

Karma Oraon Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 23, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€” Section 161, 313
Indian Penal Code, 1860 â€” Section 34, 201, 302, 364
Evidence Act, 1872 â€” Section 3, 106, 114

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

Bench: Division Bench

Advocate: Hemant Kumar Shikarwar, Shweta Singh

Final Decision: Dismissed

Judgement

Gautam Kumar Choudhary, J

1. This appeal is preferred against the judgment of conviction dated 24.05.2023 and order of sentence dated 26.05.2023, passed by learned Additional

Sessions Judge (Fast Track Court-I), Gumla against the appellants under Section 302/34 and 201/34 of the IPC.

2. Informant is the son of the deceased. As per the FIR, on 05.09.1991 at 6:00 p.m. the informant returned home after grazing cattle, when he was

informed by his mother Dahri Oraon and sister Sundar Kumari that appellants along with four-five others had assaulted his father (Sakra Oraon) and

took him towards west in Baskura Forest. When he went in search of his father, he met with the father of the appellants namely Bandhan Lohra and

came to know that his father had been done to death in the jungle area. Chhotan met him in the jungle area where he abused him and threatened him.

Despite frantic search, the dead body could not be found. Genesis of the offence has been stated to be land dispute for which his father had been

killed in a preplanned manner.

3. FIR being Gumla P.S. Case No. 178 of 1991 was registered against four accused persons including appellants under Sections 364/34 of the IPC.

Later on, Section 302/201 of the IPC was added. After investigation, Police submitted charge-sheet against the four accused persons and they were

put on trial. The learned trial Court had acquitted two accused persons and convicted these appellants.

4. Learned trial Court has convicted both these appellants for committing the murder and disposing of the dead body of Sakra Oraon to conceal the

evidence and sentenced them for different terms of imprisonment under Sections 302/34 and 201 of the IPC.

5. It is argued by the learned counsel on behalf of the appellants that there is no direct eye witness to the incidence in which Sakra Oraon was

allegedly killed. As per the prosecution case, Sakra Oraon was abducted on 05.09.1991, however, the post-mortem was conducted on 08.09.1991 at

7:00 a.m. and the Doctor opined that the death of the deceased had taken place within 36 to 48 hours. This falsifies the prosecution case that soon

after the abduction, the deceased was murdered by the appellants on 05.09.1991. The chain of circumstances has not been proved from which an

inference can be drawn that it was the appellants and none else who had committed the offence.

6. Learned A.P.P. has defended the judgment of conviction and sentence. It is argued by the learned A.P.P. that there is clinching evidence against

these appellants that they abducted the deceased from his house and had briefly taken the deceased to their own house and from there he had been

taken in the jungle area after that, his dead body was found. There is evidence of last seen and motive of land dispute, is also proved from which it can

be safely deducted that it was the appellants who were the author of crime.

FINDING

7. Homicidal death of the deceased is not contested and is established by the post-mortem examination report. P.W. 3- Dr. A.K. Prasad who

conducted the post-mortem examination on the deceased and found the following ante-mortem injuries on his person:-

i) Incised wound size 3" x 2" x 3" on the left side of forehead, with fracture of underlying frontal and left parietal bone with 3" diameter hematoma in frontal lobe

of the brain.

ii) Incised wound size 3" x 2" x 1" on the head 1" right to the injury no. (i).

iii) Incised wound size 3" x 2" x 1" on the head 2" right to the injury no. (ii).

iv) 3" diameter abrasion on the left side of the chest anteriorly with fracture of 4th, 5th and 6th ribs 3" away from the mid-line with the laceration of left lob. Plural

cavity of the left side was full of blood clots.

v) Lacerated wound 1" diameter on the front of right knee.

vi) Hematoma 3" diameter over left forearm.

Doctor opined that injury nos. (i) and (iv) were grievous in nature and injury nos. (ii), (iii), (v) and (vi) were simple in nature. Injury nos. (i), (ii) and (iii)

were caused by sharp cutting weapons and injury nos. (iv), (v) and (vi) were caused by hard and blunt substance. Cause of death was shock and

hemorrhage.

