
(2006) 07 JH CK 0100

In the Jharkhand High Court

Case No : Death Reference No. 4 of 2006 and Criminal Appeal No. 554 of 2006

State of Jharkhand

APPELLANT

Vs

Rajiv Kumar Singh, Manoj Kumar Singh and Guddu Kumar
Pandey
 Manoj Kumar Singh and Guddu Kumar Pandey
Vs The State of Jharkhand

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 302, 34, 393, 394, 397

Citation : (2006) 4 JCR 53

Hon'ble Judges : R.K. Merathia, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : Praveen Kumar, Amicus Curiae in Death Reference No. 4 of 2006, Shekhar Sinha, APP in Death Reference No. 4 of 2006, Kailash Prasad Deo, in Criminal Appeal No. 553 of 2006, Vandana Singh, in Criminal Appeal No. 554 of 2006 and R.S. Mazumdar and Anjal Raj, in Criminal Appeal Nos. 553 and 554 of 2006, for the Appellant; Shekhar Sinha, Additional Public Prosecutor in Criminal Appeal Nos. 553 and 554 of 2006, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—These cases arise out of common Judgment dated 20th March, 2006 passed by Shri Chamru Tanti, 1st Additional Sessions Judge, Bermo at Tenughat in Sessions Trial No. 122 of 2003 convicting the appellants u/s 302/34 and 307/34 of the Indian Penal Code and sentencing them with death penalty.

2. The prosecution version as per the self statement of A.S.I. Narayan Prasad Singh (P.W. 15) in short is that on 11.09.2002, at about 09.40 P.M., while he was on night patrol, he heard hue and cry coming from the side of the place of occurrence whereupon he along with other armed force rushed there and saw three persons fleeing away from the back side of the quarter where the occurrence took place. Only one person could be apprehended who disclosed his name as Guddu Kurnar Pandey (Appellant). He was taken to the front side of the

quarter. Inside the quarter, a male and a female were lying dead in the pool of blood on the floor. The injured Devlina Mandal, aged about 9 years (P.W. 3), whose parent were killed, narrated to him that when she woke-up on the cry of her mother, she saw that two persons were assaulting her father Dilip Kumar Mandal with Dagger and pierced dagger into him. The person who thrashed dagger in the abdomen was appellant Rajiv, the teacher of her school. When the other accused accompanying accused Rajiv saw that she was awoken, he inflicted dagger injury on her neck. In the mean time, people started thumping the doors. Hearing the sound of thumping, they fled away from the back side by scaling over the back wall. She opened the door and narrated the entire incident to the neighbours who assembled there due to alarm raised by her deceased mother.

On interrogation, the apprehended accused Guddu Kumar Pandey confessed that he along with accused Rajiv Kumar Singh and Manoj Kumar Singh hatched up a plan for committing crime. They took wine and planned to rob the motorcycle of the deceased Dilip Kumar Mandal. Rajiv Kumar Singh purchased three daggers and distributed amongst them. They reached at the house of the deceased at about 9:30 P.M., left their slippers and jumped into the courtyard after scaling over the boundary wall Shikha Mandal (deceased) raised alarm on which, Rajiv Kumar Singh and Manoj Kumar Singh caught her and thrashed her on the floor due to which, her head broke and then Rajiv and Manoj killed her by strangulation. The deceased Dilip Kumar Mandal came out with a Danda who was killed by all the three accused persons by dagger. They tried to kill Devlina Mandal but as the people assembled and were thumping the door, they fled but he was caught.

The informant Narayan Prasad Singh, ASI (P.W. 15) prepared his statement (Ext. 5) in the quarter and returned to the Police Outpost with it and handed over the apprehended accused Guddu Kumar Pandey to the Officer Incharge Subhash (P.W. 19) who investigated the case.

The Investigating Officer again took the statement of accused Guddu Kumar Pandey who confessed his guilt.

On the basis of such confession, accused Manoj Kumar Singh and Rajiv Kumar Singh were arrested and their confessional statements were also recorded.

The blood stained clothes were seized and sent to Forensic Science Laboratory. On the basis of confession of Rajiv Kumar Singh, the blood stained dagger used in the crime was seized which was also sent to the laboratory. The blood from the place of occurrence was also seized and sent to the laboratory.

Charges u/s 393, 394, 397 and 302/34 of the Indian Penal Code were framed against the petitioners to which, they pleaded not guilty.

