
(2019) 08 JH CK 0127

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 115 Of 2002

Sogen Hansda @ Doman Majhi And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 326, 449

Citation : (2019) 08 JH CK 0127

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

Bench : Division Bench

Advocate : A.K. Das, Swati Shalini, Hardeo Pd. Singh

Final Decision : Partly Allowed

Judgement

Shree Chandrashekhar, J

1. Four persons came to the house of the informant in the night of 16.08.1998 at about 11:00 p.m. Three of them namely, Butru Hansda @ Putul Majhi, Sogen Hansda @ Doman Majhi and Logen Hansda have assaulted the son of Sumi Kuntiya, the informant, whose statement was recorded on 17.08.1998 at 11:00 a.m. on the basis of which Dumaria P.S. Case No. 14 of 1998 was registered under section 449 IPC and section 302/34 IPC.

2. In course of investigation, the fourth accused could not be identified and, accordingly, a charge-sheet was submitted against the above-named accused persons.

3. During pendency of this criminal appeal, the appellant, namely, Butru Hansda @ Putul Majhi has passed away. In respect of his death an affidavit has been filed by the Assistant Sub-Inspector of Police, P.S.-Dumaria, District-East Singhbhum, along with which a death certificate from Up-Mukhiya certifying death of Butru Hansda @ Putul Majhi has been produced.

4. Accordingly, vide order dated 24.07.2019 this criminal appeal qua the

appellant no. 1, namely, Butru Hansda @ Putul Majhi has abated.

5. In Sessions Trial No. 240 of 1999/5 of 2002, the learned trial Judge has convicted the appellants for the offence punishable under section 449 IPC and under section 302 read with section 34 IPC. The appellants have been awarded sentence of R.I for life under section 302/34 IPC and R.I for Seven years under section 449/34 IPC.

6. During the trial, the prosecution has examined 11 witnesses; wife of the deceased, namely, Nepali Kuntiya is P.W. 3 and the investigating officer is P.W. 9. The informant, namely, Sumi Kuntiya, who died in the meantime, could not be examined during the trial.

7. The prosecution has projected Nepali Kuntiya as an eye-witness.

8. Dr. Om Shanker-P.W. 5, who has conducted the post-mortem examination, has found the following injuries on Sadhu Kuntiya:

"(i) Sharp cut 2 cm X 6 mm X bone deep on right Jaw.

(ii) Sharp 2.5 cm X 3 mm X bone deep front chin.

(iii) Sharp cut 3.5 X 3 mm on middle scalp fracture of bone with underlying hameofoma brain.

(iv) Sharp cut 2 cm X 5 mm X bone deep on right shoulder.

(v) Sharp cut 1.5 cm X 5 mm X muscle deep on right arm.

(vi) Sharp cut 6 cm X 1 cm from lower neck to back muscle deep.

9. According to the doctor, the injuries on Sadhu Kuntiya were ante-mortem in nature and he has succumbed to the injuries, particularly the injury no. (iii). The doctor has found red ants present all over the body causing multiple abrasion on right side of the chest and other parts of the body of Sadhu Kuntiya.

10. Mr. A. K. Das, the learned counsel for the appellants has submitted that: (i) the informant of the case has not been examined and while so, the initial version of the prosecution has not been proved, (ii) the wife of the deceased has made improvements in the prosecution's case when she was examined in the court, (iii) the crime weapon was not seized, (iv) the source of identification, that is, dhibri has not been recovered, (v) the investigating officer has not prepared a site-plan, and (vi) none of the co-villagers has witnessed the appellants assaulting Sadhu Kuntiya, and therefore the prosecution has failed to prove the charge under section 302/34 IPC against the appellants. The learned counsel submits that in any case in view of the aforesaid lacuna in the prosecution's case the appellants are entitled for the benefit of doubt.

11. The learned counsel for the appellants has relied on the decision in "Narayana Reddy Alias Babu Vs. State of Karnataka" reported in (2016) 14 SCC 212, to fortify his contentions.

12. In her fardbeyan, the informant has stated that in the night of 16.08.1998, at about 11:00 p.m., she heard cries of her son, namely, Sadhu Kuntiya and when she went to his room she found four persons armed with knife standing in the room and her son was lying there injured. He was bleeding profusely and there were several injuries on his body. The accused persons threatened her not to raise hulla else she would be killed. The informant has stated that the wife of Sadhu Kuntiya was also present in the room. Due to fear of the accused persons she was also not raising hulla. The informant has stated that she has identified three accused persons in the light of dhibri (small lamp), however, she could not recognize the fourth one. She has named Butru Hansda @ Putul Majhi, Logen Hansda and Sogen Hansda @ Doman Majhi as the persons who have assaulted her son. She says that several villagers had assembled there and after sometime her son died. The informant has claimed that due to land dispute the accused persons have killed her son.

