

(2017) 12 JH CK 0017
In the Jharkhand High Court
Case No : 1436 of 2006

Sushil Sharma @ Suhil Sharma

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 11-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused

[Indian Penal Code, 1860](#), [Section 302](#) - Punishment for murder

Citation : (2017) 12 JH CK 0017

Hon'ble Judges : H. C. Mishra, Anil Kumar Choudhary

Bench : DIVISION BENCH

Advocate : Rajesh Kumar, Nagmani Tiwari

Final Decision : Allowed

Judgement

1. Heard learned amicus curiae for the appellant and learned counsel for the State.

2. This jail appeal is directed against the Judgment of conviction and Order of sentence dated 13.04.2006, passed by the learned 1st Additional Sessions Judge, West Singhbhum at Chaibasa, in S.T. No. 100 of 2005, whereby, the sole appellant has been found guilty and convicted for the offence under Section 302 of the Indian Penal Code, for committing the murder of his wife. Upon hearing on the point of sentence, the sole appellant has been sentenced to undergo rigorous imprisonment for life for the said offence.

3. The prosecution case was instituted on the basis of the fardbeyan of the informant Stephen Munda, who was the village Munda, recorded on 21.12.2004, near Hospital More Chowk, Goilkera, wherein the informant has stated that on 20.12.2004, at about 3:00 pm, the accused Habil Topno had assaulted his wife by "danda" causing her death and thereafter he tried to burn the dead body of the deceased by straws, due to which the lower part of the body was burnt. He

was informed about the occurrence at about 8.00 pm in the night and as such, on the next day, the dead body was being brought to the Police Station. As the S.I. of Police met in the way, the fardbeyan of the informant was recorded, on the basis of which, Goilkera P.S. Case No. 27 of 2004 corresponding to G.R. No. 287 of 2004, was instituted against the sole accused for the offence under Section 302 of the Indian Penal Code, and investigation was taken up. After investigation the police submitted the charge-sheet in the case.

4. Upon commitment of the case to the Court of Session, charge was framed against the sole accused for the offence under Section 302 of the Indian Penal Code, and upon the accused's pleading not guilty and claiming to be tried, he was put to trial.

5. In course of trial, the prosecution has examined eight witnesses in this case, out of whom, P.W.-5 Prakash Bodra was only tendered by the prosecution. The I.O. of the case has not been examined and accordingly, P.W.-6 Francis Topno, who was the Officer-Incharge of Goilkera Police Station, has only proved the fardbeyan, the FIR and the inquest report, which were marked as Exhibits 3 to 5 respectively.

6. P.W.-2 Stephen Munda is the informant of the case, but he is not the eye witness to the occurrence. This witness has stated that he was informed by the daughter of the deceased that her father had killed her mother, whereupon he went to the house and saw the dead body. He has also stated that the accused had confessed before him that he had killed his wife. He has stated that on the next day, he and the villagers were bringing the dead body and the accused to the Police Station, and in the way he met the police and gave his fardbeyan, on which he has identified his signature, which was marked as Exhibit-2. He also handed over the accused to the police. In his cross-examination, he has specifically stated that he had neither seen the occurrence, nor he had any knowledge about the quarrel between the wife and husband.

7. P.W.-3 Juspin Bodra is the daughter of the deceased and the appellant, who has stated that on the date of occurrence, there was quarrel between her father and mother, in which her father assaulted her mother by danda, causing her death at the spot. She informed the Munda of the village and she also gave her statement before the police. She has identified the accused in the Court, and in her cross-examination also, she has stated that she had seen the occurrence.

8. P.W.-7 Selai Bodra and P.W.-8 Potka Kandeyam have only stated that they had seen the dead body of the deceased in the courtyard of the house. They have not stated anything about the occurrence and they have stated that they had no knowledge as to how the deceased was killed. P.W.-7 has also stated that he had seen some straws near the dead body.

9. P.W.-4 Tintush Topno is only the witness to the inquest report of the dead body, on which he has identified his signature and also the signature of the other witness, which were marked Exhibits-2/1 and 2/2.

10. P.W.-1 Dr. Birendra Kumar Singh had conducted the post-mortem examination on the dead body of the deceased on 23.12.2004 and had found the following ante-mortem injuries on the dead body:-

External:-

1. Cow dung, Straw, Dhan present over hair, abdomen, leg etc.
2. Blood mixed froth present over mouth.
3. 2nd degree (Dermo Eepidermal) burn over abdomen, back both thighs, knee, right shoulder - post-mortem burn. No redness, vesiculation present.
4. Multiple bruise over right shoulder, 3" x ?".
5. Bruise over neck 2" x ?".
6. Leakage of stool from anus present.

