

(2010) 05 JH CK 0062

In the Jharkhand High Court

Case No : Criminal Appeal No. 29 of 1999 (P)

Sk. Bhhola alias Sk. Bholu Mian

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 05 JH CK 0062

Hon'ble Judges : Pradeep Kumar, J;J.C.S. Rawat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This appeal is directed against the judgment and order of conviction and sentence dated 28/30. 11.1998 passed by the learned Sessions Judge, Godda, in Sessions Trial No. 175 of 1998 whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment for life u/s 302 IPC.

2. Brief facts of the prosecution case is that on 24.2.1998 at about 6.00 p.m., the informant Surodhani Besra, was returning from her Naihar (parental house) situated in village Bajpai to her matrimonial house at village Jagatpur. When she reached near a Mahua tree at a road bridge in village Jagatpur, the appellant suddenly emerged, stopped her and inflicted a knife blow on her stomach as a result of which she sustained injuries on her stomach. Thereupon, she raised alarms. The appellant left the knife penetrated on the person of the victim lady and ran away from the place of the occurrence. Thereafter, the victim wanted to - proceed to her matrimonial home, but when she proceeded a few steps further and pulled out the knife from her stomach, she fell down and became unconscious. She remained there whole night, but in the morning Lakhiram Murmu PW1 and Rajendra Thakur PW2 of the village Bajpai who had gone towards river side in the morning hours to attend the call of nature, reached near the place of the occurrence on hearing the cries of the victim lady. When they

reached near the place of the occurrence, they saw that the informant Surodhani was lying in the maize field in an injured condition, and she was groaning. When they asked her about the occurrence, she told them that the appellant had penetrated the knife into her abdomen. Thereupon, the villagers were called and they reached at the spot. She also narrated the incident to them and slated the fact that the appellant had inflicted the knife blow on her abdomen.- She was taken to the Police Station where her fard beyan in which she narrated the details of the incidents, was recorded by the police and Pathergama PS Case No. 17 of 1998 was registered. After recording her fard beyan, the injured informant was sent to the hospital where she died. The fard beyan was also signed by PW10 Biraj Murmu who is the village Pradhan.

3. After the case was registered, investigation was conducted. Inquest report was prepared; witnesses were examined u/s 161 Cr.P.C. The Investigation ultimately culminated into charge sheet submitted against the appellant.

4. The learned Magistrate took cognizance of the offence. The case was committed to the court of sessions as it was exclusively triable by the court of sessions. Learned Sessions Judge framed charges against the appellant. The appellant denied the charges and claimed to be tried.

5. The prosecution in support of its case, examined PW1 Lakhiram Murmu, PW2 Rajendra Thakur and PW3 Marang Mai Murmu. In their depositions they have stated that the deceased had made statement before them that she had been killed by the appellant and it was further stated that the appellant had stabbed her on stomach as a result of which she had sustained injuries. These witnesses (PWs 1 to 3) are witnesses on the dying declaration. PW11 Bindeshwari Mishra SI of Police, is the investigating officer of the case who has proved the fard beyan in which the dying declaration of the deceased Surodhani was recorded. PW6 Makku Murmu, PW8 Krishna Murmu and PW9 Debilal Hansda are co-villagers who had reached at the spot having received the information that the deceased had sustained injuries on her person which was caused by the appellant. PW8 and 9 are witnesses also on the point of the seizure list (Ext 2 to 2/1). PW3 Marang Mai Murmu is the mother in law of the deceased and PW5 Bablu Marandi is the husband of the deceased. They had also reached the place of occurrence. PW4 is Dr. Satyendra Mishra who conducted autopsy on 26.2.1998 at 10.30 a.m. on the dead body of the deceased.

6. After recording the "entire prosecution evidence, the appellant was examined u/s 313 Cr.P.C. and he denied all the averments made in the evidence against him and he has taken the plea that he has been falsely implicated in this case. After conclusion of the trial, the Sessions Judge convicted the appellant and sentenced him as indicated above.

