
(2019) 10 JH CK 0031

Jharkhand High Court

Case No: Criminal Appeal (D.B.) No. 415, 946 Of 2013

Ram Angaria And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Oct. 14, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 201, 302, 326
- Prevention Of Witch (DAAIN) Practices Act, 2001 - Section 4

Hon'ble Judges: Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench: Division Bench

Advocate: R.P. Gupta, Nehala Sharmin

Final Decision: Partly Allowed

Judgement

Shree Chandrashekhar, J

1. Two persons, namely, Sri Ram Angaria and Paikerai Kuntia were named by Gardi Kuntia, the informant, as the accused persons who have

committed murder of his parents, namely, Dubraj Kuntia and Smt. Maniful Kuntia. Both the accused persons have been convicted for the offences

under section 302/34 IPC and under section 201/34 IPC. They have also been convicted under section 4 of the Prevention of Witch (Daain) Practices

Act.

2. In Criminal Appeal (D.B.) No. 415 of 2013 the convict, namely, Sri Ram Angaria is the appellant and in Criminal Appeal (D.B.) No. 946 of 2013

the convict, namely, Paikerai Kuntia is the appellant.

3. Both these criminal appeals arise from a common judgment dated 16.05.2013 in S.T. Case No.104 of 2008 and, therefore, these have been heard

together and disposed of by a common judgment.

4. During the trial, the prosecution has examined eight witnesses; the informant, namely, Gardi Kuntia is P.W.8. The prosecution witnesses are P.W.2,

P.W.3 and P.W.4 have stated that the informant has informed them about the complicity of both the appellants in committing murder of his parents.

5. Dr. Dilip Kumar Sinha-P.W.7, who has conducted the post-mortem examination, has found the following injuries on Dubraj Kuntia:

External Injuries

(I) Incised wound on left scapular region posterior to shoulder joint, 5 cm deep.

(II) Incised wound on the back of neck 4 cm muscle deep.

(III) Incised wound on the left temporal occipital region, 3 cm bone deep.

6. Dr. Dilip Kumar Sinha-P.W.7 has found the following injuries on Smt. Maniful Kuntia:

External Injuries

(I) Incised wound on temporal region back to ear about, 5 cm deep to skull cavity.

(II) Incised wound right side of face 5 cm, causing damage of the right eye and cutting of right ear pinna and also the root of nose.

(III) Incised wound present above the right wrist joint anteriorly, 2 cm muscle deep.

(IV) Incised wound on right arm antro posteriorly, about 3 cm muscle deep.

(V) Incised wound on right arm medially lower shoulder joint, 2 cm muscle deep.

7. The main contention raised on behalf of the appellants is that the testimony of the informant, who is a child witness, is not trustworthy and on the basis of his evidence conviction of the appellants for a serious crime like murder cannot be recorded.

8. In *Kuna V. State of Odisha* reported in (2018) 1 SCC 296, the Supreme Court has held as under:

11. "That conviction can be based on a testimony of a single eye-witness if he or she passes the test of reliability and that it is not the number of

witnesses but the quality of evidence that is important, have been propounded consistently in Anil Phukan [(1993) 3 SCC 282], Ramji Surjya [(1983) 3 SCC 629], Patnam Anandam [(2005) 9 SCC 237] and Gulam Sarbar [(2014) 3 SCC 401] with the apparent emphasis that evidence must be weighed and not counted, decisive test being whether it has a ring of truth and it is cogent, credible, trustworthy or otherwise.â€

9. There is no universal rule that testimony of a child witness cannot be acceptable, rather the law is that if testimony of a child witness inspires confidence it is sufficient to record conviction of an accused. Naturally, whether corroboration is necessary in a case which is solely founded on the evidence of a child witness would depend on the facts and circumstances of the case. In â€œK. Venkateshwarlu Vs. State of A.P.â€ reported in (2012) 8 SCC 73, the Supreme Court has observed as under:

9. â€œâ€¦.....A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by threat, coercion or inducement.

Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was

under a threat or coercion. Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to

the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a

child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version

or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the

court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court

decides to rely upon it.â€

10. Admittedly, Gardi Kuntia is the only eye-witness; the learned Additional Sessions Judge has recorded a finding that P.W.2, P.W.3, P.W.4 and

P.W.5 are not the eye-witnesses. The testimony of Gardi Kuntia would establish that he was present in the house at the time of the occurrence. Being

the son, his presence in his house is natural. He has spoken about presence of both the appellants at the place of occurrence, but his examination-in-

chief is quite cryptic. In fact, he has failed to make specific allegation of assault by the appellants on his father. All that he has stated about the assault

by the appellants is regarding assault on his mother with tangi and danda. We further find that his evidence is not fully corroborated by the medical

evidence. P.W.7 has not found any injury on the deceased persons caused by a hard and blunt substance. In paragraph no.16 of his cross-

examination, P.W.7 has admitted that he has not found any injury on Smt. Maniful Kuntia caused by lathi. The cross-examination of the informant

would reveal that he has failed to give necessary details of the occurrence. All the time he has taken a plea that he is an illiterate person, though he

has asserted that he has seen the occurrence and he has seen both the persons.

11. In the above facts and circumstances of this case; other prosecution witnesses have corroborated testimony of P.W.8 to the extent that P.W.8 has

informed them about the occurrence and disclosed the name of the appellants as the accused persons who have caused murder of his parents, crime

weapon was not recovered by the police and on the top of all the investigating officer has not been examined during the trial, conviction of the

appellants under section 302/34 IPC warrants interference by this Court. P.W.8 has admitted that on seeing the accused persons assaulting his mother

he fled and came to the house of his uncle. The dead body was recovered from a forest, but it has not come on record how the dead body was

recovered and who has led the police to the forest where the dead body was found lying. The doctor has also not rendered an opinion which one of

the injuries found on the person of Dubraj Kuntia and Smt. Maniful Kuntia were fatal; cause of death according to P.W.7 is shock and haemorrhage,

and therefore benefit must go to the appellants [refer, *â€œVijay Singh & Anr. Vs. State of Madhya Pradeshâ€* reported in (2014) 12 SCC 293 and

â€œDhanna Chaudhary & Ors. Vs. State of Biharâ€ reported in (1985) 3 SCC 680].

12. In the background of the evidences led by the prosecution, we are of the opinion that conviction of the appellants under section 302/34 IPC is not

proper and, accordingly, it is set-aside. We find that presence of the appellants at the place of the occurrence and at the time of the occurrence are

proved by the prosecution and since grievous injuries were caused by the appellants to Dubraj Kuntia and Smt. Maniful Kuntia and, therefore, both the

appellants, namely, Sri Ram Angaria and Paikerai Kuntia are convicted and sentenced to R.I for Ten years under section 326 IPC.

13. Mrs. Nehala Sharmin, the learned APP, states that the appellants have undergone more than Eleven years of imprisonment.

14. Accordingly, the appellants, namely, Sri Ram Angaria and Paikerai Kuntia shall be set free forthwith, if not wanted in connection to any other criminal case.

15. In the result, Criminal Appeal (DB) No. 415 of 2013 and Criminal Appeal (DB) No. 946 of 2013 are partly allowed.

16. Let the lower-court records be transmitted to the court concerned, forthwith.