Bhim Hembram Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 7, 2020

Acts Referred: Indian Penal Code, 1860 â€" Section 302
Evidence Act, 1872 â€" Section 106, 134, 145
Code Of Criminal Procedure, 1973 â€" Section 161, 313

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

Bench: Division Bench

Advocate: S.P. Roy, Hardeo Prasad Singh

Final Decision: Dismissed

Judgement

Shree Chandrashekhar, J

1. The sole appellant has faced the trial on the charge under section 302 IPC for committing murder of his wife, namely, Marangmai Murmu.

2. In S.T. Case No. 33/2008 the appellant has been convicted and sentenced to RI for life under section 302 IPC.

3. The informant of this case is the brother of Marangmai Murmu. On the basis of his fardbeyan, which was recorded on 29.09.2007, Boarijore

(Lalmatia) P.S. Case No. 120/07 has been lodged against the appellant under section 302 IPC. During the trial, the prosecution has examined five

witnesses; the informant, namely, Babu Chand Murmu is PW-3.

4. The prosecution witnesses, namely, Sukhda Murmu PW-1 and Tala Soren PW-2, who are co-villagers of the appellant, have turned hostile. When

they were examined in the court they have denied that they have any knowledge about the occurrence. In his fardbeyan, the informant has stated that

on Thursday, which was 27.09.2007, his sister and her husband had visited the village fair on the occasion of Mansa Puja. It was around 1:30 p.m. on

that day when a quarrel had started between his sister and her husband. At that time the appellant was drunk. The informant has further stated that he

pacified both of them and sent them home. Next day, he received an information from one Hopan Ba of village Dhankunda about death of his sister

due to assault by her husband. On receiving such information he came to the house of her sister where he has found the dead body of her sister lying

on a cot. He has noticed injuries on her person. About the death of his sister when he enquired from his brother-in-law, the appellant, he said that he

has not killed her and fled away. The informant has further stated that the villagers have told him that in the evening of 27.09.2007 the appellant

assaulted his wife mercilessly. The informant has been examined in the court as PW-3. He has stated that the appellant has killed his sister in his

house and he called him to his village Dhankunda and asked him to take away dead body of his sister. He has also stated about injuries on the person

of Marangmai Murmu, his sister.

5. Dr. Suban Murmu PW-4, who has conducted the post-mortem examination on 29.09.2007 at 4:45 p.m. at Sadar Hospital, Godda, has found the

following injuries on Marangmai Murmu:

i. Lacerated wound 6Ã¢â‚¬â€x 4Ã¢â‚¬â€x skin deep over the left side of the back.

ii. Diffuse swelling over occipital region of the scalp.

iii. Bruise over the right side of chest and abdomen. On dissection of abdomen-Cavity was full of blood and liver was found rapture postural.

6. According to the doctor, the injuries on Marangmai Murmu were ante-mortem in nature and caused within 36 hrs. of the post-mortem examination.

In the opinion of the doctor, cause of death was due to shock and haemorrhage resulting from the injuries sustained by Marangmai Murmu on account

of assault on her by hard and blunt substance.

7. Sri S.P. Roy, the learned counsel for the appellant has contended that: (i) presence of the appellant in his house on the fateful day/ night has not

been established, (ii) there is serious inconsistency in testimony of the informant, (iii) none of the independent witnesses has supported the

prosecutionÃ¢â‚¬â„¢s case, and (iv) motive for the crime has not been proved by the prosecution.

8. To support his submissions, the learned counsel for the appellant has referred to a decision of this Court in Ã¢â‚¬Å“Lukhiram Murmu Vs. The State of

JharkhandÃ¢â‚¬â€ in Criminal Appeal (DB) No. 143 of 2010.

Paragraph nos. 8 of the aforesaid decision reads as under:

Ã¢â‚¬Å“8. One of the circumstances found proved by the trial judge is that the dead body was found in the house of the accused, and the other

circumstance is that blood stained axe was recovered from the earth near the dead body on the information of the accused. On recovery of dead body

from the house of the accused, the trial judge has raised presumption under section 106 of the Evidence Act, but then there is no evidence led by the

prosecution that it was the accused and accused alone who was present in the house in the fateful night of 21.10.2007. It has also not been proved by

the prosecution that except the accused no other person could have entered his house and, in fact, did not enter his house in the night of 21.10.2007.