7. It needs to be mentioned here that there is no dispute about the death, time, place and the date of the incident,

8. The prosecution in support of its case examined Dr. Mishra, PW4 who

conducted post mortem on 26.2.1998 at about 10.00 a.m. on the dead body of the deceased and found the following injuries:

(i) rigor mortis were present over all the limbs. There was dressed wound over epigastrium. The body was pale. Eyes and mouth were closed. On removing the dressing a perforating wound 1x 1/2 "x 3" was found on the epigastrium caused by sharp pointed weapon;

(ii) On dissection, head and neck the skull was intact; the meninges and brain were pale.

(iii) parietal cavity (abdomen) was full of blood. In stomach there was perforation of both the walls. Gastric vessels were lacerated. A big tear was in the greater omentum. In intestines there were perforation of transverse colons and proximal jejunum.

According to the opinion of the doctor, the death occurred due to intra abdominal injuries caused by a sharp pointed weapon. He further opined that the death was caused due to ante mortem injuries. Duration of death as stated by the doctor (PW4) is 18 hours old from the time of autopsy.

9. Apart from that, the prosecution has also adduced evidence of PW1 Lakhiram Murmu, PW2 Rajendra Thakur, PW3 Marang Mai Murmu and other Prosecution Witnesses before whom it was stated that she sustained the injuries which were caused by the appellant. Thus, it is established from the materials on the record that the deceased died at the time and place given by the prosecution. Now it has to be decided who is the author of the injuries on the person of the deceased.

10. According to the prosecution, the appellant stabbed a knife into the stomach of the deceased in consequence of which she sustained injuries in the evening and she died after giving her statement to the witnesses and fard beyan before the police. According to the defence the appellant is innocent. The prosecution case rests entirely on the dying declaration of the deceased which was given before PW1 Lakhiram Murmu; PW2 Rajendra Thakur; PW10 Ishwar Hembram and PW11 Bindeshwari Mishra, Sub Inspector of Police. It is a settled position of law that if the dying declaration is credible and cogent, no further corroboration is required and the conviction of the accused can be based solely on the dying declaration.

11. The prosecution has examined PW1 Lakhiram Murmu, and PW2 Rajendra Thakur who have stated in their evidence that on 26.2.1998 they had gone to the river side early in the morning to attend natural call. When they reached near the field, they heard the outcries, wails and woes of the victim lady (deceased) and when both of them reached near the deceased, they found the deceased lying in an injured condition. When they asked her about the incident, she told them that the, appellant had assaulted her with a knife in her stomach and upon hearing the said statement of the deceased PW1 Lakhiram Murmu asked PW2 Rajendra Thakur to go to the village and inform the villagers about the incident.

Thereupon, the villagers reached at the spot and found the victim lady in an injured condition. It is also stated by PW2 that a knife was also kept by the side of the victim lady. The police prepared the seizure list (Ext.6) and the PW8 Krishna Murmu and PW9 Debilal Hansda are the witnesses of seizure memos. It is also stated by PW10 Birja Murmu that when PW2 Rajendra Thakur came to the village, PW10 also went to the spot along with other villagers including Krishna Murmu PW8 and found the deceased in an injured condition. He has stated in his evidence that on the evening of 25.2.1998, the deceased went to village Bajpai from Jagatpur carrying oil. When she was returning through the field, it was found that she did not return to her house. PW1 Lakhiram Murmu and PW2 Rajendra Thakur have stated that they found the victim lady lying in the maize field and when they enquired from the deceased, she, who was in a conscious state, narrated about the occurrence to them. When PW10 enquired from the injured, she stated that she was stabbed by the appellant. Thereafter, she was taken to the Police Station where she gave her statement in an injured condition, which was recorded as her fard beyan by PW11 Bindeshwari Mishra, and the said statement was attested by him. In her statement, she has clearly and categorically named the appellant as her assailant who had mercilessly stabbed her in her stomach on 24.2.1998 as a result of which she died on the following day.