8. With regard to offence, admittedly there is no direct eye witness to the incidence and case rests on last seen. Legal requirement to prove a fact

either by direct or circumstantial evidence, is settled by a long line of judicial precedents. Prudent man's test, is the bed rock of proof as provided

under Section 3 of the Evidence Act. Proof in any case, is a matter of logical deduction from evidential facts. Once the incriminating circumstances

are proved, matter for consideration before a Court is whether they lead to an irresistible conclusion that the person charged was guilty of the offence.

If there are gaps in the chain of circumstance from which a reasonable alternative hypothesis can be drawn regarding the innocence of accused, he is

entitled to benefit of doubt.

9. In the present case, deceased was abducted from his house on 05.09.1991 and the case was lodged the very next day on 06.09.1991. Informant is

the son and a rustic tribal who has barely signed over the fardbeyan. As per the FIR, he was not at home when his father was abducted and was

informed about this by his mother Dahri Oraon and sister- Sundar Kumari. As per the deposition of informant (P.W. 12), his mother Dahri died and

therefore, she could not be examined. This leaves us with the evidence of P.W. 1- Sundar Kumari, who was at home when her elder father (uncle)

was abducted. She has deposed in para-1 that on the day of occurrence, she saw appellants assaulting and taking him away. Later, she informed

about this to Bhauka Oraon (informant), Bolo Oraon and her aunt. She saw the appellants taking the deceased to the Rugali Tilla and thereafter his

dead body was found.

10. She had seen both these appellants dragging her uncle Sakra Oraon along with four unknown persons. This witness is a tribal girl who was aged

18 years at the time of deposition and had put her LTI on the deposition. She was cross-examined at length, but defence has failed to impeach her

credit in the cross-examination. She has not been confronted with her earlier statement under Section 161 of the Cr.P.C. to elicit any contradiction.

Her testimony is corroborated by the informant (P.W. 12) who has deposed that when he returned home, he was informed about the incidence by this

witness. He further deposed that they had enmity with Lohra Oraon and his sister had illicit relationship with Karma Oraon. Nothing contradictory has

come out in his cross-examination. Thus, motive for the offence is also proved.

P.W. 4 is the Investigating Officer of the case, he proved the place of occurrence at Narya Tiled house of Bhauka Oraon and another place of

occurrence is Chattan of river.

11. From the evidence of P.W. 1, it is amply clear that it was these appellants who had taken the deceased from his house and while being taken, he

was also being assaulted by them. This is further corroborated by the testimony of P.W. 5, who is a co-villager and had seen the appellants taking

away the deceased. The deposition of P.W. 9 is also on the same line as she had seen the appellants taking the deceased from the house. A combined

reading of testimony of these witnesses leaves not a modicum of doubt that appellants had forcibly taken the deceased and then his dead body was

found from the jungle area, which is duly proved by the I.O. and other witnesses.

12. Once it is proved that these appellants had abducted the deceased and shortly thereafter his dead body was found, onus shifts on the accused

under Section 106 of the Evidence Act to explain as to what they did with their prey or when did they part company with the deceased. This was a

fact which was within the special knowledge of the appellants and they could have only explained it, but no explanation has been offered on behalf of

the defence. Law of Evidence does not cast an unconscionable burden on the prosecution to prove a fact on which only the accused could throw

light. Therefore, once the foundational facts are proved onus shifts in such case on the accused. A presumption of fact is also liable to be drawn in

such cases, that it was the abductor and not else who committed the offence. I find fortified in this view by the ratio laid down in *State of West*

Bengal v. Mir Mohammad Omar & Others, (2000) 8 SCC 382 which was a case of abduction, held as under,

“33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved.

Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact

from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has

gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it

thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct, etc. in relation to the facts of

the case.

36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: “When any fact is

especially within the knowledge of any person, the burden of proving that fact is upon him.

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to

cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless

the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

13. For the reasons as discussed above, I do not find any infirmity in the judgment of conviction and sentence.

Criminal Appeal accordingly stands dismissed.

Appellants are on bail, their bails stand cancelled. They are directed to surrender before the learned Court below within two weeks of receipt of copy

of judgment to serve the remaining part of sentence.

Pending Interlocutory Application, if any, is disposed of.

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