Evidently, presumption u/s 106 of the Evidence Act, on the ground that the accused being inmate of the house is under a duty to reveal how death of

his wife has been caused, cannot be raisedÃ¢â‚¬â€‹.

9. The case set up by the prosecution against the appellant is based on circumstantial evidence. The law on the circumstantial evidence is by now

well-settled. In a case founded on circumstantial evidence, the prosecution must first prove the incriminating circumstances against the accused and

then prove that the chain of incriminating circumstances is so complete that these are pointing towards guilt of the accused and that it was the accused

and accused alone who has committed the crime. In Ã¢â‚¬Å“Padala Veera Reddy v. State of A.P.Ã¢â‚¬ reported in 1989 Supp (2) SCC 706, the HonÃ¢â‚¬â„¢ble

Supreme Court has laid down the tests, which the prosecution in a case of circumstantial evidence must satisfy;

Ã¢â‚¬Å“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

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

(3) 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 non else; and

(4) 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.Ã¢â‚¬â€‹

10. To prove the charge under section 302 IPC against the appellant for committing murder of his wife, the prosecution has relied on the following

circumstances: (i) last-seen together, (ii) quarrel between the appellant and his wife on 27.09.2007, (iii) dead body of Marangmai Murmu is found in

her marital home, (iv) homicidal death of Marangmai Murmu, and (v) the medical evidence.

11. The evidence laid by the prosecution against the appellant is primarily based on testimony of the informant and the doctor who has conducted the

post-mortem examination, but then, it is well-settled that it is not quantity of the evidence rather it is quality of the evidence which matters the most in

a criminal trial. Section 134 of the Indian Evidence Act, 1871 provides that no particular number of witnesses is required to prove a fact. The

testimony of informant is reliable and trustworthy. He is not an eye-witness to the actual occurrence in which Marangmai Murmu has died but his

evidence on quarrel between the appellant and his wife, the appellant being drunk on 27.09.2007 and his seeing injuries on his sister has remained

unshaken. In fact, there is no serious challenge by the defence during his cross-examination on the aforesaid aspects of the matter.

12. Sri S.P. Roy, the learned counsel for the appellant has contended that the informant who has initially stated in his fardbeyan that he was informed

by a co-villager, namely, Hopan Ba about the assault and death of his sister has changed his version when he was examined in the court and said that

the appellant himself came to him, brought him to the village Dhankunda and asked him to take away the dead body of his sister and, therefore, he is

not a reliable witness.

13. We are not inclined to accept this submission, primarily for the reason that during his cross-examination the informant has said that he does not

know what has been written in the fardbeyan. Compared to the statement of a witness before the police it is his statement in the court which is on

oath has to be accepted. In this context, we further find that during the cross-examination this fact, whether the informant has stated in his fardbeyan

that he was informed by Hopan Ba about the assault and murder of his sister, has not been put to the Investigating Officer. During his examination in

the Court, if a witness resiles from his statement made before the police his attention must be drawn to his statement made before the police. If the

witness denies his previous statement then during cross-examination of the Investigating Officer his attention is drawn to the statement of the witness

recorded under section 161 of the Code of Criminal Procedure and if the Investigating Officer affirms the same, the statement of the witness

recorded under section 161 of the Code of Criminal Procedure is proved. The law on the subject has been dealt with by the HonÃ¢â‚¬â„¢ble Supreme

Court in Ã¢â‚¬Å“V.K. Mishra v. State of UttarakhandÃ¢â‚¬â€‹, reported in (2015) 9 SCC 588, in the following words:

Ã¢â‚¬Å“19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the

attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used.

While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is

intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and

this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no

need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his

attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it

is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the

purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose

about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the

maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence

wanted to contradict him, then the court cannot suo-motu make use of statements to police not proved in compliance with Section 145 of the Evidence

Act that is, by drawing attention to the parts intended for contradictionÃ¢â‚¬â€‹.

