

Amrit Lakra Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Nov. 12, 2024

Acts Referred: Indian Penal Code, 1860 â€” Section 34, 201, 302
Evidence Act, 1872 â€” Section 106

Hon'ble Judges: Ananda Sen, J; Gautam Kumar Choudhary, J

Bench: Division Bench

Advocate: Saumya S. Pandey, Vandana Bharti

Final Decision: Allowed

Judgement

Heard the parties at length.

1. The appellants have preferred this appeal against the judgment of conviction dated 03.08.2002 and order of sentence dated 05.08.2002 passed by

the Sessions Judge, Gumla in Sessions Trial No. 186 of 1998, whereby the appellants have been held guilty and convicted for the offence punishable

under Sections 302/34 and 201 of Indian Penal Code and they have been sentenced to undergo imprisonment for life under Section 302 of IPC and

rigorous imprisonment of one year under Section 201 of IPC. Both the sentences were ordered to run concurrently.

2. The F.I.R. is at the instance of the father of the deceased, who is PW 2. The fardbeyan was recorded on 28.03.1998. He stated that on 22.03.1998,

his son Bimal Paul Tirkey aged about 16 years took meal along with the family members. At about 2:30 p.m., these appellants came to his house and

told Bimal Paul Tirkey to go for hunting birds. The younger brother-PW 1 of the deceased also wanted to accompany them. The younger brother of

the deceased and some other boys also followed them. In the forest, they hunted some birds, rats etc. In the evening, PW 1- younger brother of the

deceased returned to his house but the elder son did not return. The informant started searching for his son and enquired from the appellants about his

elder son. They told him that his son had left them and had gone to visit some of his relatives. The informant then searched the house of the relatives

but his son remained traceless.

3. Again on 24.03.1998, the informant went to the house of Albis Minj and Anup Lakra who then threatened him. The younger brother of the

informant also searched the deceased. When from the well of one Philip Lakra the dead body of the deceased was recovered, the police came there

and recorded the fardbeyan which resulted in Raidih P.S. Case No. 12 of 1998 under Sections 302/34 and 201 of IPC.

4. After investigation, police submitted charge sheet under Sections 302, 201, 34 of IPC. The case was committed to the Court of Sessions and the

charges were framed. Seven witnesses were examined in this case. The Trial Court after hearing the parties and going through the record and

evidences convicted the appellants for committing offence punishable under Sections 302/34 and 201 of IPC and sentenced as aforesaid.

5. It is argued by the learned counsel on behalf of the appellants that there is no direct evidence of occurrence, and the prosecution case rests on

circumstantial evidence of the deceased having been last seen with the appellants. Conviction on this evidence is not sustainable for the reason that

there is a long time gap between last seen and the discovery of the dead body. There is evidence to the effect that after having drink, appellants had

dispersed and were not together to raise presumption under Section 106 of the Evidence Act.

6. Learned counsel for the State has defended the impugned judgment of conviction and order of sentence. It is argued that it was incumbent on the

part of the appellants to disclose when did they part company after they were last seen with the deceased. Reliance is placed on Ram Gopal Vs. The

State of Madhya Pradesh (Special Leave Petition (Crl.) No. 9221 of 2018).

7. After hearing the parties, on going through the judgment, materials on record, we find that there is no eye witness to the occurrence of commission

of murder. This case is based on circumstantial evidence. Main circumstantial evidence is that the deceased was last seen in the company of these

appellants. To prove these facts, the prosecution has produced the informant-PW 2, brother of the deceased-PW 1 and PW 5 as the witness. The

informant stated that these appellants came and took his son along with them on the pretext of hunting birds. His son went to the river. The younger

son of the informant i.e. PW 1 also followed them. PW 1, who is the younger brother of the deceased, also stated that these appellants came to the

house of the informant and with these appellants the deceased went to the river for hunting birds. PW 1 further stated that he along with his friends

also accompanied them. After hunting, these appellants told PW 1 and his friends to leave. PW 1 and his friends then left. Evidence of these two

witnesses clearly suggests that these appellants were last seen with the company of the deceased.

