
(2019) 07 JH CK 0176

Jharkhand High Court

Case No: Criminal Appeal (DB) No. 292 Of 2001

Jugeshwar Singh And
Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: July 10, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 302

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

Bench: Division Bench

Advocate: V.P. Singh, Bandana Kumari Sinha, Sardhu Mahto

Final Decision: Allowed

Judgement

Shree Chandrashekhar, J

1. Affidavit dated 08.07.2019 sworn by the Officer-in-Charge of Satbarwa Police Station, District-Palamu is tendered in the Court.

2. Taken on record.

3. Sri Sardhu Mahto, the learned A.P.P. states that during pendency of this criminal appeal, the appellant No.1, namely, Jugeshwar Singh and the

appellant No. 3, namely, Nanhak Singh have passed away.

4. There is no application on behalf of the legal heirs and successors of the appellant No.1, namely, Jugeshwar Singh and the appellant No. 3, namely,

Nanhak Singh for their substitution in their place and, accordingly, this criminal appeal qua appellant No.1, namely, Jugeshwar Singh and qua appellant

No. 3, namely, Nanhak Singh has abated.

5. Three accused persons, namely, (1) Jugeshwar Singh, (2) Jagni Devi alias Jagmania Devi and (3) Nanhak Singh faced the trial in Sessions Trial No.

454 of 1995 on the allegation that they have killed Maheshwar Singh, son of informant, namely, Nathuni Singh, in the night of 10/11.04.1995 at village

Rabda, PS-Manika, District-Palamu.

6. On the basis of the fardbeyan of Nathuni Singh, Manika P.S. Case No. 15 of 1995 was registered against the aforesaid three accused persons

under Sections 302/34 IPC.

7. During the trial, the prosecution has examined altogether 10 witnesses and the constable Sahabir Oraon was examined as CW-1.

8. Dr. Surendra Kumar Singh, PW-1 has found the following ante-mortem injuries on the dead body of Maheshwar Singh:

Ã¢â¬(i) Incised wound over in front of neck transversely cutting of tracheal rings, larynx, neck muscles, blood vessels 4Ã¢â¬x2 Ã¢â¬x 1Ã¢â¬ caused by sharp cutting weapon.

(ii) Incised wound right side of the face injuries of the zygomatic process, skin muscles and blood vessels 3Ã¢â¬x2Ã¢â¬x1Ã¢â¬ bone deep.

(iii) Incised wound over right upper leg 2Ã¢â¬x Ã¢â¬x Ã¢â¬x Ã¢â¬x.

(iv) Incised wound over left elbow joint 2Ã¢â¬x Ã¢â¬x Ã¢â¬x Ã¢â¬x bone deep.

(v) Incised wound over right side of the frontal scalp 4Ã¢â¬x2Ã¢â¬x1Ã¢â¬ bone deep.

(vi) Incised wound over left side of the neck leading to cutting of the muscles and blood vessels cervical vertebrae 2Ã¢â¬x1Ã¢â¬x Ã¢â¬x.

In the opinion of the Doctor, the injuries were caused by sharp cutting weapon like Tangi and the death has occurred within 36 hours; post-mortem

was held at 3:00 p.m. on 11.04.1995.

9. On the basis of the evidences led before him, the learned 1st Additional Sessions Judge, Palamu has held that the prosecution has proved the charge

under Sections 302/34 IPC against the accused-appellants and, accordingly, convicted them for the aforesaid offence.

10. Admittedly, case of the prosecution is based on circumstantial evidence; there is no eye-witness to the occurrence.

11. During the trial, as many as 5 witnesses have turned hostile and PW-5 has been tendered for cross-examination. PW-10, namely, Maheshwar

Paswan and CW-1, namely, Sahabir Oraon are the formal witnesses.

