

(2006) 05 JH CK 0013
In the Jharkhand High Court

Teophil Tirkey

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2006) CriLJ 4501 : (2006) 3 JLJR 501 : (2006) 3 EastCriC 242 :
(2006) 3 AIRJharR 372

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Judgement

1. The accused appeals.

2. The appellant, Teophil Tirkey, was accused of the murder of Anjela Khariain at noon of 17-3-1994. The trial Judge, accepting the accusation made in the charge against the appellant, found him guilty u/s 302 of the Indian Penal Code for which he was directed to suffer imprisonment for life. The appeal is against the said conviction and sentence.

3. The deceased, Anjela Khariain, is the daughter of PW-3, Martin Kharia. PW-2, Sushma Khariain, is the younger sister of the deceased and at the relevant period, PW- was studying and staying in the hostel. PW-1, Balandina Khariain is the mother of the deceased and wife of PW-3. It is the case of the prosecution that the deceased and the appellant were loving each other and they were also having physical relationship. The deceased was studying in a College and was aged about 20 years. Sometime prior to date of the occurrence, the appellant had taken the deceased to his house. Therefore, a Panchayati was convened and at the Panchayati, it was decided that the appellant should return the girl to his parents. Accordingly, the deceased was brought back to the house of PW-3. On the date of occurrence, namely, on 17-3-1994, the deceased was living in the house of her parents and she was also pregnant. It is the further case of the prosecution that the appellant went to the house of PW-3 on 15-3-1994 and

stayed over night in the house. On 16-3-1994 he left the house only to return and inform PW-3 and others in the family that he has missed his bus to reach his village. He stayed in the house on the night of 16-3-1994. On 17-3-1994, PW-3 went out of the house to pick up Mahua flowers and the mother of the deceased, PW-1, went to her father's house, leaving the appellant and the deceased in the house. PW-3 returned to his house after picking Mahua flowers. While he was approaching the house, he saw the appellant closing the door from outside with a chain and going away towards north. PW-3 entered the house and found the dead body of his daughter and the head was found severed from the neck. PW-3 raised alarm and the villagers gathered. Later, Ext. 3 was given at 5.30 p.m. on the same day, on the basis of which a crime was registered. Investigation in the crime was taken up by Sri Krishna Singh, PW-9, who conducted inquest by preparing the Inquest report, Ext. 4. After the inquest, the dead body was sent for autopsy.

4. On receipt of the requisition and the dead body, PW-8, Dr. Angraj Subhash, conducted autopsy and found the following injuries:

Incised wound upper part neck right side size 5" x 2" x 1"

2. Incised wound of left part of neck 3"x 2"x 1".

The doctor issued Ext. 2, the post mortem certificate, with his opinion that the death is on account of the injury to the neck and decapitation of the head.

5. After the completion of investigation, final report was filed and the appellant denied the circumstances, put against him u/s 313 of the Code of Criminal Procedure.

6. The learned Counsel appearing for the appellant submits that the evidence of PW-3 is too artificial to believe, since it is impossible to accept his evidence that he allowed the appellant to stay in the house when it is the case of the prosecution that he gave a complaint against him at the Panchayat for taking away his daughter. He submits that the evidence of PW-3 cannot be accepted for finding the appellant guilty.

7. We have heard Mr. R. Mukhopadhyay, learned A.P.P., appearing for the State, on the above contentions.

8. According to the prosecution, the occurrence took place at 11.00 a.m. on 17-3-1994. The evidence of PW-3, who is the father of the deceased, is that his daughter Anjela Khariain was kidnapped by the appellant sometime prior to the date of the incident and he gave a complaint at the Panchayat. His further evidence is that the appellant was caught and later at the Panchayati, the appellant was directed to return the girl to his parents and accordingly the deceased, Anjela Khariain, was returned to him and his wife, PW-1, Balandina Khariain. The evidence also shows that the deceased was in the house of her parents on the relevant date. According to PW-3, the appellant reached his house and stayed overnight on 16-3-1994. PW-3 has further deposed that he left the

house at about 9.00 a.m. to collect Mahua flower and when he left the house, the deceased and the appellant alone were there, since the mother of the deceased, Balandina Khariain, was away in her parents house. He has further stated that on return, at about noon, he found the appellant closing the door with a chain and going away and that he found the dead body of his daughter in the house with head chopped off.

9. On going through the evidence of PW-3, we find several suspicious features in the said evidence for us to accept his version. The evidence of PW-3 is that he was not happy with his daughter going away with the appellant. He has stated that he had given a complaint at Panchayat and his daughter was returned to him as per the decision taken at the Panchayati. The evidence further shows that before Panchayati was convened, the appellant was caught by the villagers. The above evidence of PW-3, therefore, shows that PW-3 was inimical towards the appellant as he had taken away his daughter without his consent. The evidence of post mortem doctor shows that the deceased was carrying a foetus of 30- 32 weeks in age in the womb. In the above background, we find it difficult to accept the evidence of PW-3 that he allowed the appellant to stay in his house on 15-3-1994 and also on the night of 16-3-1994. No father, who had given a complaint against a person for taking away his daughter, will allow that person to stay in his house for two days and that too during nights. It is also unbelievable that PW-3, who had given a complaint against the appellant, left his daughter in the house along with the appellant, with nobody to look after them, since even according to PW-3, PW-1, the mother of the deceased, was away at her parents house. This conduct of PW-3 in leaving the appellant and the deceased alone in the house to go away to "collect Mahua flowers is highly unbelievable as collection of Mahua flowers is not as important as protecting the daughter. It is also difficult to accept the evidence of PW-3 that when he returned, he found the appellant closing the door and going away towards north. According to him, he immediately entered the house and found the dead body of his daughter. If that be the case, he would not only raise alarm but also would have chased the appellant to apprehend him. He did not do so. On the contrary, he has stated that he informed the Chowkidar. The said Chowkidar was not examined in Court. It is also an admitted fact that PW-3 did not inform any of the villagers, including the ladies, who had come to the scene that he saw the appellant going out of the house after locking the door from outside. If PW-3 had really seen the appellant going out of the house after locking the door from outside then he would have at least mentioned this fact to the villagers, including the ladies. He did not do so.

10. We, therefore, find it difficult to accept the evidence of PW-3 that he allowed the appellant, against whom he had given a complaint alleging that he had kidnapped his daughter, to stay in his house, that too, for two nights and left the daughter alone in the company of the appellant on 16-3-1994. At the risk of the repetition, we have to say that PW-3, even did not mention this fact to the villagers, including the ladies, that the appellant left the house after closing the door from outside. It is only for the first time he had come out with such version

before the Court.

11. We, on the totality of the circumstances, have a doubt whether the appellant would have been present in the village and left the house of the deceased at noon on 17-3-1994 after closing the door from outside. It is to be remembered that the Investigating agency did not even seize the chain with which the door was allegedly closed by the appellant, though the Officer on reaching the scene of occurrence, prepared a seizure list for the seizure of Tangi, which was lying near the dead body. The said Tangi was also not sent for chemical analysis.

12. In view of the reasons given by us, we find it difficult to uphold the conviction of the appellant. The benefit of doubt is given to the appellant and he is acquitted. The conviction and consequence sentence imposed upon the appellant is set aside.

The appellant, Teophil Tirkey, who is in jail, shall be released forthwith, unless he is wanted in, connection with any other case(s).