
(2019) 07 JH CK 0186

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 217 Of 2001, 140 Of 2002

Sheochand Prajapati And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 201, 302

Citation : (2019) 07 JH CK 0186

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : A.K. Kashyap, Anurag Kashyap, Sudhir Kumar

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J

1. The appellant- Sheochand Prajapati in Criminal Appeal (D.B.) No. 217 of 2001 and appellant- Bishwanath Prajapati in Criminal Appeal (D.B.) No. 140 of 2002 have challenged the judgment of conviction under sections 302/201 and 120B IPC dated 20.4.2001 and the order of sentence of R.I. for life under section 302 IPC with fine of Rs. 5,000/- imposed upon each appellants and R.I. for three years under section 201 IPC dated 21.4.2001 passed by Vth Additional Sessions Judge, Palamau at Daltonganj in S.T. No. 226 of 1998.

2. The prosecution's case is narrated by the informant, father of Baijnath Prajapati-the deceased, in his fardbeyan recorded on 28.1.1998 at about 13:45 p.m. In his fardbeyan, the informant has raised suspicion against both the accused persons; the accused Bishwanath Prajapati is step brother-in-law of the informant and the accused Sheo Chand Prajapati is the brother-in-law of the accused Bishwanath Prajapati. The informant has stated that he was informed by Ram Chandra Prajapati that he has seen his son Baijnath Prajapati going with the accused persons. He has further stated that on inquiry both the accused persons denied that Baijnath Prajapati had come to their home. After the dead body of

Baijnath Prajapati was recovered on 28.1.1998 at about 9 a.m. in the morning from the well of Bihari Prajapati, the informant gave his statement before the Assistant Sub-Inspector, P.S. Dhurki. After the investigation, charge-sheet was submitted against both the appellants and they faced trial on the charge of conspiracy and murder of Baijnath Prajapati.

3. During the trial, the prosecution has examined as many as 16 witnesses. However, PW-5, PW-10, PW-12 and PW-15 have turned hostile. P.W.-2, PW-9, PW-11, PW-13 and PW-14 are hearsay witnesses and PW-4 and PW-6 are formal witnesses.

4. The prosecution has projected Ram Chandra Prajapati-PW-1 and Bhola Prajapati-PW-3 as eye witnesses.

5. Dr. Ajit Kumar Singh-PW-7 who has conducted autopsy has found the following injuries on the dead body of Baijnath Prajapati:

"(i) Abrasion over left elbow 1"x1" and right dorsal region of fore-arm 2"x1".

ii) Abrasion over right elbow 1"x 3/4".

(iii) Abrasion over right fore-arm 2"x1/2"

(iv) Abrasion on both knees 3/4"x1"

(v) Multiple abrasion over scalp.

(vi) Rapture of trachea on right side and

(vii) Ecchymosis and clotted blood present in layers of tissues over lying neck anteriority. Neck swollen and radiating veins on all side of neck."

6. The doctor has opined that the death has occurred due to external compression on the neck of Baijnath Prajapati and the time elapsed since death was 24 to 96 hrs. ; post mortem examination was conducted by Dr. Ajit Kumar Singh at 12:40 p.m. on 29.1.1998.

7. On the basis of the aforesaid evidences, the learned Additional Sessions Judge, Palamau at Daltonganj has held that the prosecution has proved the charge under section 302/201 and 120B IPC against both the accused persons.

8. Admittedly, there is no eye witness to the actual occurrence. The evidence laid by the prosecution through PW-1 and PW-3 is on last-seen-together. Ram Chandra Prajapati-PW-1 has stated in his examination-in-chief that on 25.1.1998 at about 8 p.m. in the evening Baijnath Prajapati along with the appellants had come to his house and asked for a light (biri), and thereafter they separated and went away (tab wo log apna ghar gaye). The prosecution witness, namely, Bhola Prajapati-PW-3 has, however, stated that these appellants were asking the deceased to come along with them for operating their Flour Mill to which he had declined whereupon they offered chicken to him. This witness has stated that these appellants have accompanied the deceased towards their house. At this

stage, we may indicate that the evidence laid by PW-1 and PW-3 is a little contradictory. From the evidence led by the prosecution, we find that all that the prosecution has established is that on 25.1.1998, in the evening the deceased-Bajinath Prajapati was found in the company of these appellants, at least for a brief period.

9. The law on the circumstantial evidence is by now well-settled. In a case founded on circumstantial evidence, the prosecution is required first to prove the incriminating circumstances and then prove that the proved circumstances are so complete that these point out an accusing finger only towards the accused excluding every reasonable hypothesis of innocence of the accused. In the context of the circumstantial evidence, it has been observed that suspicion howsoever strong cannot take place of the legal evidence. In "Gambhir Vs. State of Maharashtra" [(1982) 2 SCC 351], the Supreme Court has explained the law on the circumstantial evidence, thus;

9. ".....When a case rests upon the circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

10. The only circumstance which can be said to have been proved against the accused persons is that the deceased Bajinath Prajapati was found in the company of these appellants in the evening of 25.1.1998, but then, only on the basis of such evidence conviction under section 302 IPC cannot be recorded. The time gap between the accused persons seen lastly in the company of the deceased and recovery of the dead body of the deceased becomes relevant. In the context of the last-seen-together evidence, it needs to be recorded that the dead body of Bajinath Prajapati has been recovered from a well situated in the village itself. The doctor has opined that the time elapsed since death was 24-96 hrs. Now, accepting the medical evidence on death of the deceased, it can be said that the deceased has died somewhere between 25.1.1998 to 27.1.1998. It has also come in the prosecution's evidence that on 26.1.1998 the informant had visited house of both the appellants and inquired from them about his son Bajinath Prajapati. In the case of "Bodhraj @ Bodha & Others Vs. State of Jammu and Kashmir" [(2002)8 SCC 45], the Supreme Court has explained the law on last-seen-together, thus;

"31. The last-seen theory comes into play where the time-gap between the point

of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases-----."

11. In the light of the aforesaid decisions of the Supreme Court, having examined the record of S.T. No. 226 of 1998, we hold that conviction of both the appellants under section 302 and section 201 IPC is not sustainable.

12. Accordingly, judgment of conviction under sections 302/201 and 120 B IPC dated 20.4.2001 and order of sentence of R.I. for life under section 302 IPC with fine of Rs. 5,000/- imposed upon each of the appellants and R.I. for 3 years under section 201 IPC passed by the learned Vth Additional Sessions Judge, Palamau at Daltonganj in S.T. case No. 226 of 1998 are set-aside.

13. Both the appellants are discharged of the bail-bonds furnished by them.

14. In the result, Criminal Appeal (D.B.) No. 217 of 2001 and Criminal Appeal (D.B.) No. 140 of 2001 are allowed.

15. Let the lower court records be transmitted to the court concerned, forthwith.