12. Investigating Officer of this case has not been examined during the trial.

13. The Prosecution's case, as narrated by the informant Nathuni Singh, is that, after the death of his first wife; from the wedlock a son, namely,

Maheshwar Singh was born, he married Jaso Devi and they have three children from the said wedlock. Previously, the informant was staying at

village-Sikikala where his lands were cultivated by his nephew Jugeshwar Singh. The informant has alleged that his nephew Jugeshwar Singh never

parted with his share in the crop grown in his field. After the death of his wife, Maheshwar Singh started living with Jugeshwar Singh. It is further

case of the informant that in the morning of 11.04.1995 he was informed by Daroga that the accused- Jagmania Devi has confessed before him that

they have killed Maheshwar Singh.

14. The learned 1st Additional Sessions Judge, Palamu has referred to the following circumstances to conclude that the prosecution has proved the

charge under Section 302/34 IPC against the accused persons:

“(i) That deceased Maheshwar Singh had been cousin brother of accused Jugeshwar Singh and they cultivated sugar-cane crop jointly before the

occurrence.

(ii) That on the fateful night of occurrence, the deceased Maheshwar Singh was sleeping in the house of accused Jugeshwar Singh and Jagni Devi

where in the morning the dead body of the deceased was found with multiple incised injuries on different parts of the body and where inquest was

held by the Officer-Incharge of Manika P.S. vide Ext.5.

(iii) That blood stained earth, Tangi and one pair of Hawai chappal said to be used by the deceased was found at the place of occurrence where the

dead body of deceased was lying.

(iv) That I.O. has found heel portion of both the Hawai chappal cut by some sharp cutting weapon.

(v) That accused Nanhak Singh has been also living in the house of accused Jugeshwar Singh with whom the informant (father of the deceased) had

animosity.

(vi) That the I.O. on the wall of the P.O. room found several blood stained marks (as per case diary para 7 where detailed description of the P.O. has

been mentioned).

(vii) That the accused persons Jugeshwar Singh and Jagni Devi have been also living in the same house but none of them gave information about the

occurrence to the Police Officer or any one.

(viii) That there had been the enmity in between the accused persons on one hand and the family member of the deceased on the other hand and after

the death of the wife of deceased Maheshwar Singh, he came in close contact with the family members of the accused.

15. The aforesaid circumstances according to the learned Judge complete the chain of circumstances so as to prove the guilt of the appellants.

16. The law on the circumstantial evidence is well-settled by now. In "Hanumant Govind Nargundkar Vs. State of M.P." reported in AIR 1952

SC 343, the Supreme Court has observed thus;

—It is well to remember that in case where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be

drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the

accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one

proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion

consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the

accused.

17. The Hon'ble Supreme Court in *Padala Veera Reddy Vs. State of A.P.*, reported in 1989 Supp (2) SCC 706, has laid down the following test

which the prosecution in a case of circumstantial evidence must satisfy;

(i) the circumstances from which an inference of guilty is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human

probability the crime was committed by the accused and no else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the

guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

18. We find that many of the circumstances referred to by learned Judge in para-21 of the judgment in Sessions Trial No. 454 of 1995 cannot be said

to be incriminating circumstances. The fact that the dead body was found in the house of the Jugeshwar Singh and according to the prosecution, the

accused persons did not inform the police, in our opinion, are not such facts which would conclusively establish the guilt of the appellants. There may

be several situations in which, a dead body is found in the house of a person and merely on the basis that the dead body has been found in the house of

a person he cannot be convicted for the offence like murder. Not informing the police is a matter of perception. It is the prosecution's own case

that on 11.04.1995 at about 7:00 a.m. a statement of the informant was recorded at village-Rabda. If that is so, how early one should inform about the

death of a person is a matter for speculation.

19. When we examine the circumstances referred by the learned Judge in para-21 in the light of the fact that majority of the prosecution witnesses

have turned hostile, we come to a conclusion that the prosecution has failed to establish charge under Sections 302/34 IPC against the surviving

appellant, namely, Jagni Devi alias Jagmania Devi and, accordingly, the judgment of conviction dated 26.06.2001 and the order of sentence dated

28.06.2001 passed in Sessions Trial No. 454 of 1995 are set aside. The appellant, namely, Jagni Devi alias Jagmania Devi is acquitted of the charge

under Section 302/34 IPC, she is discharged from the liability of bail bonds furnished by her.

20. In the result, this criminal appeal is allowed.

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