13. The prosecution witness, namely, Lugoo Murmu-P.W.1 has deposed in the court that at about 10.30 - 11.00 p.m in the night he heard hulla coming from the house of Sadhu Kuntiya and when he reached there he saw four persons coming out from his house. He has said that mother of the deceased had narrated the entire incident to him. P.W. 2 has also stated that he saw four persons armed with Bhujali coming out of the house of the deceased. He has seen Sadhu Kuntiya lying on the floor in the pool of blood. P.W. 4 has also seen Sadhu Kuntiya lying in his house in unconscious condition. He says that the mother of Sadhu Kuntiya had disclosed the name of the accused persons, however, she did not recognise the fourth accused. The other prosecution witnesses have also spoken about the incident in a similar manner.

14. It is not a universal rule that conviction cannot be recorded on the basis of testimony of a solitary witness, rather the law is that if testimony of the sole eye-witness inspires confidence, it does not require corroboration and conviction can be based on the evidence of the sole eye-witness. The wife of the deceased, namely, Nepali Kuntiya has deposed in the court that at about midnight the accused persons, namely, Butru Hansda @ Putul Majhi, Logen Hansda and Sogen Hansda @ Doman Majhi, armed with knife, entered her house and started assaulting her husband. She says that on her raising the cries her mother-in-law, the informant, came in the room and the accused persons after assaulting her husband with knife fled away. She has also spoken about land dispute with the accused persons and the co-villagers arriving there when she raised cries. We find that during her cross-examination, P.W. 3 has withstood her ground. She is a natural witness. Her presence in the house at the time of occurrence cannot be doubted.

15. On identification of the accused persons, Mr. A. K. Das, the learned counsel for the appellants, has contended that P.W. 3 has stated that she did not disclose the name of the accused persons before the investigating officer and the investigating officer has also affirmed this fact when he was examined in the

court.

16. On this issue, it needs to be recorded that during her cross-examination P.W. 3 has reiterated that she has identified the appellants in the light of dhibri. She has denied that she did not tell the police that she has not recognised the accused persons, or that only her mother-in-law has recognised them. She has categorically stated that three accused persons present in the court have killed her husband. In view of the consistent evidence of P.W. 3 identifying the appellants as the assailants, evidence of the investigating officer would not discredit P.W.3. The appellants were named in the First Information Report, which was lodged promptly and P.W. 3 has narrated the incident in a similar manner as has been described by the informant in her fardbeyan. The question raised on identification of the appellants in absence of recovery of dhibri in our opinion is not so substantial as to disbelieve the prosecution's story of assault by the appellants upon Sadhu Kuntiya, particularly in the light of the evidence of P.W. 3. We are also of the opinion that failure of the investigating officer to seize the dhibri was just a lapse in the investigation for which no benefit goes to the appellants.

17. The failure of the investigating officer to seize the crime weapon, dhibri or other incriminating articles, in view of the consistent evidence of P.W. 3 that she has seen the appellants assaulting her husband and corroboration to some extent of her testimony by P.W. 1, P.W. 2 and P.W.4, would not shake the foundation of the prosecution's case. The contention, that in view of the medical evidence that injury no. (iii) cannot be caused by a knife and, therefore, the true manner of occurrence has not been disclosed by the prosecution, is also untenable. This contention has been raised in ignorance of the evidence led by the prosecution through P.W. 3 and P.W. 4, who have said that the accused persons were holding Bhujali also.

18. In view of the aforesaid discussions, we hold that the prosecution has proved presence of the appellants at the place of occurrence and at the time of occurrence.

19. However, the question is whether on such evidence the appellants can be convicted under section 302/34 IPC and under section 449/34 IPC.

20. It was around midnight when the occurrence has taken place. Dhibri as commonly used by the villagers is a small lamp. P.W. 3 has stated in her cross-examination that there was a scuffle between her husband and the accused persons and as many as six incised wounds have been found on Sadhu Kuntiya. According to the doctor, death has been caused due to shock and hemorrhage arising from the injuries, particularly the injury no. (iii) caused to Sadhu Kuntiya. However, the prosecution has failed to prove who has inflicted injury no. (iii) on the deceased. Moreover, in the above state of affairs it cannot be concluded that any one of the appellants has intended a particular injury on Sadhu Kuntiya. For the above reasons, conviction of the appellants under section 302/34 IPC cannot

be sustained in law.

21. The appellants have caused grievous injury to Sadhu Kuntiya and, therefore, they are liable to be convicted under section 326 IPC and sentenced to undergo R.I for Ten years. However, their conviction and sentence under section 449/34 IPC is affirmed.

22. The bail-bonds furnished by the appellants, namely, Sogen Hansda @ Doman Majhi and Logen Hansda are cancelled. They shall surrender before the court below to serve the remaining sentence.

23. Criminal Appeal (DB) No. 115 of 2002 is partly allowed.

24. Let a copy of the Judgment be transmitted to the court concerned through FAX.

25. Let the lower-court records be sent to the court concerned forthwith.