

(2024) 10 JH CK 0036

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 352 Of 2002

Sukhram Nayak

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 28-10-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 324, 326

Citation : (2024) 10 JH CK 0036

Hon'ble Judges : Ananda Sen, J;Gautam Kumar Choudhary, J

Bench : Division Bench

Advocate : Manoj Kumar Mishra, Azeemuddin

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J.

1. The sole appellant is before this Court in appeal against the judgment of conviction and sentence under Section 302 of the IPC.
2. As per the FIR on 25.08.1999, informant-Chowkidar (P.W. 1), receiving an information regarding murder of a person near the jungle area, went to the place of occurrence and found dead body of a person whose neck was slit. Thereafter, he found another injured person whose neck was partially slit and was not dead at that time, but could not speak and communicated only by gestures. Matter was reported to the police and on the basis of the statement made by the informant, Pindrajora P.S Case No.55/99 was registered under Sections 302, 324, 307, 326/34 against unknown.
3. During investigation, appellant was apprehended. On the basis of the confessional statement, appellant was implicated in this case and the charge sheet was filed against the three accused persons, out of whom one absconded and another accused was declared juvenile and his trial was separated and the appellant was put on trial for offence under Section 302 of the IPC.

4. Altogether eight witnesses were examined on behalf of the prosecution and the relevant documents including post-mortem examination report, have been adduced into evidence and marked as exhibit.

5. It is argued by the learned counsel on behalf of the appellant that there is no legal evidence, oral or circumstantial, against the appellant and the judgment of conviction has been returned only on disclosure statements (Exhibit 5/1) on the basis of which weapon of offence is said to have been seized (Exhibit 4/1).

6. Learned A.P.P. has defended the judgment of conviction and sentence.

7. On perusal of the prosecution evidence, it is apparent that P.W. 2 and P.W. 6 have been tendered by the prosecution. P.W. 1 is the informant, who is also not an eye witness to the occurrence, but is a witness who found the body of the deceased in an injured condition. P.W. 3 is the Doctor of Bokaro General Hospital, who examined the deceased after he was admitted in the Hospital with incised wound on trachea. P.W. 8 is the Doctor, who conducted post-mortem examination and has opined that the death was due to cardio-respiratory failure due to massive hemorrhage and injuries to the vital structure passing across the throat.

8. Thus, the homicidal death and the body having been found in an injured condition before his death, is established by the prosecution.

9. With regard to the author of crime, prosecution case rests on circumstantial evidence. Law on circumstantial evidence, is settled by catena of judgment of Hon'ble Supreme Court that the chain of circumstances should be proved so as to unerringly point towards the guilt of the accused.

P.W. 4 is the Investigating Officer, who has deposed that identity of the deceased/victim was established as Bindu Beldar. Because of the injury on the vocal cord, he was not in a position to talk. He somehow gave the names of Pappu, Mantu, Sukhram @ Sukhu, whose names were also given by Hiralal Ram. However, Hiralal Ram has not been examined on behalf of prosecution. It has also been deposed that on the basis of the disclosure statement, weapon of offence which was a Khukhri (knife), was recovered from a drain, the seizure list was proved and marked as Exhibits 4 & 4/1 and the confessional statement of the appellant has been proved as Exhibit 5/1.

10. In a case based on circumstantial evidence, it is necessary that the incriminating circumstances should be put to the accused while recording his statement under Section 313 of the Cr.P.C. The main evidence against the appellant is that on his confessional statement, the weapon of offence was seized. This part of the evidence regarding confessional statement leading to recovery of weapon of offence, had not been put to the appellant while recording his statement. The weapon of offence which is said to be seized on the basis of the confessional statement (Exhibit 5/1) of the appellant, was also not sent to the FSL for forensic examination to determine that it had any trace of human blood over it. In this view of matter, the confessional statement cannot be relied

upon.

11. There being no other credible legal evidence, I am of the view that the prosecution has failed to prove the charge against the appellant beyond the shadow of all reasonable and probable doubt. Judgment of conviction and sentence, is not sustainable and is accordingly, set aside.

Criminal Appeal is allowed.

Appellant is on bail and his sureties are discharged from the liability of their bail bond.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.