3. Learned Counsel appearing for the appellants submitted that the entire case has been fabricated to falsely implicate the appellants. It is not known why the fard beyan was recorded on the self statement of ASI (P.W, 15) if P.W. 3 Devlina

Mandal was competent to depose and could narrate the story to P.W. 15. It is further submitted that the other members of the patrolling party were not named by P.W. 15 and they were not examined. It is further submitted that if P.W.-18, brother of P.W. 3 reached his house on 13.09.2002, how he could put his signature on Ext. 7/3 the seizure list of blood from the place of occurrence prepared on 12.09.2002 at 01.00 P.M. It is also submitted that P.W.-3 is the only eye witness and she being a girl child, aged about 9 years, her evidence cannot be relied. It was further submitted that the evidence of P.W. 3 is contrary to her statement made u/s 164 of the Code of Criminal Procedure (hereinafter referred to as "the Code"). It is further submitted that the inquest report was fabricated. It is also submitted that as per the fard beyan, Guddu Kumar Pandey confessed that he and other accused persons planned the robbery of motorcycle, but no motorcycle was seized by the Investigating Officer.

4. It is true that the evidence of child witness is to be seen with caution. Devlina Mandal (P.W. 3) is the only eye witness of the actual occurrence. She was aged about 9 years at the time of incident. The Court has found that she was competent to depose. She supported the statements recorded in fard beyan. She said that at about 9:30 P.M. on 11.09.2002, she was in her bed. Her father was making mosquito net, mother was washing the utensils. In the mean time, Rajiv and Manoj came inside the quarter by jumping over the wall. Manoj assaulted her mother on head by rod. When her mother cried, her father tried to resist Rajiv by lathi. When the Lathi struck in the Nylon cloth line, Rajiv inflicted dagger blow in the abdomen of her father and revolved dagger four times. She was standing nearby. Manoj inflicted dagger blow on her neck causing bleeding injury. Asha (P.W. 6) who is next door neighbour along with her mother (P.W.7) came and asked to open the door. Shailendra (P.W. 2) Ram Kewal (P.W. 4) and Prakash Chandra (P.W.5) also came and saved her. The appellants fled away from the house. Guddu Pandey was in the garden. He did not enter into the quarter. She identified the appellants in dock. The police did not brief her when she gave statement in Court. However, Police asked her to say about the matter in the Court (this part apparently refers to her statement u/s 164 of the Code). On the date of evidence, the Government Lawyer did not make her understand as to what she has to say. She knows the appellants who used to visit her house. They were her neighbours. Rajiv was her teacher in the school. She was brought to the Court by her brother (P.W.18) and Prakash Chandra (P.W.5) but they have not asked her as to what she has to say. Behind her quarter, there is jungle. The appellants had tied their mouth by black cloth.

In cross examination, it was not suggested by the appellants that she was not present at the time of occurrence. There is no reason why she should depose falsely against the appellants with whom she had no grudge or enmity, and will spare the actual culprits. Her evidence is corroborated by the evidence of P.W. 2, P.W. 6 and P.W. 7 who are her next door neighbours, who have also supported the case of the prosecution.

5. P.W. 2 has said that her mother P.W. 6 asked him to look from the back side whereupon, he went back and climbed over the water tank and saw that Shikha Mandal (deceased) was lying on the ground and the appellants were fleeing away. (Investigating Officer has said that there is a common wall in the angan or Quarter No. 284 where the occurrence took place and Quarter No. 285, in which P.Ws. 2, 6 and 7 live). When P.W. 3 opened the door, he came from back side and found Dilip Kumar Mandal lying dead in a pool of blood and his intestine had come out. Shikha Mandal was also dead. P.W.-3 narrated the story to him. He saw the injury on the neck of P.W.-3. Though this witness has not seen the actual occurrence but he has seen the appellants fleeing away. P.W. 6 and P.W. 7 were the next door neighbours who have supported the prosecution case. There is no reason why this witness should falsely implicate the appellants. He identifies the accused persons in Court. He said that one Rajesh Kumar Pandey informed the Police over Telephone on which, the Police came but, in the meantime, the patrolling party caught Guddu and brought him to the place of occurrence. He saw the faces of the accused persons while scaling the wall in course of fleeing away. (Investigating Officer has said that the height of this wall was 6"), He knew them from before. No suggestion has been given to this witness as to why he may implicate the appellants falsely.