On Dissection:-

Head & neck:- Blood present in subcutaneous tissue in neck, 3 tracheal rings broken, blood present in trachea.

Thorax- Lungs congested, All chambers of heart was full of blood.

Abdomen - Liver, spleen kidneys congested, stomach contained Hadiya, uterus-small.

This witness has stated that the death was caused due to asphyxia due to strangulation. He has proved the post-mortem report to be in his pen and signature, which was marked as Ext.1.

11. The statement of the accused was recorded under Section 313 of the Cr.P.C., wherein, he has denied the evidence against him. No evidence was adduced by the defence. On the basis of the evidence on record, the accused has been convicted and sentenced for the offence under Section 302 of the Indian Penal Code.

12. Learned amicus curiae, appearing for the accused appellant, has submitted that the impugned Judgment of conviction and Order of Sentence cannot be sustained in the eyes of the law, inasmuch as, there is discrepancy in the evidence of the alleged eyewitness, i.e., P.W.-3 Juspın Bodra, who is the daughter of the deceased, stating that the deceased was assaulted by lathi due to which she died, but the cause of death was found to be due to strangulation, as per the medical evidence of P.W.-1 Dr. Birendra Kumar Singh. There is no allegation of strangulating the deceased in the evidence of P.W.-3 Juspın Bodra, even though she has claimed to be the eyewitness to the occurrence. Learned counsel, accordingly, submitted that the impugned Judgment of conviction and Order of sentence cannot be sustained in the eyes of law.

13. Learned Addl. P.P., appearing for the State, on the other hand, has opposed

the prayer and has submitted that P.W.-3 Juspın Bodra is the eyewitness to the occurrence, being the daughter of the deceased and the appellant, and she has clearly stated that it was her father who had assaulted her mother, causing her death. It is submitted that there can be no motive to the daughter to falsely implicate her father. It is also submitted that her evidence is also supported by the medical evidence of the P.W.-1 Dr. Birendra Kumar Singh and as such, there is no illegality in the impugned Judgment of conviction and Order of sentence, passed by the Trial Court below.

14. Having heard learned counsels for both the sides and upon going through the record, we find that in the FIR, the informant Stephen Munda has stated that upon getting the information, he went to the place of occurrence and found the dead body in which the lower part of the body was burnt, as the accused appellant had tried to burn the dead body by straws. He has been examined as P.W.-2, but in his entire evidence he has not stated that he had seen the dead body in burnt condition. Similarly, P.W.-7 Selai Bodra and P.W.-8 Potka Kandeyam, who had seen the dead body of the deceased in the courtyard, have also not stated that the dead body was in burnt condition. Even though, P.W.-7 has stated that some straws were there near the dead body, but he has not stated that they were burnt or partly burnt straws. P.W.-3 Juspın Bodra, who is the daughter of the accused, though has stated that her father had assaulted her mother by lathi, causing her death, but she has not stated that her father strangled her mother, nor she has stated that the accused had also tried to burn the dead body. The evidence of P.W.-1 Dr. Birendra Kumar Singh and the post-mortem report though show that some cow dung and straws were found on the dead body, but it is not stated that they were the burnt straws and cow dung. The I.O. has not been examined in this case and it is an admitted fact that the dead body was not recovered in the house of the accused, as the dead body was produced before the police in the way to the Police Station. There is absolutely no evidence on record to show any mark of violence at the alleged place of occurrence, i.e., the house of the accused appellant.

15. We are of the considered view that in the facts of the case, the prosecution has not been able to bring home the charge against the sole accused beyond all reasonable doubts and in the facts of the case, the accused appellant was entitled to the benefits of doubt. Hence, the impugned

Judgment of conviction and Order of sentence passed by the Trial Court below, cannot be sustained in the eyes of law.

16. Accordingly, the impugned Judgment of conviction and Order of sentence dated 13.04.2006, passed by the learned 1st Additional Sessions Judge, West Singhbhum at Chaibasa, in S.T. No. 100 of 2005, convicting and sentencing the accused Habil Topno for the offence under Section 302 of the Indian Penal Code, are hereby, set aside. The accused appellant Habil Topno is given the benefits of doubt and he is acquitted of the charge. The appellant is in custody, let him be released and set at liberty forthwith, if his detention is not required in any other

case.

17. Before parting with this Judgment, we must record that we have been ably assisted by Sri Rajesh Kumar, learned amicus curiae. We direct the Secretary, High Court Legal Services Committee, to make the payment of the prescribed remuneration to the learned amicus curie. Let a copy of this Judgment be sent to the Secretary, High Court Legal Services Committee, for the needful.

18. This appeal is accordingly, allowed. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy this Judgment.