8. Another important witness on this aspect is PW 5 who is a lady and sold local alcohol in Tangartoli. She stated that these boys came to her house

on Sunday at the time of sunset. She had taken the name of Bimal, Thelber, Amrit, Anup and Nabor. She said that six boys were there and after

hunting they came to her house and cooked the birds in the courtyard and consumed wine and Haria (indigenous wine) and thereafter they left. She

stated that the dead body of the deceased was found from the well. This witness also supports the prosecution case that the deceased was in the

company of these appellants. Thus, one of the circumstances that the deceased was last seen in the company of these appellants has been proved by

the prosecution.

9. PW 7 is the doctor who conducted the postmortem. He found the following injuries:-

i. Rigor mortis absent on both upper and lower limbs whole body swollen in decomposed peeling of skin with maggot all over body.

ii. Eye bulged out and eaten by maggot. Tongue protruded outside the mouth and swollen.

iii. Bruise on both thigh muscle 4" x 2".

iv. Fracture of hyrune bone with bruise marks over front and side of neck size 1/2" and 1/4".

v. Fracture of body of sternum.

vi. Fracture of 3rd, 4th, 5th ribs right side.

vii. Fracture of 4th and 5th ribs left side chest with injury to lungs.

viii. Bruise over heart muscle.

ix. Brain matter liquefied.

10. He opined that injury nos. 5, 6, 7, 8 and 9 were grievous in nature. As per the doctor, the weapon used to commit murder was a hard and blunt

substance and the cause of death was asphyxia due to strangulation and hemorrhage and shock and lung injuries. The postmortem report was marked

as Ext.3. From the evidence of the doctor, we hold that the prosecution has been able to prove the homicidal death of the deceased.

11. Since the entire case is based on the circumstantial evidence, the prosecution must prove the motive of committing murder.

12. None of the witnesses has come up to substantiate or even whisper about the motive behind the crime. This is a case where these appellants had

gone to the house of this informant, requested the deceased to accompany them in hunting. The deceased gladly accompanied them. They were seen

together in the house of PW 5 consuming alcohol. There is nothing in the evidence of these witnesses i.e. PWs. 1, 2 and 5 which would suggest that

there was any element of threat upon the deceased by these appellants or there was past enmity. In contra distinction to cases based on direct

evidence, in a case of circumstantial evidence, motive assumes significance. Absence of motive can be fatal to the prosecution case if the chain of

circumstances does not unequivocally point to the guilt of the accused.

13. Further, in this case solely on the basis of last seen theory, these appellants have been convicted. It would not be proper to convict any of the

accused solely on the basis of last seen theory without there being any corroboration or additional circumstances. In this case, save and except the last

seen theory there is no other additional circumstances.

14. As held above, apart from the absence of motive, the time gap is also long as the deceased went missing on 22.03.1998 and the dead-body was

found on 27.03.1998. It is also surprising that after the deceased went missing, no missing report was lodged. It was lodged only after the dead-body

was recovered i.e. after six days. Though the doctor, who conducted the postmortem, has opined that the time of death is 5 to 7 days prior from the

date of conducting the postmortem, yet the delay in lodging the FIR is also fatal in this case.

15. It is true that the accused have to explain when they parted company with the deceased after being last seen, but in this case PW 5 has stated that

all of them were present in her house and were consuming liquor but she has not stated whether they had parted together or they parted separately.

16. For the above reasons we are of the view that appellants are entitled to the benefit of doubt.

17. For the reasons discussed above, the Judgment of conviction and sentence passed by the learned Trial Court in this appeal is,

accordingly, set aside and the Criminal Appeal is allowed.

Since the appellants are already on bail, their sureties are discharged from the liabilities of their bail bonds.

Pending I.A., if any, stands disposed of.

Let the Trial Court Records be sent back to the Court concerned forthwith along with a copy of this judgment.