

(2013) 03 JH CK 0130

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 214 of 1991 (R)

Shrawan Mahto

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 3 AJR 317 : (2013) 3 JLJR 179

Hon'ble Judges : S. Chandrashekhar, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Praveen Shankar Dayal, for the Appellant; Krishna Shankar, Assistant Public Prosecutor, for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—The present appeal has been preferred against the judgment and order of conviction and sentence, dated 6th September, 1991, passed by learned 2nd Additional Sessions Judge, Palamau, in Sessions Trial No. 88 of 1990, whereby, the appellant, namely. Shrawan Mahto, has been convicted for the offence u/s 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. It is the case of the prosecution that on 15.11.1989 at about 8.00 a.m. the informant Sanichar Mahto (P.W. 3) had gone in his field for harvesting the paddy crops and his daughter, though already married but was living in his father's house, as usual, had gone to Rahar field for cutting grass from the said field. On that day the informant (P.W. 3) returned from his field and learnt from his younger daughter, namely, Dewanti Kumari, that his elder daughter. Hemanti Devi (deceased), had come to take her meal at late hours and, therefore, the informant along with his son, Santosh Prasad alias Santosh Mahto (P.W. 2), proceeded to Serpurwa Baghouta Badhar, in order to ascertain the reason for her late coming for taking meal. While they were just hundred yards away from the field in Baghouta Badhar, they heard loud cry of Hemanti and apprehended that she is in great danger and, therefore, they rushed towards the field and saw the accused Shrawan Mahto and his son Bhadoiya Mahto dragging Hemanti, in order to conceal her. On the Hulla. raised

by the informant, his brother Bechan Mahto (P.W. 1) also reached there and all of them saw accused Shrawan Mahto and his son running away. Hemanti was struggling there for his life, but, she could not speak anything and died immediately. The informant thereafter, informed the Chowkidar as well as the in-laws of the deceased, who arrived at the place of occurrence, and thereafter, leaving them at the place of occurrence, the informant (P.W. 3) went to the Police Station for lodging the First Information Report and, thereafter, the instant First Information Report being Chainpur Police Station Case No. 96 of 1989 dated 16.11.1989 was instituted.

2. After instituting the First Information Report, the police carried out investigation and submitted charge sheet. The case was committed to the court of Sessions where the case was numbered as Sessions Trial No. 88 of 1990 and on the basis of the evidence and depositions, given by the prosecution witnesses i.e. P.W. 1 to P.W. 8, the learned trial court has passed the judgment and order of conviction and sentence against the appellant, namely, Shrawan Mahto, convicting him for the offence punishable u/s 302 of the Indian Penal Code for causing murder of Hemanti Devi and sentencing him to undergo rigorous imprisonment for life.

3. We have heard learned counsel for the appellant, at length, who has mainly submitted that the First Information Report has been lodged by P.W. 3, Sanichar Mahto, who is father of the deceased Hemanti Devi. Several injuries were "sustained by the deceased, as per the case of the prosecution and as per the medical evidence, given by P.W. 5, who is Dr. Sita Ram Choudhary, but, in the First Information Report, father of the deceased has neither mentioned about any weapon in the hand of the appellant-accused, nor has narrated the manner of assault nor the motive for committing murder of the deceased-girl. It is submitted by the learned counsel for the appellant that such an important aspect of the matter cannot be forgotten by the informant, when he was lodging the First Information Report.

Secondly, it is submitted by the learned counsel for the appellant that the offence appears to have been committed during the day hours. It is also submitted by the learned counsel for the appellant that there is evidence of the prosecution witnesses that in an open field the offence was committed and in the nearby fields there were several persons working, but, not a single independent witness has been examined by the prosecution.

Thirdly, it is submitted by the learned counsel for the appellant that there is a sharp contradiction between the medical evidence and ocular evidence and lastly, it is submitted that there is too much exaggerated version in the depositions of the prosecution witnesses and, as such, it is difficult to separate the grain and chaff and therefore, the so called eye witnesses are not trustworthy and are unreliable, because they have never seen the incident at all. These aspect of the matters have not been properly appreciated by the learned trial court and hence the impugned judgment and order conviction and sentence, passed by the

learned trial court, deserve to be quashed and set aside.

4. It is further submitted by the learned counsel for the appellant that P.Ws. 1, 2 and 3, who have been projected as eye witnesses, are, in fact, not the eye witnesses, especially looking to their cross examinations. This aspect of the matter has also not been properly appreciated by the learned trial court and hence also the impugned judgment and order of conviction and sentence, passed by the learned trial court, deserves to be quashed and set aside.

5. We have also heard learned A.P.P., appearing on behalf of the State, who has submitted that there are as many as three eye witnesses to the incident, who are P.Ws. 1, 2 and 3. Looking to the depositions of these eye witnesses, it is evident that they have clearly narrated the role, played by this appellant-accused in causing murder of the deceased. It is further submitted by the learned counsel for the State that this appellant has assaulted the deceased by giving stone Wows, resulting into her death, and this aspect of the matter is getting further corroboration from the medical evidence given by P.W. 5, who is Dr. Sita Ram Choudhary, who has carried of the post-mortem examination of the body of deceased Hemanti Devi and, thus, the evidences on record have properly been appreciated by the learned trial court and the prosecution has proved the offence of murder of the deceased, beyond reasonable doubts, to have been committed by the appellant and no error has been committed by the learned trial court in appreciating the evidences on record and hence this appeal may not be entertained by this Court.

