

(2016) 03 JH CK 0039

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 1987 of 2004 with Sessions Trial Case No. 122 of 2003 Case No. 353 of 2003, P.S. Case No. 125 of 2003.

Sona Ram Majhi S/o Late Kunthu Majhi R/o Village Hathiadih, APPELLANT
P.S. Adityapur, District Seraikella - Kharsawan

Vs

State of Jharkhand RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 161 AIC 599 : (2016) 3 AIRJharR 183 : (2016) 2 ECrC 597 :
(2017) 2 JLJR 141

Hon'ble Judges : D.N. Upadhyay;Ratnaker Bbhengra, JJ.

Bench : Division Bench

Advocate : Shiv Shankar Kumar, Advocate, for the Appellant; Pankaj Kumar,
A.P.P, for the Respondent

Final Decision : Allowed

Judgement

D.N. Upadhyay and Ratnaker Bbhengra, JJ. - This Criminal Appeal has been preferred against the judgment of conviction and order of sentence dated 7th August, 2004 passed by 1st Additional Sessions Judge, Seraikella in connection with Sessions Trial Case no. 122 of 2003 corresponding to G.R. Case no. 353 of 2003, arising out of Adityapur P.S. Case no. 125 of 2003, whereby the appellant has been held guilty for the offence punishable under sections 302 Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 10,000/- and in default of payment of fine, further rigorous imprisonment for six months.

2. The facts emerges from the fard-beyan of Gangadhar Majhi (informant), is that, on 27.5.2003 at about 10 p.m. the informant received message regarding death of his sister Parvati Devi, who was married with appellant Sona Ram Majhi. He came to know that his sister Parvati Devi has been killed by her husband Sona Ram Majhi (appellant) who had assaulted her by means of Lathi and Tangi.

The informant rushed to the house of his sister Parvati Devi and found her dead lying on a cot. She was having multiple injuries on her person. He could learn from Pinki (daughter of deceased) that on petty cause of not providing food in time, the appellant Sona Ram Majhi has killed his wife Parvati Devi. The fard-beyan of informant Gangadhar Majhi was recorded at 00:45 hrs. on 28.5.2003 and a case being Adityapur P.S. Case no. 125 of 2003 dated 28.5.2003 U/Ss. 302,201 I.P.C. against the appellant was registered.

The investigation was carried out, examination of witnesses were taken, inquest report was prepared, postmortem was conducted on the dead body of Parvati and after securing attendance of the appellant, charge sheet was submitted and, accordingly, cognizance of the offence was taken and the case was committed to the Court of Sessions and registered as Sessions Trial Case no. 122 of 2003.

3. The charges U/Ss. 302, 201 I.P.C. against the appellant Sona Ram Majhi were framed, to which he pleaded not guilty and claimed to be tried.

To substantiate the charges the prosecution has examined altogether eleven witnesses including informant, doctor, investigating officer and the daughter of deceased. The learned Additional Sessions Judge placing reliance on the evidence and documents available on record, held the appellant Sona Ram Majhi guilty for the offence punishable under section 302 I.P.C. and sentenced him as indicated above.

The appellant stood acquitted from the charge framed under section 201 I.P.C.

4. Learned counsel for the appellant has assailed the impugned judgment mainly on the ground that it is a case of no evidence, and, the appellant has been convicted only on the circumstance that dead body of Parvati Devi was lying in the house of appellant. Nothing incriminating has been recovered from possession of the appellant. Only because death of Parvati Devi was homicidal, the appellant can not be held guilty without any cogent evidence. The story brought on record by the informant does not find support from deposition of any of the material witness. P.W.-1 to P.W.-8 including P.W.-6 Pinki Kumari who happens to be daughter of deceased but turned hostile and they have not supported the prosecution case. The informant is also not consistent in his statement. The information regarding murder of Parvati Devi derived to him from mouth of Pinki Kumari PW-6, but, Pinki Kumari did not support the aforesaid contention of the informant. The learned trial judge has mis-appreciated the evidence and mis-constituted the law of evidence and has wrongly held the appellant guilty. The impugned judgment of conviction and sentence is not sustainable in the eye of law as well as in fact.

5. The learned A.P.P. has opposed the arguments and submitted that circumstantial evidence available on record have been considered for holding the appellant guilty. The dead body of Parvati Devi having multiple injuries on her person, was found lying in her matrimonial home. Immediately after the occurrence, the informant reached to the place of occurrence and reported the

matter to the Police. It was informed by Pinki Kumari that her father Sona Ram Majhi (appellant) has killed her mother Parvati Devi in her presence. It is obvious, when a daughter has lost her mother, she would try to save her father from conviction. Informant has supported the case of prosecution. The doctor PW-9 had found injuries on the person of deceased and those injuries were reason behind death of Parvati Devi. The investigating officer has conducted proper investigation and submitted charge-sheet.

6. We have gone through the evidence on record and we find that P.W.-1 to P.W.-8 have turned hostile, and, they have not supported the prosecution case. Pinki Kumari P.W.-6 did not support the contention made by the informant. According to prosecution case, she is the only eye witness, in whose presence, Parvati Devi was allegedly killed by the appellant Sona Ram Majhi. She has not supported the prosecution case, and except her, there is no eye witness to the occurrence. The informant is also not consistent in his deposition in Court. In the fard-beyan of informant, it was disclosed that he could learn about the murder of Parvati Devi from Pinki Kumari (PW-6) and other villagers, but, in his cross-examination, in para 8, he says that officer-in-charge of concerned police station had informed him about the murder of Parvati Devi. He did not support his contention that after receiving information regarding death of Parvati Devi, he had been to the house of Parvati, rather, he says that he along with officer-in-charge of Police Station had gone to the place of occurrence at about 11 p.m. on 27. 5.2003. Only because death of Parvati Devi was homicidal and the dead body was found lying in her matrimonial home, it would not be safe to record the judgment of conviction against the appellant who happens to be the husband of deceased. The circumstantial evidence available on record is not sufficient to point out towards guilt of appellant only. In the circumstances and the evidence discussed above, we do not feel inclined to uphold the judgment of conviction and sentence dated 7th August, 2004, passed by 1st Additional Sessions Judge, Seraikella in connection with Sessions Trial case no. 122 of 2003 corresponding to G.R. Case no. 353 of 2003, arising out of Adityapur P.S. Case no. 125 of 2003. Accordingly, the impugned judgment of conviction and order of sentenced is set-aside and the appellant is directed to be released forthwith from custody, if not wanted, in any other case and for that convicting/successor court shall issue appropriate direction, if necessary.

7. Appeal is allowed.