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(2008) 08 JH CK 0030

Jharkhand High Court

Case No: None

Debendra Dehri — APPELLANT

Vs

State of Jharkhand — RESPONDENT

Date of Decision: Aug. 27, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2008) 4 JCR 367

Hon'ble Judges: Dhananjay Prasad Singh, J; Amareshswar Sahay, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. By the impugned judgment dated 12.3.2003 in SC No. 90 of 2001 passed by the 1st Additional Sessions Judge. Dumka, the sole appellant has been convicted for the offence u/s 302 of the Indian Penal Code and has been sentenced to undergo R.I. for life for committing murder of Somesh Chandar Dehri, husband of the informant, Gendi Devi.

2. The facts in brief are that an FIR was registered on the basis of Jardbeyan of PW 9, Gendi Devi on 18.6.2000. The informant in the said fardbeyan alleged that while she was returning from "Haat", on 17.6.2000 along with her husband and mother and at about 8:00 P.M. when they reached near village Pipra, four persons namely Devendra Dehri, Laxman Dehri, Kisto Dehri and Hariya Dehri appeared and caught hold of her husband and then appellant Debendra Dehri assaulted her husband by means of a tangi on his head due to which her husband fell down on the ground and then he cut the neck of her husband by means of tangi due to which her husband died at the spot. The motive behind the occurrence was alleged to be the land dispute between the parties.

3. The police after completion of investigation submitted charge sheet against four accused persons and thereafter all the accused persons named in the FIR were put on trial. The accused persons denied the charges levelled against them.

4. On behalf of the prosecution altogether 10 prosecution witnesses were examined to establish the charges. The Investigating Officer was not examined. Even according to the prosecution, the informant is the only eyewitness to the occurrence. The appellant has been convicted and sentenced by the Trial Court relying on the statement of the aforesaid eyewitness PW 9, the informant.

5. We find that out of the 10 witnesses examined by the prosecution, PW 1 Sawitri Devi is the mother of the informant, PW 2 Babulal Kisku, and PW 3 Dinesh Hembram have been declared hostile, PW 4 is Dr. Ramesh Prasad Verma, held postmortem examination on the body of the deceased, PW 5 Dhani Dehri, PW 6 Shambhu Dehri, PW 7 Madan Dehri and PW 8 Budhan Dehri are the witnesses who came to know about the occurrence from the informant PW 9, PW 10 is a formal witness, who proved the signature of Officer-in-Charge on Ext. 3. PW 9 is the informant and widow of the deceased. Sub-para it appears that the whole case of the prosecution hinges upon the solitary evidence of the eyewitness i.e., the Informant (PW 9).

6. Mr. Laljee Sahay, learned Counsel appearing for the appellant submitted that the conviction and sentence passed by the Trial Court against the appellant is not sustainable in the law as well as on facts for the reasons:-that on the same set of evidence the Trial Court has acquitted the other three accused persons against whom the informant had specifically alleged that they also took active part in the commission of assault on the deceased, but the Trial Court acquitted them holding that there was lack of evidence against them and therefore, the Trial Court has adopted two standards in weighing the evidence of prosecution evidence. Secondly that the statement of solitary eye witness is not at all consistent and her evidence is contrary to the evidence of the Doctor, PW 4, and thirdly that the alleged time of occurrence was about 8:00 P.M. even according to the statement of the informant and according to the statement of her mother there was no source of light at the place of occurrence and therefore, it was not possible for the informant or any body to see as to who assaulted the deceased and with which weapon. Accordingly, it is submitted that in such a situation on the evidence of PW 9 does not inspire confidence therefore, relying wholly on her testimony. The conviction of the appellant cannot be sustained.

7. In order to appreciate the submission of the learned Counsel for the appellant we have ourselves scrutinized the evidence of the prosecution witnesses in detail and then find force in the submission of the learned Counsel for the appellant. We find that the informant (PW 9), specifically stated in her evidence that her husband was assaulted by this appellant by means of a tangi on his head and other co-accused Laxman Dehri also assaulted him by means of tangi. She has further stated that this appellant cut the neck of her husband by means of tangi due to which he died, but we also find from evidence of PW 4, the Doctor that only three injuries were found on the person of the deceased. Injury No. (i) was lacerated wound with diffuse swelling over the left mandible bone of the deceased which according to the Doctor may be possible by fall on hard surface. Injury No. (ii) though was found to be an incised wound, but it was found to be simple in nature

and Injury No. 3 was found to be a penetrating wound over the right side of neck 3" x 1" deep to neck, which caused the death of the deceased but the same could have been caused by "chhura" as per the Doctor PW 4.

8. It is not a Case of the prosecution that the appellant assaulted the deceased, by means of chhura rather the specific evidence of the informant is that the deceased was assaulted by the appellant by means of tangi "Tangi is a heavy sharp cutting weapon but is not a pointed weapon whereas the injury No. 3 was found to be caused by any pointed weapon. In such a situation, the injuries found on the person of the deceased which caused his death does not fit in with the evidence of the informant PW 9. We further find from the evidence of PW 9 that the time of occurrence was about 8:00 P.M. and according to her while returning from "Haat" on the way her husband was behind her, and at that time four persons suddenly appeared and started assaulting her husband (deceased), but according to her mother (PW 1), who has been declared hostile, it was dark at that time and it was not possible to identify as to who assaulted and committed murder of the deceased. In view of the above facts, the evidence of PW 9 does not inspire confidence and therefore we are of the view that the conviction of the appellant for the offence u/s 302 of the Indian Penal Code on such unreliable evidence of PW 9 cannot be sustained.

9. We also find that on the same set of evidence the learned Trial Court has adopted two different standard in weighing the evidence of the prosecution i.e., one for acquitting the other co-accused and the other for convicting the present appellant. The learned Trial Court was not right in convicting the appellant for the offence u/s 302 of the Indian Penal Code and acquitting other three accused persons on the same set of evidence.

10. In view of the discussions and findings above, we hold that the conviction of the appellant for the offence u/s 302 of the Indian Penal Code passed by the Trial Court cannot be sustained.

11. Accordingly, this appeal is allowed and the judgment of conviction and sentence as passed by the Trial Court is hereby set aside and the appellant is acquitted. The appellant, who is in custody, is directed to be released forthwith, if not wanted in any other case.