
(2016) 01 JH CK 0034
In the Jharkhand High Court
Case No : Cri. Appeal (DB) No. 621 of 2006

Suresh Bhagat

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 1 AIRJharR 759 : (2016) 1 JBCJ 500 : (2016) 1 JLJR 708

Hon'ble Judges : Dhruv Narayan Upadhyay and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Vivek Kumar, for the Appellant; Amaresh Kumar, A.P.P., for the Respondent

Final Decision : Allowed

Judgement

1. This criminal appeal has been directed against the judgment of conviction and order of sentence dated 16.02.2006 and 17.02.2006, respectively, passed by the Learned 1st Additional Sessions Judge, Godda, in connection with Sessions Case No. 85 of 2005/11 of 2005, corresponding to Godda (M) P.S. Case No. 111 of 2004, dated 16.04.2004, G.R. Case No. 343 of 2004, whereby the Learned 1st Additional Sessions Judge has held appellant guilty under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. The prosecution case, as it appears from the Fardbeyan of Bindeshwari Bhagat (P.W. 6) recorded on 16.04.2004 at about 6.45 hours at village Makhani within P.S. Godda(M), District-Godda, in brief, is that on 15.04.2004 at about 6 p.m. Basuki Bhagat (brother of the appellant) informed that the appellant had been causing assaulted to his wife and he had kept her confined in a room. On the following morning, the informant went to the house of his daughter Rita Devi and he had seen the people assembled. When he inquired from them it was informed that son-in-law, Suresh Bhagat had assaulted his wife Rita Devi and after committing murder he fled away from the house. The informant then entered in room and found Rita Devi lying dead. Fardbeyan of the informant was recorded

and a case being Godda (M) P.S. Case No. 111/2004 dated 16.04.2004 under Section 302 of the Indian Penal Code against the appellant Suresh Bhagat was registered.

2. The police after due investigation submitted charge-sheet and accordingly cognizance for the offence punishable under Section 302 of the I.P.C. was taken. Since the offence under Section 302 IPC is exclusively triable by the Court of Sessions, the case of the sole appellant was committed and it was registered as S.T. No. 85 of 2005/11 of 2005.

3. Charge under Section 302 of the IPC against sole appellant Suresh Bhagat was framed on 07.05.2005 and he was put on trial. The prosecution, in order to substantiate the charge, examined altogether ten witnesses. The learned 1st Additional Sessions Judge considering the evidences and documents on record held the appellant guilty for the offence punishable under Section 302 of IPC and sentenced him, as indicated above. Hence, this appeal.

4. The learned counsel appearing for the appellant has assailed the impugned judgment on the ground that except the informant P.W. 6, Dr. Pradeep Kumar Sinha P.W.-8, who had conducted the postmortem examination on the dead body of Reeta Devi and Rana Pratap Singh P.W.-9, who had conducted investigation, have not supported the prosecution case. Basuki Bhagat P.W.-1, Devendra Das P.W.-2, Hemu Das, P.W.-3, Indu Devi P.W.-4, Maya Devi P.W.-5, have turned hostile and they have not supported the prosecution case. Gurudeo Bhagat P.W.-7 and Uday Shanker Bhagat P.W.-10 are formal witnesses and they have proved their signatures appearing on the inquest report.

5. The informant, P.W-6 is not an eye-witness to the occurrence. According to his Fardbeyan, he had received information about the incident from Basuki Bhagat, but Basuki Bhagat has not corroborated the version of informant. The person, who had accompanied the informant up-to the house of deceased, had also not supported the prosecution case. It could be said that the informant is also a formal witness whose statement is based on hearsay. In this circumstances the deposition of Dr. Pradeep Kumar Sinha P.W.-8 and evidence of I.O. P.W.-9 shall not be helpful in any manner to the prosecution. The judgment of conviction and order of sentence passed by the Learned 1st Additional Sessions Judge is highly erroneous, based on mis-appreciation of evidence and therefore, it is liable to be set aside.

6. Learned APP appearing for the State has opposed the arguments but concedes that except the informant, no material witness has supported the prosecution case. He has submitted that deceased was the wife of appellant and she was murdered in her matrimonial home. The circumstantial evidence collected by the Investigation Officer during investigation are required to be taken note of.

7. We have gone through the impugned judgment, deposition of witnesses, documents proved and marked exhibits as well as the lower Court records. Admittedly, no-eyewitness has come forward to support the prosecution case.

Basuki Bhagat, P.W.-1, who had informed about the incident to informant, did not appear before the Court below to support his contention. No villagers, from whom the informant received the information regarding assault caused to the deceased by the appellant, has come forward to support the prosecution case. The hearsay information, on the basis of which Fardbeyan of the informant was recorded, stands uncorroborated. The only circumstance that deceased was found dead in her matrimonial home will not be sufficient to hold the appellant guilty for committing her murder. It is necessary to mention here that other family members of the appellant had also been occupying the same house. In the circumstances, we do not feel inclined to uphold the impugned judgment of conviction and order of sentence passed by the Learned 1st Additional Sessions Judge, Godda. Since cogent and reliable evidences are lacking we have left no option but to acquit the appellant. In the result the impugned judgment of conviction and order of sentence dated 16.02.2006 and 17.02.2006 respectively, passed by Learned 1st Additional Sessions Judge, Godda, in Sessions Case No. 85 of 2005/11 of 2005 is hereby set aside and the appeal is allowed. Accordingly, the appellant Suresh Bhagat is acquitted from the charges levelled against him and directed to be released forthwith from jail custody, if not wanted in any other case(s) and for that appropriate direction may be issued, if necessary, by the convicting/successor Court.