

(2016) 01 JH CK 0154

In the Jharkhand High Court

Case No : Cr. Appeal (D.B.) No. 915 of 2006, (Against the judgment of conviction and order of sentence dated 22nd May, 2006 and 23rd May, 2006 respectively, passed by the 1st Additional Sessions Judge, Gumla in Sessions Trial Case no. 160 of 2005 corresponding to G

Somara Nagesia

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, Section 302, Section 34

Citation : (2017) 2 JLJR 143

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

Bench : Division Bench

Advocate : Mr. J.P. Pandey, Advocate, for the Appellant; Mr. Krishna Shankar, A.P.P, for the respondent

Final Decision : Dismissed

Judgement

1. This Criminal Appeal has been preferred against the judgment of conviction and order of sentence dated 22.5.2006 and 23.5.2006 respectively, passed by the 1st Additional Sessions Judge, Gumla in connection with Sessions Trial Case no. 160 of 2005 corresponding to G.R. Case no. 248 of 2005 arising out of Raidih P.S. Case no. 17 of 2005, whereby both the appellants have been held guilty for the offence punishable under section 302/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 1000/- each and further sentenced to undergo rigorous imprisonment for five years under section 201/34 Indian Penal Code and to pay a fine of Rs. 500/- each, and in case of non-payment of fine the convicts shall further suffer simple imprisonment for six months each. The sentences were to run concurrently.

2. The facts which appear from the fard-beyan of Mahabir Nagesia recorded on 25.4.2005 at 11:30 hrs. at village Louki Gojra Kona within P.S. Raidih District Gumla is that on 24.4.2005 the informant with his brother Ganesh Nagesia

(deceased) returned home after attending feast from the house of Shankar Manjhi. When they were sleeping on the verandah of their house Shankar Manjhi, Balo @ Balram Nagesia, Banesh @ Baneshwar Nagesia and Somra Nagesia forcibly entered in their house and compelled Ganesh Nagesia to accompany them. Ganesh Nagesia was taken by the miscreants near a Mango tree. The informant followed his brother and the miscreants, but, he was threatened not to follow. Shankar Manjhi and Somra Nagesia told the informant that you go back home, we would not leave Ganesh alive because he has abused their aunt. Thereafter, all the four accused caused injuries to Ganesh Nagesia by means of Tangi and killed him. It is disclosed that the accused persons took the dead body towards Lauki Soti (narrow river). Due to fear the informant returned home and the matter was reported to the police on the following morning. On the basis of fard-beyan of Mahavir Nagesia Raidih P.S. Case no. 17 of 2005 dated 25.4.2005 under sections 302,201,34 Indian Penal Code against all the four accused persons was registered.

The police after due investigation submitted charge sheet and accordingly cognizance was taken and case was committed to the Court of Sessions and registered as Sessions Trial No. 160 of 2005.

3. Charges were framed against the appellants and their associate Shankar Manjhi to which they pleaded not guilty and claimed to be tried. The prosecution in order to substantiate the charges examined altogether seven witnesses. The learned 1st Additional Sessions Judge placing reliance on the evidence and documents held the appellants and their associate Shankar Manjhi guilty for the offences punishable U/Ss. 302,201,34 I.P.C. and sentenced them as indicated above.

Co-convict Shankar Manjhi did not prefer any appeal against the judgment impugned. A report vide letter no. 125 dated 8.1.2016 received from the Superintendent, Birsa Munda Central Jail, Hotwar, Ranchi indicates that co-convict Shankar Manjhi Son of Ango Manjhi died on 14.7.2013 in course of treatment at RIMS, Ranchi.

4. Learned counsel for the appellants assailed the impugned judgment mainly on the ground that Mahavir Nagesia PW-6, Sukhni Devi PW-3 (wife of informant), in fact, had not seen the occurrence but, they have projected themselves as eye witnesses. The informant in his fard-beyan has stated that deceased Ganesh Nagesia was forcibly taken by the appellants and their associates near a Mango tree and there he was subjected to assault but, in his deposition in Court he has tried to exaggerate the prosecution story and said that door of the house was broken and then Ganesh Nagesia was taken towards Sarna Tand by the appellants and their associates. It is disclosed that near Sarna Tand, Ganesh was subjected to assault by the appellants and their associates. Thereafter, they took the dead body towards Louki Soti river and buried the dead body beneath sand. In the fard-beayn he has stated when Ganesh was subjected to assault under the Mango tree he returned home due to fear but, in his deposition in Court he has

explained the entire episode. It is submitted that deceased was having criminal background and he was released from jail custody few days prior to the occurrence. It is admitted by informant in para 12 that Ganesh Nagesia (deceased) had remained in jail for about three years. As a matter of fact, he was a man of loose character and after consuming liquor he used to enter in the house of anyone and he was in habit of outraging modesty of inmates. It is also submitted that Ganesh was killed by M.C.C. extremists and the appellants have falsely been implicated.

Sukhni Devi PW-3 is the wife of informant and she has tried to corroborate the story narrated by her husband. She has repeated the same fact in her deposition in para 2 but, the informant did not say that his wife was also accompanying him while he was following the appellants and their associates.

According to statement of the informant the door of the house of informant was broke opened, none of the villagers appeared at the place of occurrence. The conviction has been recorded on the basis of evidence of informant and his wife and they are highly interested witnesses.