12. Learned Counsel for the appellant contended that since the deceased lady had sustained stomach injuries, she could not have been in a position to narrate the incident. He further pointed out that PW1 Lakhiram Murmu has deposed that she was in a semi conscious state when she was crying and bewailing for help in the morning. Learned Counsel for the State refuting the contention raised on behalf of the appellant stated that PW1 has stated that when he reached the spot, the deceased was in semi conscious position; PW2 has stated that she was able to speak; PW10 has also stated in his evidence that she was able to speak clearly. There is no cross examination of the witnesses on this point and the statements given by the witnesses have not been challenged during the course of their cross examination. Thus, the evidence of these witnesses as indicated above, clearly and categorically reveals that the victim lady had been, to some extent, in a conscious state and she was able to speak and give statement to the witnesses and she died in the hospital. Thus, we do not find any force in the contention raised by the learned Counsel for the appellant.

13. PWs. 1, 2 and 10 were cross examined at length, but nothing could be elicited from the cross examination. PW11 Bindeshwari Mishra is the Investigating Officer of the case, who had also recorded the fard beyan of the deceased. He has stated that on 26.2.1998 at about 10.00 a.m. he was at the Police Out Post and the deceased had been brought there in an injured condition and she had given her statement which was recorded by him as fard beyan which was marked as Ext.3. He has further stated that he recorded the fard beyan of the deceased in his own hand writing, and it was read over and explained to her and she having found the same to be correct, put her thumb impression. The

fard beyan was further attested and signed by PW10 Biraj Murmu. This evidence was not challenged during the cross-examination. Thus, the dying declaration by way of fard beyan (Ext.3) has also been proved by the PW11, Bindeshwari Mishra. The deceased had given her dying declaration before Lakhiram PW1; Rajendra Thakur PW2; Biraj Murmu PW10 and Bindeshwari Mishra PW11. The said dying declaration of the deceased is cogent and credible and also stands corroborated by the evidence of other witnesses namely PWs. 6, 8, 9, 10.

14. We have gone through the entire evidence of the case with the help of the learned Counsel for the parties. We do not find that any error has been committed by the trial court in appreciating evidences of the prosecution witnesses and holding that the dying declaration is totally cogent and credible.

15. The said dying declaration is further corroborated by the circumstances projected by the prosecution. The prosecution has adduced evidence of the other witnesses, viz. PW6 Maku Murmu, PW8 Krishna Murmu, PW9 Debilal Hansda and PW10 Bira) Murmu. Immediately after the information given to them by PW2 Rajendra Thakur in the village, they reached at the place of occurrence and found the" injured (the deceased) at the spot. The weapon which was found lying near the body of the deceased was also seized and seizure memo was prepared and it was produced before the trial court which was proved by Krishna Murmu (PW8) and Debilal Hansda (PW9). Apart from that, their evidence is further corroborated from the evidence of Dr. Satyendra Miashra, (PW4) who found the stab injuries in the stomach of the deceased. As such the manner of incident is further corroborated. All the witnesses have remained consistent during their cross examination. Nothing has been elicited from their cross examination to discredit or disbelieve their testimony. The deceased has given her dying declaration at different point of time to the PWs 1, 2, 10 and 11. All the witnesses have corroborated each other about the statement given to them by the deceased. They have corroborated each other in their depositions on the point of the dying declaration.

16. On a conspicuous consideration of the entire evidence available on the record, we find that the mode and the manner of the incident as projected by the prosecution has been established and the dying declaration made by the deceased before the witnesses is cogent and credible. The said evidence of the prosecution is also corroborated by the preponderance and circumstances of the case. We are in complete agreement with the findings of the trial court. We do not find any fault with the appreciation of the evidence made by the trial court. Thus, we do not find any merit in this appeal which is devoid of any merit and is fit to be dismissed.

For the reasons aforesaid, this appeal is dismissed. The order of conviction and sentence of the appellant recorded by the trial court in Trial No. 175 of 1998 is hereby confirmed.