6. P.W. 6 has also fully supported the prosecution case. She, inter-alia, said that she saw Rajiv and Manoj at the place of occurrence. She said that the Police brought Guddu at the place of occurrence. She knew the appellants from before who used to come to the house of the deceased persons. A suggestion was given to P.W. 6 that her father and the father of the appellant Rajiv both being "the teachers in the School had grudge against each other and therefore, she has given false evidence, which was denied by this witness.

7. P.W. 7 has also supported the prosecution case. She, inter-alia, said that Guddu was brought by the police at the place of occurrence. She denied similar suggestion about enmity.

8. P.W. 9 is the Doctor who conducted the postmortem on both the deceased. On the body of deceased Dilip Kumar Mandal, he found four incised wound on face in front of Pinna, on abdomen due to which the intestine was protruding, over right fore-arm and over right wrist, apart from one abrasion on the finger. The cause of death was shock and hemorrhage due to injury on the abdomen which was enough to cause death. In his opinion, the incised injuries were caused by knife--sharp cutting weapon.

On the dead body of Shikha Mandal, the Doctor found three antimortem injuries. Abrasion over front of neck, swelling over left temporal region of scalp and bleeding from mouth and nose. As per the Doctor, the cause of death was the head injury and asphyxia due to throttling which was sufficient to cause death.

9. P.W. 3 was examined by the Doctor (P.W. 21) who found one bruise on right shoulder and scratch injury with bleeding, size 4" x 1" on her right shoulder near

her neck. In his opinion, both the injuries were caused by sharp and hard weapon, may be by "chura".

10. P.W.-17 is the shop keeper who said that at about 7:30 P.M. in the evening on 11.09.2002, the appellant Rajiv Kumar Singh purchased snacks from his shop and took three glasses and went away. The glasses were brought by his servant from the Union office. This evidence supports the confession of the appellants that they hatched planning of the crime and they took wine near the Union Office.

11. P.Ws. 20, 22 and 23 are the witnesses from the Forensic Science Laboratory. Human blood was detected on the clothes i.e. the blood stained full pant, shirt and the dagger whereas, the blood group on pant and origin of blood on the dagger could not be ascertained due to disintegration of blood.

12. P.W. 1 is the Judicial Magistrate who recorded the statements of P. W. 3 u/s 164 of the Code, who also testified that she had intellectual capacity to understand the question and give rational answer.

13. P.W. 15 is the informant. He has supported his fard beyan. He identified the accused persons in dock. He has said that when he apprehended Guddu Pandey, his mouth was not covered.

14. P.W. 19 is the Investigating Officer of the case. He, inter-alia, proved the fard beyan; his endorsement on the same; inquest report; the seizure list of blood stained clothes of Manoj Kumar Singh and Rajiv Kumar Singh; three pairs of Chapels found outside the wall of the quarter; confessional statement and the case diary etc. He, inter-alia, said that there was a common wall between the quarter where the occurrence took place i.e. quarter Nos. 284 and 285. P.Ws. 2, 6 and 7 reside in quarter No. 285. The boundary wall of the back side was 6ft. height. He said that during investigation, he found that the appellants entered the house for taking away the motor-cycle and jewellery etc. When he was asked about the overwriting in the inquest report of Dilip Mandal, in the case diary, he explained that by over-writing in the diary the date and time 11 was made 12 by some body later on. In my opinion, the prosecution has not gained any advantage by such change. Thus it is of no relevance. This witness was not confronted with the question if P.W, 18 said in his evidence that he came on 13.9.2002, how he could put his signature on Ext. 7/3, the seizure list prepared on 12.9.2002. In any event, due to this reason, the entire prosecution case cannot be doubted.

15. P.Ws. 20, 22 and 23 are the Technicians and the Officers of the Forensic Science Laboratory, Patna, From the report of the Forensic Science Laboratory, it appears that human blood was found on the full shirt of Manoj Kumar Singh and full pant of Rajiv Kumar Singh, though group of blood on full pant could not be determined. The origin of blood found on dagger/chhura could not be decided as the same was disintegrated. On the whole, the forensic evidence supports the prosecution case.

