The postmortem report was marked as Exhibit 2. In his cross examination, he reiterated that the injuries were three weeks old and there was no possibility of presence of explosive material as well as charing and tutoring.

19. From the aforesaid evidence, which has been recorded in this case, it is quite clear that there is not a single eye witness to the occurrence, the case hinges only on circumstantial evidence. The circumstances which have been brought by the prosecution are as follows: - (I) Devendra Ram Mahto went missing on 16.01.2004 at night;

(ii) He was having dinner with Munna Bari, one of the accused;

(iii) Etwa Tirkey, P.W. 6 was also present in the house of Munna Bari where the deceased Devendra @ Dabu was present along with Munna Bari, Babloo Bankira and Bhola. Etwa left early as he started vomiting after consuming mutton;

(iv) There was an altercation at night between the deceased and these appellants, which was witnessed by P.W.1 Sunil Kumar Sinha and this person saw that these appellants and the deceased went towards the dam;

(v) During search, blood stains were found on the floor of the bridge over cooling pond;

(vi) On 17.01.2004, slippers of the deceased was found near the cooling pond;

(vii) The accused were apprehended and on their confession, the dead body was recovered.

20. These are the circumstances, which have been put forth by the prosecution to prove the guilt of these appellants. From the aforesaid facts and the circumstances, which have been put forth, it is clear that the appellants were last seen with the deceased at night and on their confession, the body was recovered. There is no eye witness in this case. The dead body of the deceased was sent for postmortem. The evidence of the doctor is very important in this case. Thrice the doctor stated that the death had taken place three weeks from the date the postmortem was conducted. The postmortem was conducted on 19.01.2004. Thus, as per the doctor, the deceased died three weeks prior to 19.01.2004. This is not the prosecution case. As per the prosecution case, the deceased went missing since the night of 16.01.2004 only three days back. We have gone through the postmortem report. In the postmortem report, it has been mentioned that the time elapsed since death is three days. The inquest report was prepared on 19.01.2004, itself and it suggests that there was injury on the head and there were wounds on the face and the entire body was swollen. Surprisingly, neither in the postmortem report nor in the evidence of the doctor, there is any whisper of any wound on the face of the deceased. Further, the doctor stated that there was fire arm injury on the dead body. The postmortem report did not suggest any fire arm injury nor it is the prosecution case. Now the question, which arises is whether the body, which was recovered from the ditch and was sent for postmortem, was of the brother of the informant or postmortem was conducted on some other dead body. A doubt has crept in this case about the dead body itself and whether the said body belonged to the deceased or not. Thus, whose body was recovered at the instance of the accused is not quite clear. Thus, the chain of circumstances in this case is incomplete.

21. In a case which is based upon circumstantial evidence, the circumstances should be so strong that there remains no other option than to conclude that the accused are guilty. The chain of circumstances should also be complete in all respect. As held above, the recovery of the body and the identity of the dead body as to whether the same was that of the deceased of this case or not, is doubtful. This is enough to conclude that the prosecution has failed to complete the chain of circumstances in this case. In this circumstances, the only option is to extend the benefit of doubt in favour of the accused. Thus, there is no other alternative before this Court than to hold that the appellants in this case must be given the benefits of doubt as the prosecution has failed to prove the case beyond all reasonable doubts.

22. In view of the conclusion arrived above, the Judgment of conviction dated

26th February 2007 and Order of sentence dated 28th February, 2007 passed by the Additional Sessions Judge, Fast Track Court-I, Bokaro in Session Trial No.178 of 2004 is hereby set aside. The appellants are given the benefit of doubt and acquitted of the charge under Sections 302/201 of the Indian Penal Code. The appellant Bhola Sharma is on bail in Criminal Appeal No. 343 of 2007, he is discharged from the liabilities of his bail bonds. Appellants Munna Bari and Babloo Bankira, who are in custody, should immediately be released and set at liberty, if they are not wanted in any other case.

23. All these appeals stand allowed. Let the Lower Court Records be transmitted to the Court concerned forthwith along with a copy of this judgment. The I.A. No.3866 of 2017 filed in Cr. Appeal (D.B.) No.526 of 2007 stands disposed of.