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Krishna Mahto and Another Vs State of Jharkhand

None

Court: Jharkhand High Court

Date of Decision: Nov. 23, 2006

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 201, 302, 34

Citation: (2007) 2 JCR 308

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

Bench: Division Bench

Final Decision: Allowed

Judgement

1. Both the appellants stand convicted for the offence u/s 302/201 of the Indian Penal Code and sentenced to undergo RI for life u/s 302, IPC and

further sentenced to undergo RI for 7 years u/s 201 of the IPC by Judgment dated 7/9th August, 2001 in Sessions Trial No. 133 of 2000 by

Additional Judicial Commissioner-cum-Special Judge-1, Ranchi.

2. Brief facts leading to this appeal are that one Sunil Tirkey of village Baazpur in the evening of 27.10.1999 at about 8. p.m. approached the

informant Sukara Oraon of same village to accompany him for the purpose of a walk. According to the Informant both of them went out and

visited the house of one Pati Oraon uncle of the deceased and husband of PW 3. According to the informant when they were going out of the

house of PW 3, convict Krishna Mahto Invited them to share the drinks. The Informant along with deceased and the appellant Krishna Mahto

went in search of drinks and could not find it. As further stated when all of them reached near a bridge situated out side the village adjacent to Guru

Hospital, all of sudden appellant Shibhu Mahto arrived there carrying a sword. According to the informant both the appellants felled the deceased

on ground and cut the neck of Sunil Tirkey. The informant was threatened by them to be killed if he raised alarm. Thereafter they kept the dead

body by the side of the Road and took the Informant along with them to their house where they ate. Further stated they came back with a spade

and buried the dead body in a paddy field with the help of the informant. The informant was further asked by the appellants to sleep in the. hospital

and in the morning taken to another village form where he was forced to drink and eat and only in the evening of 28.10.1999 he was left alone.

3. The informant tried to find out the grand father of the deceased but could not locate him as he has gone out of the village. According to him

when the grand father of deceased PW 1 returned next day in the evening he narrated the incident to him. This PW 1 further asked him to wait till

morning so that he can report the matter to police. However, in the morning police arrived at the village and recorded the statement of the

informant. According to this informant the genesis of the occurrence was a love affair between the sister''s daughter of the appellants and the

deceased. The informant further asserted that though he has seen the occurrence, he could not help the deceased because of fear of the appellants.

The dead body was recovered from the paddy field in presence of witnesses. Statements of informant was recorded at 11 a.m. on 31.10.1999 on

the basis of which Ratu P.S. Case No. 85 of 1999 dated 31.10.1999 was registered against the appellants under Sections 302, 201/34 of the

Indian Penal Code. The inquest report was prepared and dead body was sent for post-mortem examination and finally charge-sheet was

submitted against both the appellants. The trial of the appellants was committed to the Court of sessions.

4. The appellants were charged and tried together for the above noted offences under Sections 302, 201/34 of the Indian Penal Code. The

learned trial Court found and held both of them guilty for the offences stated above and sentenced them as to undergo RI for life u/s 302, IPC and

seven years u/s 201, IPC.

5. The present appeal has been, preferred on the grounds that the learned trial Court has committed mistake by believing the statement of PW 2

Sukra Oraon who has taken part in the alleged offence. It is also asserted that the informant kept this information concealed for four days without

any probable and valid explanation. It is further asserted that the police has lodged the FIR after much delay and witnesses examined before the

trial Court were not trustworthy. It is also asserted that the genesis of the occurrence ''Love Affair'' between the deceased and the sister''s daughter

of the appellants has not been proved. The learned Counsel for the appellant Sri B.M. Tripathy further pointed out that even if the witnesses are

relied upon the delay in lodging of FIR after four days makes the whole story doubtful. The learned Counsel repeatedly pointed out that the

conduct of PW 2 Sukra Oraon itself creates doubt on the whole prosecution version. Its also asserted that PW 1 Rama Oraon said to be grand

father of the deceased also mentions that his statement were recorded by police on 30.10.1999 and the 10 PW 5 specifically asserted in his

examination-in-chief that fardbeyan was recorded on 31.10.1999, therefore, the registration of the case on 31.10.1999 and the fardbeyan of PW

1 recorded on 31.10.1999 vide Ext. 2 shows that the entire story is concocted one. Accordingly to Sri Tripathy, the informant himself given

different version and concealment of the fact of offence u/s 302, IPC discredits him.

