

(2012) 03 JH CK 0026

Jharkhand High Court

Case No: Criminal Appeal (DB) No. 73 of 2002

Sandir Lohra @ Birsa
Lohra

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: March 27, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2012) 3 JCR 152

Hon'ble Judges: R.K. Merathia, J; Dhrub Narayan Upadhyay, J

Bench: Division Bench

Advocate: A.K. Sahani, for the Appellant;

Judgement

1. This appeal is directed against the judgment of conviction and order of sentence dated 24.12.2001, passed by learned 1st Additional Judicial Commissioner, Khunti, Ranchi, in Sessions Trial No. 97 of 1994, convicting the appellant u/s 302, IPC and sentencing him to undergo R.I. for life. The prosecution case in short is that Sanika Munda @ Jugui Munda (mother of the deceased Manbodh Munda) lodged a fardbeyan on 21.06.1993 at about 1 p.m. before the police that in the preceding evening at about 4 p.m. Manbodh Munda went to bazar but did not return in the night. At about 10 a.m. on 21.06.1993, Ghasi Rai Munda (not examined) informed her that dead body of her son Manbodh Munda was lying in "akhara" with injuries. The informant went and found her son lying dead with bleeding injuries. Nobody told her about the occurrence. The informant alleged that Manbodh Munda had illicit relation with Nandi Tuti, (PW 2) daughter of sarpanch Sahdeo Pahan (PW 1) and also with the daughter of Dukhan Swansi, (PW 5) due to which sarpanch Sahdeo Pahan and Dukhan Swansi used to be angry with the deceased.

2. The prosecution examined six witnesses. PW 1 is the sarpanch"-Sahdeo Pahan (father of PW 2). He said that when he was going outside his house, at 6 a.m. he saw

the dead body of the deceased lying in his "akhara". He did not identify the dead body. He called the villagers for identification. It learnt that dead body was of Manbodh Munda. He signed the inquest report. He said that he has got no knowledge that there was love affair between his daughter-Nandi Tuti (PW 2) and the deceased.

PW 2 is Nandi Tuti, who inter alia said that she was sleeping with the deceased in the night. At about 2.30 a.m., she heard the sound of throwing stone. She and Manbodh went outside the house. Manbodh Munda and the appellant proceeded while talking with each other. She could not hear their conversations. She followed them. Appellant asked her to go back in the house. On this, she came back and closed the door. In the morning, she found the dead body of Manbodh Munda lying in "akhara" in front of her house. There was blood also. Due to fear, she went to the house of her relative. She also said that earlier she had love affair with the appellant. Thereafter, she had love affair with Manbodh Munda for about two months prior to the occurrence. Manbodh used to come and live with her. This was not known to her parents. Appellant used to threaten that he will kill Manbodh Munda. About 10-15 days prior to the occurrence, there was quarrel between the appellant and Manbodh in the market. There also, the appellant threatened to kill Manbodh Munda. The appellant also asked to break the relationship. In her cross-examination, she said that PW 1 her father, was sarpanch in the village having good influence. Police personnel used to stay in her house. Her house is in the middle of the village. She resided in the house with her parents. When Sandir Lohra (appellant) threw stones, her parents did not hear the sound.

PWs 3 and 4- are the seizure list witnesses of blood stained knife and blood stained soil.

PW 5-Phagni has been declared hostile.

PW 6 is the doctor, who conducted postmortem. He found two stab injuries on the chest caused by sharp cutting weapon, may be by "chhura".

3. The conviction is based on the evidence of PW 2 but it is not safe to rely on her evidence. She was sleeping with the deceased in her house, in which her parents also reside. She heard the sound of throwing stones but her parents did not hear such sound. She did not follow when the appellant and the deceased were proceeding from her house talking with each other only because the appellant is said to ask her to go inside the house, in spite of the fact that the appellant is said to have threatened to kill the deceased. She also said that her parents were not knowing about her love affairs. She saw the dead body in the morning at about 5.45 a.m. but did not disclose to anybody about the occurrence of the previous night, and went away to her mama, Akhara, where the dead body was found is a few yards away from her house. I.O., the informant and Ghasi Rai from whom, the informant got Information, have not been examined in this case. The alleged confession has

not been proved. Therefore the recovery of knife on the alleged confession cannot be relied. There is no eye-witness to the occurrence.

4. In the facts and circumstances of the case, it is not safe to uphold conviction only on the testimony of PW 2. In our opinion, the prosecution has not been able to prove its case against the appellant beyond all reasonable doubt. In the result, the appellant is acquitted giving benefit of doubt. The impugned judgment of conviction and order of sentence dated 24.12.2001, passed by the 1st Additional Judicial Commissioner, Khunti, Ranchi, in Sessions Trial No. 97 of 1994, against the appellant, is set aside. Appellant is directed to be released from jail forthwith, if not wanted in any other case.