

(2012) 09 JH CK 0121

Jharkhand High Court

Case No: Criminal Appeal (D.B.) No. 200 of 1993 (R)

Sohrai Oraon

APPELLANT

Vs

The State of Bihar (Now
Jharkhand)

RESPONDENT

Date of Decision: Sept. 24, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2013) 2 AJR 45

Hon'ble Judges: Prashant Kumar, J; Dhirubhai Naranbhai Patel, J

Bench: Division Bench

Advocate: S.N. Sinha, for the Appellant; D.K. Chakraborty, APP, for the Respondent

Final Decision: Allowed

Judgement

D.N. Patel, J.

The present appeal has been preferred by the appellant against the judgment of conviction and order of sentence passed by Additional Judicial Commissioner, Lohardaga in Sessions Trial No. 470 of 1991 (40 of 1991), whereby the present appellant has been convicted mainly for the offence punishable u/s 302 of the I.P.C. for life imprisonment by judgment of conviction and order of sentence dated 16th October, 1993 & 18th October, 1993. It is the case of prosecution that on 28.2.1991 at about 11 a.m. the informant -P.W. 12 Bahadur Oraon gave his statement before the police on 28.2.1991 that at about 6.30 a.m., he has been conveyed by Dhaniya Kumari (P.W. 1)- cousin sister of the informant that some persons had killed his father Gondal Oraon (deceased) and blood is oozing from his head. Upon her saying, the informant (P.W. 12) went to his uncle's house and found his uncle dead. He saw injuries on the head of the deceased by sharp cutting instrument at 3-4 places and thereafter several cuts on the body of the deceased. It is further a case of the prosecution that informant alleges against the present appellant that he had given threat to the deceased that he will not keep the deceased alive for more than

fifteen days. This is how the appellant was named in the FIR. Investigation was carried out, charge sheet was filed and the case was committed to the Sessions Court and upon recording the evidences of the prosecution witnesses and upon depositions of the prosecution witnesses, the appellant/accused has been convicted for the offence punishable u/s 302 of the I.P.C on the basis of circumstantial evidence.

2. Having heard counsels for both the sides and looking to the evidences on record, it appears that P.W. 12 is the informant of the case and he has been declared hostile. Looking to his deposition, nothing is proved against the appellant/accused. Similarly, P.W. 1, who is the daughter of the deceased has also turned hostile. P.W. 2 has also been declared hostile and P.W. 3 Soma Oraon has also turned hostile. Looking to their depositions, no circumstance against the appellant has been proved by the prosecution which will lead to the conviction.

3. We have also perused the depositions of P.W. 5 who is Bibi Oraon. Looking to the deposition of this witness also she is not an eye witness, nor she is a witness of earlier incident about the fact that the poison was administered to the appellant by the deceased. Nor she has heard the appellant-accused telling that he will not allow the deceased to be alive for more than fifteen days. P.W. 5 is a hear say witness, he gives a hear say evidence. Similarly, P.W. 6, who is also not an eye witness of any of the incident, nor this P.W. 6 has also heard the treat given by the appellant to the deceased. P.W. 6 is also hear say witness.

4. It further appears from the rest of the prosecution witnesses that they have not proved any circumstance against the appellant/accused which may lead to the conclusion that the appellant has committed murder of the deceased.

5. It appear that the whole case of the prosecution is based upon the hear say evidence and the so called recovery of the weapon at the behest of the appellant/accused. Looking to the depositions of the prosecution witnesses, it appears that the prosecution has failed to examine the seizure-panchnama witness. So far seizure list is concerned, prosecution has examined P.W. 2 Tembu Oraon. We have also perused the evidence of P.W. 2, who has been declared hostile and he has not proved the seizure list. The so called confessional statement given before police, I.O. P.W. 13, has no evidenciary value at all and that has also not been brought on record of the Sessions Trial. Thus, no circumstance which leads to only conclusion that appellant has committed murder of deceased, has been proved by the prosecution. This aspect of the matter, has not been appreciated at all by the learned trial court. In fact, there is no evidence at all against the appellant/accused whatsoever.

6. In view of this, we, therefore, quash and set aside the judgment of conviction and order of sentence passed on 16.10.1993 and 18.10.1993 respectively by Additional Judicial Commissioner, Lohardaga in Sessions Trial No. 470 of 1991 (40 of 1991).

Prosecution has failed to prove beyond reasonable doubt that the appellant has committed murder of Gondal Oraon and he is therefore, acquitted from the charges levelled against him by the prosecution. The appellant/accused is already on bail by suspending the sentence by this Court. The appellant is discharged from the liability of his bail bond. The appeal is allowed and disposed of.