14. In view of the aforesaid discussions, we find that there is no contradiction in testimony of the informant and one stray statement in his cross-

examination which may have occurred on account of lapse of time, forgetfulness, pressure of cross-examination etc. would not make his testimony

unreliable.

15. The prosecution has established through the evidence of Dr. Suban Murmu PW-4 that Marangmai Murmu has suffered a homicidal death. The

doctor has found lacerated wound, diffuse swelling over occipital region and bruises over right side of her chest and abdomen and the informant has

seen the injuries on his sister. On such facts, accidental or suicidal death of Marangmai Murmu is completely ruled out.

16. When dead body of a woman is found in her matrimonial home, her husband must say something how his wife has died. Under section 106 of the

Evidence Act, a presumption can be drawn against the husband because how his wife has died is a fact exclusively within knowledge of the husband.

The HonÃ¢â‚¬â„¢ble Supreme Court in the case of Ã¢â‚¬Å“Trimuk Maroti Kirkan vs. State of MaharashtraÃ¢â‚¬ reported in (2007) 1 SCC (Cri) page 8 0has

held thus:

Ã¢â‚¬Å“15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the

prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of

circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a

corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot

get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case has entirely upon the

prosecution and there is no duty at all on an accused to offer any explanation.

21. In a case based on circumstantial evidence where no eye witnesses account is available, there is another principle of law which must be kept in

mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanations or offers an

explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.Ã¢â‚¬‹

17. From the evidences laid by the prosecution it appears that it was the appellant alone who was the inmate of the house in which dead body of his

wife has been found on 29.09.2007. In his examination under section 313 of the Code of Criminal Procedure, the appellant is completely silent and he

has failed to offer an explanation how and under what circumstances his wife has suffered death. An evasive reply of an accused or his failure to

offer an explanation to incriminating circumstance(s) may not be the sole basis for his conviction for an office like murder, but then, his evasive reply

or failure to explain the incriminating circumstance(s) such as death of his wife in his house by itself would provide an additional link to the chain of

circumstances [refer, Ã¢â‚¬Å“State of Maharashtra Vs. SureshÃ¢â‚¬, reported in (2000)1SCC 471]. In the case of Ã¢â‚¬Å“Lukhiram Murmu Vs. The State of

JharkhandÃ¢â‚¬ on which the learned counsel for the appellant has placed reliance, the evidence was completely lacking on the point that immediately

after the occurrence or around the time when dead body of his wife has been found in his house he was seen there. In the present case, it has come

on record that soon before her death the appellant was in the company of his wife, he was drunk and quarreling with his wife. The informant pacified

them and sent them home. The appellant has called the informant to his house and asked him to take away the dead body of his sister. The informant

has stated in his cross-examination that the appellant confessed his guilt before him. Though strictly speaking it is not legally admissible evidence as

PW-1 and PW-2 have turned hostile, but it may not be completely out of the context to record that before the police both these witnesses have spoken

about assault by the appellant upon his wife and they were cross-examined with reference to their statement recorded under section 161 Cr.P.C. and

such statements have been proved through the evidence of the Investigating Officer. According to the doctor, death of Marangmai Murmu has

occurred within 36 hrs. of the post-mortem examination; according to the prosecution, Marangmai Murmu has died in the intervening night of

27/28.09.2007 and her post-mortem examination was conducted on 29.09.2007 at about 4:45 p.m. The medical evidence thus corroborates the time of

death of Marangmai Murmu.

18. On such evidence, in our opinion, a presumption under section 106 of the Indian Evidence Act has to be raised against the appellant. The

prosecution has proved homicidal death of Marangmai Murmu in her matrimonial home and the evidence on last-seen-together has passed the

proximity test as can be seen from the medical evidence.

19. The above being the factual scenario, we do not find any ground to interfere with the judgment of conviction of the appellant in S.T. Case No.

33/2008 and, accordingly, Criminal Appeal (D.B.) No. 308 of 2013 is dismissed.

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

21. Let a copy of the judgment be communicated to the trial court through FAX.