

(2016) 05 JH CK 0103

In the Jharkhand High Court

Case No : Cr. Appeal(DB) No.1012 of 2010 (Against the judgment of conviction and order of sentence dated 3rd December,2003 and 6th December,2003 respectively passed by learned Additional Judicial Commissioner-II, Khunti in connection with Sessions Trial no. 3 of 20

Soma Munda

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2016) 3 ECrC 743 : (2016) 3 JCR 600 : (2017) 1 PCCR 20

Hon'ble Judges : Mr. D.N. Upadhyay and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. Bhaskar Trivedi, Advocate, for the Appellants; Ms. Vandana Bharti, Addl. P.P, for the Respondent

Final Decision : Allowed

Judgement

Mr. D.N. Upadhyay, J.—;This criminal appeal has been directed against the judgment of conviction and order of sentence dated 3rd December, 2003 and 6th December, 2003 respectively passed by learned Additional Judicial Commissioner-II, Khunti in connection with Sessions trial no.3 of 2002 corresponding to G.R.Case no.273 of 2001 arising out of Murhu P.S. Case no.23 of 2001, whereby the appellants have been held guilty for the offence punishable under section 302/34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The facts reveal from fardbeyan of Angi Mundain(wife of the deceased) recorded on 13.06.2001 at 14.30 hours at Village-Durudih within P.S. Murhu are that the informant with her husband-Mangra Munda was sleeping in her house. At about 11.30 P.M. after hearing noise, she woke up and saw two boys going out from the southern door. Out of them, one was having Tangi and another was having torch. In the beam of torch, she identified them as Jaga Munda and Soma

Munda, both sons of Gomiya Munda. Thereafter, she lit a lamp and saw her husband dead having sharp cut injury on his neck. She also noticed blood fallen on the ground and when she raised Hulla, people of the locality assembled.

On the basis of fardbeyan of Angi Mundain, Murhu P.S. Case no.23 of 2001 was registered for the offence punishable under section 302/34 I.P.C. against the appellants.

The investigation was carried out and charge sheet against the appellants was submitted. Accordingly cognizance was taken and the case was committed to the court of Sessions and registered as Sessions Trial no. 3 of 2002.

3. Charge under section 302/34 I.P.C. was framed against the appellants to which they pleaded not guilty and claimed to be tried. To substantiate the charge, prosecution has examined altogether ten witnesses including informant and Prem Mukesh Topano (doctor), who conducted post mortem examination on the dead-body of Mangra Munda. Learned Additional Judicial Commissioner-II, Khunti at the conclusion of trial, placing reliance on the evidence and documents available on record, held the appellants guilty for the offence of murder and inflicted sentence as indicated above.

4. The appellants have assailed the impugned judgment on the ground that prosecution has miserably failed to prove charge framed against them. There is no eye witness to the occurrence. The informant has claimed that she had seen the appellants fleeing from the place after committing murder, but the informant did not remain consistent in her deposition in court. Contradictions are appearing and, therefore, conviction should not have been recorded on the solitary testimony of a witness, who is neither wholly nor fully reliable. In her fardbeyan, she has stated that she was sleeping in her house with her husband-Mangra Munda and one Dhagar Sukharam Munda. She woke up at about 11.30 P.M. in the night and saw the appellants leaving the place and they were having torch and tangi in their hands. Soma Munda (Appellant no.1) was having torch whereas Jaga Munda(appellant no.2) was having tangi. In her deposition in court, she says that she was sleeping with her husband in her house. In paragraph-8 of her cross-examination, she says that her husband was sleeping with her daughter. Therefore, she is not consistent as to how many members were occupying the room in which offence of murder had taken place. If she was sleeping with her husband, she could have noticed the assault caused to her husband and if the daughter was sleeping with the deceased, why she has not come forward to depose against the appellants is also unknown to case record. Furthermore, name of Dhagar Sukhram Munda is appearing in the fardbeyan and she has stated that he was also occupying the room at the time of occurrence, but who is that Dhagar Sukhram Munda is also unknown to case record. The Investigating Officer has not been examined. Therefore, all the above questions remain unanswered. Place of occurrence has also not been proved. The inquest report has formally been proved by P.W.1. Weapon of the offence has not been seized. Chada Munda(P.W.3), Gomiya Munda(P.W.4), Sukaru Kumari(P.W.6),