5. Dinesh Mahto PW-1 is a witness to the seizure of incriminating articles. He has admitted his signature appearing on the seizure list, but, during his cross-examination he has clearly said that he was asked to sign on blank piece of paper at the Police Station. Chandra Mohan Nagesia PW-2 is a witness to Inquest. In his presence blood stained soil was recovered from the place where Ganesh was subjected to assault. Blood stained Balua and blood stained cloths of the appellants were allegedly seized. PW-4 has turned hostile. PW-7 Radha Sukla happens to be Investigating Officer but, he did not say that informant had given information at the Police Station rather, he has said after receiving information about murder of Ganesh Nagesia at village Louki Gojra Kona, Station Diary was entered and to verify the information, the police party proceeded to the village. It is submitted that the informant never reported the matter during night to any of the villager and also he did not bother to inform the Police. Since the evidence of PW-3 and PW-6 are contradictory to each other and PW-6 has exaggerated his statement in Court they could not be considered as reliable witnesses.

6. Learned A.P.P. has opposed the argument and submitted that the informant and his wife are natural witnesses. The appellants and their associates committed house trespass during night, forcibly dragged out the deceased from the house, compelled him to go to a lonely place and killed him by inflicting blows by means of Tangi. When the informant was following them he was threatened. The occurrence of assault was well witnessed by the informant PW-6. It is not a case based only on evidence of informant rather, wife of informant is also a natural witness and her presence during night in her house could not be disbelieved. No material contradiction has been taken from the mouth of these two eye witnesses. Besides the eye witnesses the appellants after their arrest had given their confessional statement which was reduced to writing and proved during trial. The confession so recorded is admissible u/s 27 of the Evidence Act

because the confession is leading to recovery of incriminating articles like blood stained cloths and the weapon used for commission of crime. The case of the prosecution is fully intact and judgment of conviction and order of sentence need no interference.

7. We have considered the evidence and documents available on record and also perused the judgment impugned. The prosecution has introduced three places of occurrence. First one is the house of deceased from where he was forcefully taken by the appellants and their associates. The second place of occurrence is Sarnatand where he was killed by the appellants and their associates by causing injuries to the deceased by means of Tangi. Third place of occurrence is river bank of Louki Soti where the dead body was concealed beneath sand. The time of occurrence is between 7:30 p.m. to 9:30 p.m. The house of the informant is situated within village Louki Gojra Kona which is 11 k.m. away from the Raidih Police Station. We have mentioned all these facts with a purpose to bring it on record that in the village, people used to go to bed early. The informant has stated, after attending feast at the house of Shankar Manjhi he returned home and slept on the varandah of the house. If any occurrence took place in the village after sun set, chance of availability of neighbouring witnesses is normally remote because they confined themselves in their respective houses after the sun set and used to go to bed early. We have also experienced in course of dealing such cases that innocent villagers do not intend to put them in trouble and they don't come forward to give evidence. Be that as it may, we do not find that the defence has succeeded to bring it on record that other independent witnesses were available at the place of occurrence. The eye witnesses are informant and his wife who are brother and sister-in-law of the deceased. Their presence in the house at the time of occurrence could not be disbelieved. It is disclosed by both the witnesses that the appellants with their associates came to their house, got the door forcibly opened, dragged out the deceased from the house, when the informant followed them he was threatened, the appellants and their associates took the deceased to a nearby place may be Sarnatand where he was done to death. Apprehending danger and threats hurled by the appellants the informant returned back to his house but on the following morning when police arrived at the village he had given his fard-beyan. After arrival of the police a search was made and then dead body of Ganesh Manjhi was exhumed from the river bank of Louki Soti. So far first place of occurrence is concerned, we find that PW-3 and PW-6 are natural witnesses. Appellants are well known to them and thereafter identification of the appellants during night is not doubtful. When we considered the evidence of Investigating Officer PW-7 and seizure witnesses, we find that blood stained soil was seized from second place of occurrence where Ganesh Nagesia was subjected to assault. The recovery of blood stained soil proves the second place of occurrence and also support the contention of informant that Ganesh Nagesia was subjected to assault at that place.

The third place of occurrence is the river bank of Louki Soti from where dead

body of Ganesh Nagesia was recovered. The confessional statement of appellants were recorded in presence of witnesses. On the basis of confession made by them, police incriminating articles like weapon of the crime, blood stained cloths of the appellants were recovered. Therefore, the confession leading to discovery is admissible to the extent of recovery of incriminating articles. The seizure witnesses have supported this fact that blood stained Balua and blood stained cloths of the appellants were recovered from the places pointed out by them. The injuries noticed by the doctor during post-mortem examination corroborates the ocular statement of the informant. Number of times it is being observed that First Information Report is neither substantive piece of evidence nor it will contain each and every detail of the occurrence. The informant had given his fard-beyan in the early morning when the police arrived at the village. He had not exaggerated the occurrence in his deposition in Court rather, he has described it in detail. The description of the occurrence given by the informant in detail is not contradictory to his statement recorded u/s 161 Cr. P.C. The learned defence counsel has not taken any such contradiction from his mouth.

8. The learned counsel for the appellants has tried to bring a parallel story by submitting that the deceased was having criminal background and he might have been killed by extremists. He was man of loose character and he used to dare to outrage the modesty of female members by entering in their houses. We do not find that this contention of the appellant find support from any evidence. Only this fact has been admitted by the informant that his brother Ganesh Nagesia had remained in jail for about three years. Even admitting it to be correct that the deceased was having criminal background, the law does not permit anyone to kill him. Considering all these aspects we find that prosecution has successfully bring home the charges and the learned Additional Sessions Judge has addressed all the points raised during trial.

9. In the result, the appeal stands dismissed.