

(2009) 01 JH CK 0032

Jharkhand High Court

Case No: Criminal Appeal No. 28 of 2000 (R)

Raman Lohra

APPELLANT

Vs

The State of Bihar (Now
Jharkhand)

RESPONDENT

Date of Decision: Jan. 22, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2009) 57 BLJR 1405

Hon'ble Judges: R.K. Merathia, J; Prashant Kumar, J

Bench: Division Bench

Advocate: Ram Kishore, Pradeep Kumar and Praful Kumar Jojo, for the Appellant; I.N. Gupta, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

1. This appeal is directed against the judgment of conviction and order of sentence passed by the learned Sessions Judge, Gumla in Sessions Trial No. 289/93 whereby and whereunder he convicted the appellant u/s 302 of the Indian Penal Code and sentenced him to undergo life imprisonment.

2. The case of prosecution in short is as per the fardbeyan of the informant P.W.-5 is that on 23.04.1992, the appellant, his father Ratiya Lohra and wife Kariyo Devi were in their house. On 24.04.1992 at about 3:00 P.M., he saw that the house of deceased Ratiya Lohra was closed from outside. It is further stated that later on the informant and other villagers opened the door and entered inside the house and they found that Ratiya Lohra, one of the deceased, was lying on the ground in unconscious condition whereas another deceased namely, Kariyo Devi was lying dead on a mat. It is further alleged that the informant and other villagers had found injury and thereafter they had been removed to hospital where the injured namely, Ratiya Lohra also died. It is alleged that Raman Lohra was not found in the house. It is

further alleged that deceased Kariyo Devi, who happened to be the wife of the appellant, was pregnant at that time and the appellant suspected that she became pregnant out of sexual relation with his younger brother and because of that there was strain relation between appellant and deceased.

3. On the basis of aforesaid fardbeyan, a case vide Gumla P.S. Case No. 28 of 1992 dated 24.04.1992 was instituted and police took up investigation. After completing the investigation, police submitted chargesheet against the appellant and on the basis of the same, cognizance was taken against him for the offence u/s 302 of the Indian Penal Code. It appears that since the case is exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. The charge u/s 302 of the Indian Penal Code was framed against the appellant and the same was explained to him to which he pleaded not guilty and claimed to be tried.

Thereafter, the prosecution had examined altogether ten witnesses in support of its case and one witness was also examined as Court witness, who has proved post mortem report. It further appears that after hearing the counsel for the parties, the Court below had convicted and sentenced the appellant as aforesaid, against which this appeal has been filed.

4. While assailing the judgment of the Court below, Sri Ram Kishore Prasad, learned Counsel for the appellant submitted that in the instant case there is no evidence against the appellant.

Accordingly, he submits that merely on suspicion, the impugned judgment was passed which cannot be sustained in this appeal. He lastly submitted that the appellant is in jail for about 15 years.

5. Learned Additional P.P., Sri I.N. Gupta submits that this is a double murder case and it has come in the evidence that the appellant was present in his house in the preceding night but the house was found closed from outside on the next day and the appellant was found absent, which cast suspicion that he has committed the crime and, therefore, the Court below has rightly convicted and sentenced the appellant for the aforesaid offence.

6. It is well settled principles of law that suspicion howsoever strong, it can not take the place of evidence for proving the guilt of accused. The prosecution is required to prove the case from direct or circumstantial evidence through cogent evidence. Keeping in view the aforesaid settled principles of law, we have carefully examined the evidence available on record. In the instant case, P.Ws.-1, 2, 3, 4 and 5 (informant) are witnesses of fact, who have only stated that on the next date of occurrence in the evening at about 3:00 P.M., they entered in the house of deceased and found that deceased, Ratiya Lohra was lying on the ground in injured condition whereas another deceased Kariyo Devi was found dead on a mat. They have not stated in their evidence that who has caused such injury on the person of aforesaid two deceased. However, they have cast suspicion on the appellant, who happened

to be the husband of the deceased Kariyo Devi as the relation between the appellant and Kariyo Devi was not good because the appellant is of the view that Kariyo Devi has sexual relation with his brother.

7. From perusal of entire evidence available on record, we find that witnesses have not stated anywhere in their evidence that this appellant had inflicted any injury on the person of deceased. Only because the appellant was not found present in the house, does not show that he has committed the murder of aforesaid two deceased.

8. Considering the aforesaid facts and circumstances, we find that the finding of the Court below is merely based on suspicion which, in our view, is not correct. Thus, in our view the appellant deserves benefit of doubt.

In the result, this appeal is allowed and the judgment of the Court below is set aside. The appellant is acquitted from the charges leveled against him. It is submitted by Sri Ram Kishore Prasad, learned Counsel appearing for the appellant that the appellant is still in custody, therefore, the appellant is directed to be released forthwith if not wanted in any other case.