Budhu Tuti(P.W.7), Saru Munda(P.W.8), Boyar Munda(P.W.9) are all hearsay witnesses and they have deposed what was communicated to them by the informant. Dr.Prem Mukesh Topano(P.W.10) had conducted post mortem examination on the dead-body of Mangra Munda and that goes to prove that the death of Mangra Munda was homicidal and that much is not sufficient to hold the appellants guilty. Learned Trial Judge has wrongly held the appellants guilty placing reliance on the solitary testimony of informant-Angi Mundain. The impugned judgment is highly erroneous and based on mis-appreciation of facts and law and, therefore, the same is liable to be set aside.

5. Learned counsel appearing on behalf of the State has opposed the argument and submitted that informant is an eye witness and she had seen the occurrence. She had identified the appellants in the beam of torch. Minor contradictions are appearing because the statement was given in Mundari and it was translated by the chawkidar in Hindi before the police officer, who recorded the fardbeyan. The informant is a rustic tribal and illiterate lady and she does not know the application of law. What was seen, she has reproduced the same.

6. There is no doubt that conviction has been recorded on the solitary testimony of informant-Angi Mundain. Investigating Officer has not been examined. Therefore, fardbeyan has not been proved. The informant is an illiterate lady and she had given her LTI on the fardbeyan. According to fardbeyan, informant had given her statement in mundari, which was translated by chawkidar and then it was recorded by S.I.-Deobrat Poddar. Neither ascribe nor interpreter has come forward to prove the fardbeyan. Admitted fact is that informant does not know Hindi, but her statement was recorded in Hindi by trial court. We do not find name of interpreter appearing in the title page of deposition. We do not find that interpreter was administered oath before being permitted to interpret deposition of informant in Hindi. At the concluding page of deposition of the informant(P.W.5), signature of Ratan Swansi as interpreter is appearing. No certificate has been given by the interpreter that deposition of informant was explained to her in Mundari and she found it correct and put her LTI. We do not find that deposition of Angi Mundain has been recorded properly.

Now coming to the fardbeyan and the deposition of informant, the informant has stated in her fardbeyan that on the date of occurrence, she was sleeping in the house with her husband and Dhagar Sukharam Munda. The prosecution did not produce Dhagar Sukharam Munda before the court and due to non-examination of Dhagar Sukharam Munda, evidence of informant does not find corroboration. Furthermore, we find that informant has stated in her deposition in court that she was sleeping with her husband, but how and when she woke up is not very clear from her statement. She says that she had seen the appellants leaving the room and she identified them in the beam of torch held by one of the appellants-Soma Munda. The aforesaid statement of informant suggests that she had seen the appellants at the time they were leaving the place. If the assault was caused to the deceased while he was sleeping with his wife(informant), it was expected

that informant should have also sustained some sorts of injury or she must have awoken when assault to deceased commenced. Again she has stated that her daughter was sleeping with her husband at the time of occurrence, but she did not disclose name and age of said daughter and what happened to her and why she did not come before the court to depose. Besides the above, admittedly, no source of light was available in the room at the time of occurrence. If the contention of the informant for the argument sake is admitted to be true that one of the appellants was having torch light in his hand, it is not possible to identify both of them and that too in the flash of torch light. If one of the appellant was having torch, it is not expected that they were flashing torch light on the face of each other. For the reasons assigned above, we are not ready to consider the informant as fully and wholly reliable witness and it would not be safe to record conviction and sentence on the basis of testimony of such a witness.

7. In the result, we are not ready to uphold the judgment of conviction and order of sentence dated 3rd December,2003 and 6th December,2003 respectively passed by learned Additional Judicial Commissioner-II, Khunti in connection with Sessions Trial no.3 of 2002. Accordingly, the same stands set aside. The appellant no.2- Jaga Munda, who is in custody, is hereby directed to be released forthwith, if not wanted in any other case and for that the convicting/successor court shall issue appropriate direction, if needed. The appellant no.1-Soma Munda, who is on bail, is discharged from the liability of his bail bond and set at liberty.

8. This appeal stands allowed.