16. P.Ws. 4, 5, 8, 10, 11, 12, 13, 14, 16 and 18 are hearsay witnesses and seizure witnesses who have also supported the prosecution case. Their evidence is also corroborated by other evidence.

17. The first information report was recorded within two hours of the occurrence. The seizures have been made in presence of the independent witnesses. On the confession of Rajiv Kumar Singh, chhura used in the crime was recovered. The confessions are voluntary, inculpatory, leading to recovery and are corroborated by the other materials on record. No suggestion was given to the Investigating Officer that confessions were obtained by coercion, P.Ws. 2 and 6 are the brother and sister and P.W. 7 is their mother. No suggestion of enmity was given to P.W. 2 but only a very weak suggestion was given to P.Ws. 6 and 7 that the father of Rajiv Kumar Singh and the father of P.W. 6 both being the teachers in the school, there was ill-will between them and therefore P.Ws. 6 and 7 have given false evidence. The appellants were known to P.Ws. 2 and 3. Therefore, the identification of the appellants by them cannot be doubted. There was murderous attack on P.W. 3 also by causing sharp cutting injury by chura on the vital part of the body i.e. neck. There appears to be no reason why the appellants should be implicated falsely. P.W. 4 has said that P.W. 3 was very nervous, and naturally as she witnessed the murder of her parents. This explains the doubt of learned Counsel for the appellants as to why P.W. 3 was not made informant. There are no material contradictions in the prosecution case. The quality of evidence is material and not quantity and, therefore, it was not necessary that the other members of patrolling party should also have been examined. There is no material contradiction in the evidence of P.W. 3 and her statement u/s 164 of the Code. It is to be kept in mind that her statement u/s 164 of the Code was recorded on the next date of the occurrence in which her parents were killed. Non-seizure of "danda" and the "motor-cycle" from the place of occurrence is also not of much importance. From the fard beyan, it appears that Guddu Kumar Pandey told the informant that they planned to rob the motor-cycle and the Investigating Officer also said that he learnt during investigation that the appellants planned to rob the motor-cycle and jewellery, but such things were not said by the appellants in their confessional statement. Therefore, it cannot be said that as no motor-cycle has been found by the Investigating Officer, no motive has been proved for the crime.

19. I have scrutinised the evidence of P.W. 3, the eye witness of the occurrence who was aged about nine years with care and caution. In my opinion, the evidence is fully reliable. The medical evidence fully corroborates the ocular evidence regarding the manner of occurrence and the weapons used. The evidence of P.W. 2, who knew the appellants from before and who saw the appellants escaping by scaling the backside wall, is also reliable. The crime was committed after planning. With whatever motive, they entered the house of known persons. They brutally killed the parents of P.W. 3 and tried to kill P.W. 3 also. The nature of injury clearly shows that they made it sure that the deceased persons did not survive. There are other materials on record as noticed above on

the basis of which, the trial court has correctly recorded the finding of guilt against the appellants. Accordingly, the same is affirmed.

20. So far as the question of awarding death sentence is concerned, the law is well settled by reasons of the decisions of the Supreme Court as to the circumstances in which capital punishment can be imposed. It has been held therein that the capital punishment can be imposed in the rarest of rare cases and if there are any aggravating circumstances such as accused having criminal record in the past, the manner of committing the crime etc.

21. In the present case, no doubt, the prosecution has been able to establish the charges against the accused appellants, but in view of the fact that from the evidence of the prosecution witnesses and the confessional statement of the accused persons, it appears that they had planned to commit loot in the house of the deceased in order to get valuables and motorcycle but their such plan did not succeed since the deceased lady Shikha Mandal wake up and raised hulla thereafter the accused persons assaulted her with rod and then strangled her to death. But, in the meantime, the deceased Dilip Kumar Mandal also came out of his room and tried to resist, but then the accused persons also committed his murder by giving chhura blow on his abdomen.

22. On the totality of the circumstances, particularly the manner of occurrence, the present case does not come within the purview of rarest of the rare cases in which capital punishment could have been imposed on the accused appellants by the trial court since it was not a case of pre-planned murder of the deceased persons. The decision of the Supreme Court in this regard in the case is Kishori Vs. State of Delhi, may be referred.

23. While affirming the conviction of the appellants on the charges framed against them, the sentence imposed on them by the Trial court from that of "capital punishment" is reduced to "life imprisonment".

24. With this modification in the sentence, the appeals are dismissed.