6. Having heard learned counsel for both the sides and looking to the evidences on record, it appears that the incident has taken place op 15th November, 1989 at about 4.00 p.m., First Information Report was lodged on 16th November, 1989 at about 4.45 a.m. at Chainpur Police Station within the district of Palamau. Looking to the evidence on record, it appears that P.W. 3 is an informant, who is Father of the deceased. Looking to the Fard-beyan, given by this P.W. 3, Sanichar Mahto, it appears that he has narrated, in detail, the incident, but, he has not alleged about any weapon in the hand of the appellant-accused for causing murder of the deceased, nor he has put any allegation in the Fard-beyan about the manner of assault by the appellant-accused, nor this informant, father of the deceased, has narrated any motive for committing such offence. This is the nature of the First Information Report. Moreover, it has been stated that this informant had initially gone to one Chowkidar of the concerned village, before lodging the First Information Report and before the Chowkidar, every facts were narrated. Said Chowkidar has not been examined as a prosecution witness.

7. It further appears from the evidence of P.W. 1 in paragraph No. 2 which is cross-examination of P.W. 1, that he has not seen a accused, causing injury by sharp-cutting instrument. This is fatal the prosecution, because neither there is any allegation in the First Information of the usage of sharp-cutting instrument nor there is the evidence of P.W. 1 about the usage of sharp-cutting instrument, se(sic) by him. Thus, this appellant has not used a sharp-cutting instrument in

causing injuries upon the body of the deceased. This aspect the matter has not been appreciated by the learned trial court. Moreover, looking to the deposition of P.W. 1 at paragraph No. 7 appears that he has stated that he has seen the whole incident from a distance of approximately 700 yards = 2100 ft. approximately. Thus, it appears that this witness has not seen anything from a reasonable distance. Moreover, looking to paragraph No. 2 of the deposition of this eye witness, it appears that this P.W. 1 came to know about the incident because of shouting of P.W. 2 that P.W. 2's sister has been murdered and, thereafter, this P.W. 1 has rushed to place of occurrence and seen the incident from a distance of 2100 ft. approximately. Thus, looking to paragraph No. 2 to be read with paragraph No. 4 to be read with paragraph No. 7 to be read with paragraph No. 25 of the deposition of this eye witness, it appears that he is not a trustworthy witnesses and he is not an eye witness at all. This aspect of the matter has not been proper appreciated by the learned trial court.

8. Similarly, looking to the deposition of P.W. 2, it appears that he is brother of the deceased and son of the informant. Looking to paragraph No. 2 of his deposition, it appears that this witness (P.W. 2) has rushed at the scene of offence, hearing Hulla and, therefore, P.W. 2 is also not an eye witness at all. This witness in paragraph No. 2 of his deposition has stated that there is usage of stone for causing murder of the deceased, but, this witness has also not stated before the court that any sharp-cutting instrument was ever used for causing murder of the deceased, by this appellant. Thus, this P.W. 2 is also not an eye witness of the fact that this appellant has caused injuries upon the body of the deceased, by sharp-cutting instrument. Thus, P.W. 2 is also not an eye witness, as per his deposition and this aspect of the matter has also not been appreciated by the learned trial court.

9. Likewise, looking to the evidence of P.W. 3 (informant), it appears that this witness has also not stated in his deposition about the usage of sharp-cutting instrument by this appellant whereas, looking to the evidence of P.W. 5, Dr. Sita Ram Choudhary, following are the injuries, which were noted in the Postmortem Report, when this witness has carried out postmortem examination of the body of the deceased:

(1) Incised wounds:

(a) Nine in number of varying sizes and depth from 3/4" x 1/3" x muscle deep to 1 1/2" x 1/2" x muscle deep with blood stained on right side of face, right pre-auricular region, right post-auricular region.

(b) Eight in number of varying sizes and depth from 3/4" x 1/3" x muscle deep to 2" x 1/2" x muscle deep with blood stained on left side of forehead, face.

(c) Three in number of varying sizes from 1/2" x 1/4" x muscle deep to 1 1/4" x 3/4" x muscle deep on antero-lateral aspect of right arm.

(2) Lacerated wound size 2 1/2" x 1/2" x cavity deep with underlying fracture of

left parietal on left side of hand.

(3) Swelling of both lips of mouth with missing of right upper two incisor teeth.

10. Thus, as per the medical evidence, the injuries, which are referred to in 1(a), (b) and (c) were caused by sharp-cutting weapon and may be by Sickle and these injuries have not been explained by the prosecution at all nor any of the eye witnesses has stated about these injuries. The injuries referred to 1(a), (b) and (c) are twenty in number. These many injuries, cannot go unnoticed by the so called eye witnesses. These injuries have to be explained by the prosecution, which are capable of being caused by Sickle and, therefore also, it appears that the so called eye witnesses have not seen the incident at all. This aspect of the matter has also not been properly appreciated by the learned trial court. Moreover, looking to the medical evidence and ocular evidence, there is a sharp contradiction between the two. There were several other persons, working in the nearby field, when the incident had taken place, as per paragraph No. 25 of the deposition of P.W. 1. Not a single witness has been examined, who was working in the nearby field, by the prosecution. This aspect of the matter has also not been properly appreciated by the learned trial court. We, therefore, quash and set aside the impugned judgment and order of conviction and sentence both dated 6th September, 1991, passed by learned 2nd Additional Sessions Judge, Palamau, in Sessions Trial No. 88 of 1990, arising out Chainpur P.S. Case No. 96 of 1989, since the prosecution has failed to prove the offence murder of the deceased to have been committed by this appellant beyond reasonable doubt. The sentence awarded to this appellant by the trial court, has already been suspended by this Court vide order dated 25.9.1991, upon execution of bail bonds and sureties Bail bond of appellant is discharged and his sureties are also discharged from their liability. Appellant is acquitted. This Criminal Appeal is, accordingly, allowed and disposed of.