
(2006) 01 JH CK 0037

In the Jharkhand High Court

Case No : Criminal Appeal No. 260 of 2004

Tufani Bhuiyan and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 293(4), 294, 294(2), 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2006) CriLJ 1878 : (2006) 1 JCR 279

Hon'ble Judges : N. Dhinakar, C.J; M.Y. Eqbal, J

Bench : Division Bench

Advocate : R.S.P. Sinha, for the Appellant; APP, for the Respondent

Final Decision : Allowed

Judgement

1. Heard the counsel for the parties on the merits of the appeal itself and the same is being disposed of at this stage.

2. The appellants, four in number, were tried before the Additional Sessions Judge, Chatra under various sections of the Indian Penal Code (shortly IPC) including the offence punishable u/s 302, IPC. The learned trial Judge, finding the appellants guilty under Sections 302, 323 and 324 with the aid of Section 149, IPC sentence all of them to imprisonment for life and also to pay fine of Rs. 5000/-each. Bandhu Bhuiyan, appellant No. 2 was sentenced to two years RI u/s 324, IPC. He was also directed to suffer two years RI under Sections 147 and 148, IPC. For the offence u/s 304, IPC each of them was directed to suffer imprisonment for a period of one year. The learned trial Judge directed that if the amount of fine is collected Rs. 18000/- will be paid to the family of the deceased as compensation and that in default of payment of fine, each of them shall undergo imprisonment for a period of six months. Further direction was given that the sentences of imprisonment will run concurrently. Period of sentence already undergone was also ordered to be set off.

3. The facts of the case are thus :

PW 2 Mewalal Bhuiyan is the son of Kishun Bhuiyan who is the deceased. PW 3, Sitwa Devi is the mother of PW 2 and wife of Kishun Bhuiyan. The appellants are related with the deceased and were residing in the same premises. The case of the prosecution is that the deceased was a witch and he is responsible for the death of the wife of Charan Bhuiyan. It is said that; witchcraft was the motive for which the unfortunate incident took place at about 7 p.m. on 30.7.1986.

4. PW 2, Mewalal was grazing his cattle and at that time the appellants and two others who died before trial, went to the place of occurrence. They asked PW 2 about the where about of Kishun Bhuiyan, the deceased in the case, PW 2 refused to reply and so he was beaten. PW 2, thereafter, proceeded towards the village Gidhoor and on the way, saw his uncle Rameshwar Bhuiyan and his mother Sitwa Devi. PW 2 requested his father not to go to the place where he was earlier grazing the cattle as the appellants were searching for him. The deceased ignoring the request of PW 2 went towards the place where PW 2 was grazing cattle and seeing him the appellants 1 to 3 assaulted him with lathi and spear. PW 3 intervened but he was also beaten by Pokhan, the other accused who is since dead. Thereafter the appellants went away from that place. Kishun Bhuiyan died due to the injury sustained by him. PW 2 informed the choudidar and later went to the police station and gave his statement Ext. 3 to the Officer Incharge. The statement was recorded on which thumb impression of PW 2 was taken, PWs 2 and 3 were sent to the hospital for medical treatment. The investigation was taken up by PW 6.

6. PW 6 on taking up the investigation, proceeded" towards the scene of occurrence and conducted inquest Ext. 2. He examined PW 1 and others. He sent the dead body to the hospital to enable the doctor to conduct autopsy. After the completion of investigation final report was filed against the appellants.

7. When the appellants were questioned u/s 313. Cr PC on the incriminating circumstances, appearing against them, they denied the same and pleaded not guilty. They did not examine any defence witness.

8. Learned counsel, appearing on behalf of the appellants, submits that the prosecution having miserably failed to establish the cause of death of the deceased Kishun Bhuiyan, the trial Court was not justified in convicting the appellants u/s 302, IPC. Learned counsel further, submits that the prosecution did not examine any of the doctors to hold that PWs 2 and 3 suffered injuries and therefore, the accused are entitled for acquittal.

9. On the above contention we have heard the learned Additional Public Prosecutor appearing on behalf of the State.

10. The prosecution wanted to establish that Kishun Bhuiyan died on account of homicidal violence but miserably failed to establish the said fact. The prosecution did not even attempt to examine the doctor nor did it produce the post-mortem

certificate issued by the doctor who conducted post-mortem over the dead body. It is unfortunate that the prosecution failed in its duty in not examining the doctor and marking the post-mortem certificate as exhibit. We are at a loss of find as to why the prosecution did not examine the doctor who conducted autopsy and issued certificate. Though Sub-section (4) of Section 293, Cr PC contemplates that the document issued by the Government Scientific Experts enumerated under Sub-section (4) need not be examined and the documents can be marked it does not contemplate producing of the post-mortem certificate without examining the doctor. Section 294, Cr PC though states that where any document is filed before any Court by the prosecution, it can be marked if the other side has no objection in its marking but with a further rider under Sub-section (2) of Section 294, Cr PC that the document which is to be marked without formal proof, can be marked but only through the prescribed form prescribed by the State. In this case the prosecution did not even produce the document i.e. post-mortem examination report, nor did it examine the doctor. Therefore, there is no evidence on record to show that Kishun Bhuiyan died on account of homicidal violence. In the absence of any medical evidence, we are unable to hold that the prosecution has proved its case under Sections 323 and 324, IPC, There is nothing on record to prove that Kishun Bhuiyan died on account of homicidal violence and that PWs 2 and 3 suffered injury. We therefore, hold that, the prosecution has miserably failed to establish the charge of murder as well as the charges under Sections 323 and 324, IPC.

11. On the basis of above discussion, we have no option but to acquit the appellants and we, accordingly, acquit the appellants of the charges levelled against them. This appeal is accordingly allowed.

12. Before we part with this judgment we wish to observe that the prosecution must be vigilant while conducting trial for grave offence like the case of murder. It is unfortunate that in this case the prosecuting agency did not think it necessary to examine either of the doctors who conducted autopsy, nor did they produce the necessary documents. This shows the callous and indifferent attitude of the prosecuting agency. We hope and trust that in future the prosecuting agency will be vigilant in producing the relevant materials before the Court by producing proper evidence. We further hope and trust that the concerned authorities will initiate action against the concerned person(s) who are responsible for the indifferent attitude shown in this case. The Registry is directed to send copies of this judgment to the Chief Secretary, Government of Jharkhand, Home Secretary, Government of Jharkhand and the Director General of Police, Jharkhand.