(2006) 03 JH CK 0005

Jharkhand High Court

Case No: Criminal Appeal No. 226 of 1990

Lohru Manjhi, Aklu Manjhi and Bihanu Manjhi		APPELLANT
	Vs	
The State of Jharkhand		RESPONDENT

Date of Decision: March 27, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: N. Dhinakar, C.J; Rakesh Ranjan Prasad, J

Bench: Division Bench

Advocate: Lilly Sahay, for the Appellant; T.N. Verma, APP, for the Respondent

Final Decision: Allowed

Judgement

1. The appellants 1 to 3 were arrayed as A-1, A-2 and A-3 before the Sessions Judge, Gumla. They were charged u/s 302/34 of the Indian Penal Code, on the allegation that between 24.8.1989 and 25.8.1989 they caused the death of the deceased Ignes Master. The trial court, finding the accused-appellants guilty, as charged, sentenced them to imprisonment for life, which is under challenge in this appeal.

2. The deceased, Ignes Master, is the father of PW-5, George Munda. He left the house on 24.8.1989 to go to Orga Bazar. He did not return home. The inmates of the house thought that the deceased would have gone to visit his relatives. On 26.8.1989, the wife of the deceased went to Purnapani in the State of Orissa but could not find her husband. On 27.8.1989, she went in search of her husband, accompanied by the other villagers. When they were near the bank of a river, they found a body floating. The body was brought out and it was identified to be the body of the deceased. George Munda, the son of the deceased, went to Orga Police station and gave a complaint. The said Fardbayan is Ext. 5, on the basis of which a crime was registered and investigation was taken up.

3. During the course of investigation, witnesses were examined and thereafter the body was sent for medical examination.

4. On receipt of the dead body and the requisition, PW-6, Dr. Bijay Shankar conducted post mortem on the dead body. He did not find any external injury. On opening the thorax, the doctor found fracture of the 3rd, 4th and 5th ribs on the left side. He also found fracture of 4th and 5th ribs on the right side. The doctor issued Ext. 3, the post mortem certificate, opining that death could be on account of mechanical pressure on the chest wall or by pressing the chest wall with hand or feet.

5. After the completion of investigation, final report was filed against the appellants, who, when questioned u/s 313 of the Code of Criminal Procedure, on the incriminating circumstances, appearing against them, denied all the circumstances.

6. The learned Counsel appearing for the appellants submits that the prosecution failed to establish that the appellants committed the murder and that the evidence of PW-7, Rajendra Pradhan, who was examined as an eye witness is not trustworthy, since his evidence is not supported by any other material.

7. On the above contention, we have heard Mr. T.N. Verma, learned A.P.P., appearing for the State.

8. It is no doubt true that the deceased Ignes Master died on account of homicidal violence, as the said fact stands proved through the evidence of PW-6, Dr. Bijay Shankar, who conducted autopsy on the dead body.

9. The case of the prosecution is that there were dispute pending between 1st and 2nd appellant and the deceased and, therefore, the deceased was murdered by the three appellants. According to the prosecution, PW-7, Rajendra Pradhan, while on his way, found appellant Nos. 1 and 2 near the village Dhonri Bahaar and that when they arrived Rautiatoli, the 3rd appellant also joined them. According to him, they accosted the deceased and beat him. He has further stated that on seeing him, the appellants threatened him and, therefore, he went away. The prosecution by letting the above evidence wanted to show that the appellants, three in numbers, beat the deceased and later threw the body into the river. Though, PW-7 claims to have witnessed the occurrence, his evidence is not supported by any other material. According to the prosecution, PW-7 informed the fact of his witnessing the occurrence to Munni Mukherjee, PW-3, who, according to the prosecution, informed the same to Martin Longa, PW-2 and that Martin Longa, in turn, informed George Munda, PW-5, who led Ext. 5, the Fardbayan. If PW-7 had seen the occurrence and then informed Munni Mukherjee, PW-3, who, in turn, informed Martin Longa, PW-2, and that the said information was passed on to George Munda, PW-5, then PW-5, George Munda, would have certainly mentioned this fact in the Fardbayan, Ext. 5, which was registered at the police station on 27.8.1989. A perusal of Ext. 5 shows that there is no whisper about PW-7 witnessing the occurrence

and passing on the information to other witness. It is also worthwhile to remember at this stage that in the complaint, Ext. 5, PW-5 has only stated that he has strong suspicion against A-1 and A-2 and did not even mention the name of A-3 as the person, who had joined with A-1 and A-2, though the evidence of PW-7 is to the effect that A-3 after joining A-1 and A-2, beat the deceased and that he saw the occurrence. We, therefore, find it not safe to act upon the evidence of PW-7, whose evidence was recorded on 29.8.1989. We cannot also act upon the evidence of PW-7 as his conduct in not going to police station to give the complaint as to what he saw, when according to the prosecution, the occurrence took place much earlier to 26.8.1989 also makes his evidence untrustworthy. We, therefore, reject the evidence of PW-7.

10. We also do not find it safe to act upon the extra-judicial confession, alleged to have been made by A-3 to PW-3. PW-3 turned hostile and, in fact, if there had been a statement by the 3rd appellant implicating himself with the crime then the said fact would have been mentioned by her to the witness. No such material is found in the evidence of the other witnesses, though, according to the prosecution, PW-3 informed PW-2 that A-3 made statement, implicating himself in the crime. The extra-judicial confession not having been proved and this Court, not having placed any reliance on the evidence of PW-7, cannot but acquit the appellants and they are accordingly acquitted.

11. The appeal is allowed and the judgment and order of conviction and sentence is set aside. It is reported that all the appellants are on bail; they are discharged from the liabilities of bail bonds.