6. We have considered the submission of the learned Counsel for the appellants along with the evidence on record. Admittedly the prosecution

story depends upon the credibility of PW 2 so called eye-witness of the occurrence. This witness Sukra Oraon has supported his fardbeyan,

recorded by police on 31.10.1999 in details. He has asserted in para 3 that when PW 1 returned after two days of the occurrence he narrated the

whole incident to him in the evening and with whom he was going to police station then police arrived itself. PW 5 had stated in his examination-in-

chief that the statement of PW 2 has been recorded by SI Ashok Kumar Mandal vide Ext. 2 at 11 a.m. at the place of occurrence. He has stated

the date of recording of this statement in the first line of his examination-in-chief on 30.10.1999 shows there is gap of 24 hours between the

statement recorded by police and lodging of FIR. This witness has further admitted that the dead body was recovered in presence of BDO Ratu

on disclosure of the informant. Now when the statement of PW 1 considered in this context, he admitted in cross-examination that on 30.10.1999

his statement was recorded by police. This witness has further stated that the dead body guarded for the whole night by him and two choukidars in

the night vide para 6 which further becomes clear vide para 9 that police has arrived at the place where offence has taken place at about 12 noon

on 30.10.1999. This also tallies with his admission vide para 4 that he returned to his village in the evening of 29.10.1999 and was informed by the

informant regarding the incident. According to him vide para 5 he started for police station next morning at 8 a.m. and the statement of the

informant was recorded at police station thereafter police arrived at the place of occurrence. This shows that there was a gap of 24 hours in

registration of the case and recording of the statement of PW 1 informant. If these witnesses are relied upon the whole investigation with

preparation of inquest report becomes doubtful.

7. As regards the genesis of the occurrence said to be Love Affair between the deceased and the sister"s daughter of the appellants is concerned,

no positive evidence is brought on record. The police has recovered a photograph from the pock-et of the deceased vide Ext. 4 but did not try to

confirm whether the said photograph was of the girl with whom love relation was alleged resulting in his death. The IO has admitted in his cross-

examination that the dead body was kept in a gunny bag tied with coffee colour Shawl which does not tally with the information given by PW 1.

The recovery of the dead body from the gunny bag has been admitted by PW 1 vide para 11. As against this, PW 2 during cross-examination has

stated specifically that due to love affair between Anua, sister"s daughter of the appellant, the deceased was killed as he has eloped with her. He

has explained that out of fear he did not disclose the occurrence to any of the villager earlier. However, he admitted in cross-examination that after

the occurrence he was forced to sleep for the whole night at the hospital and the appellants were not present there. It has also come on record that

next day he was roaming with them and did not dare to disclose the incident to any one. The defence has suggested that he was involved in a case

of murder vide Ratu P.S. Case No. 100 of 1998 along with PW 1. According to him vide para 15 the statement was recorded at the police station

thereafter they came back and the dead body was dug out next day. He also admitted that the dead body was kept inside a gunny bag and legs

were tied with Shawl. The conduct of this witness is not normal and he appears not reliable because in spite of threat he was left to his own in the

night of 27 and 28.10.1999 by the appellants. It is also well settled that the exculpatory statement of an accomplish requires to be corroborated

with circumstances before it is relied upon. As we have discussed above, the conduct of the informant by not disclosing the incident to any one for

two days right from the evening of 28.10.1999 creates a reasonable doubt on his veracity.

8. PW 3, the aunt of the deceased also kept quite for two days and did not make any effort to look for the deceased in spite of the fact that she

knew the deceased has gone out with the informant. She explained it that for two days she could not met Sukra Oraon and when she met he did

not disclose anything. The IO of this case has also not conducted the investigation properly. According to him he found the dead body on

disclosure of the informant but he did not enquire from PW 2 regarding the dead body concealing in a gunny bag with Sawl. He did not make any

effort to enquire form village Tiklitpla where the Informant has remained for one day after the incident. He further did not take any step to verify of

the identity of the photo of the girl found from the pocket of the deceased neither he tried to confirm whether any such illicit relationship existed

between the deceased and the girl Anua, sisters daughter of the appellants. Therefore the whole prosecution story revolving on the theory the

appellants committed this murder because of the love relation between Anua and deceased becomes doubtful.

9. Having considered the above mentioned facts and circumstances where the prosecution version is based upon the statement of PW 2 Sukra

Oraon whose conduct creates grave doubts on his veracity as well as the perfunctory investigation conducted by PW 5 makes the whole

prosecution case doubtful.

10. Having considered the above mentioned facts and circumstances we are of the opinion that the prosecution in the present fact has not been

able to prove beyond doubts the guilt of the appellants under Sections 302, 201/34 of the Indian Penal Code. In the result this appeal is allowed

and the conviction and sentence passed by the trial Court is hereby set aside. The appellants, who are in custody are directed to be released

forthwith, if not wanted in any other case.