

Naresh Jerai and Another - Appellants @HASH The State of Jharkhand

Court: JHARKHAND HIGH COURT

Date of Decision: May 11, 2016

Acts Referred: Evidence Act, 1872 - Section 3
Penal Code, 1860 (IPC) - Section 201, Section 302, Section 494

Citation: (2017) 1 AIRJharR 1 : (2017) CriLJ 1234 : (2016) 4 ECrC 130

Hon'ble Judges: D.N. Upadhyay and Ratnaker Bhengra, JJ.

Bench: Division Bench

Advocate: Krishna Murari and Rohit, Advocates, for the Appellants; Ms. Sadhna Kumar, APP, for the Respondent/State

Final Decision: Dismissed

Judgement

D.N. Upadhyay, J. - Heard the parties.

2. This criminal appeal has been directed against the judgment of conviction and order of sentence dated 19.5.2008 and 21.5.2008 respectively

passed by the Sessions Judge, West Singhbhum at Chaibasa in Sessions Trial No. 163 of 2007 arising out of Manjhaon P.S. Case No. 10/2007

corresponding to G.R. No. 145/2007 whereby the appellants have been held guilty for the offence punishable under Section 302/34 of the Indian

Penal Code and Section 201 of the Indian Penal Code and sentenced to undergo RI for life and to pay fine of Rs. 15,000/- each under Section

302/34 of the Indian Penal Code, RI for three years and fine of Rs. 1,000/- each under Section 201 of the Indian Penal Code. The appellant

Naresh Jerai has further been held guilty for the offence punishable under Section 494 of the Indian Penal Code and sentenced to undergo RI for

five years and to pay fine of Rs. 5,000/-. The sentences so passed were directed to run concurrently.

3. The prosecution case as it appears from fardbeyan of Kanu Ram Jerai recorded on 15.3.2007 at 17:00 hrs. at village Kukurusud, Tola -

Kusosai, P.S. - Majhaon, District - West Singhbhum at Chaibasa is that on 15.3.2007 at about 9:30 a.m., the informant could learn that slippers

belonging to wife of Naresh Jerai are lying near a public well situated at a distance of 200 yards West to the village. The water in the well also gone

dirty. The informant then collected information about the wife of Naresh Jerai and it was informed that she is not at home and the house is put

under lock. Thereafter, the matter was brought to the notice of other villagers and hook (Jhhaggar) was dropped into the well in which saree of the

deceased stuck and after pulling the hook, dead-body of Pani Jerai surfaced on the water. The matter was informed to Munda - Ganga Ram Tiriya

who also reached to the place and sent information to police through Rajendra Tiriya (PW 2). After receiving information the Police arrived at the

place, took out the dead-body of Pani Jerai from the well and fardbeyan of Kanu Ram Jerai (PW 1) was recorded. Inquest report was also

prepared at the place of occurrence.

On the basis of fardbeyan of Kanu Ram Jerai, Manjhgaon P.S. Case No. 10/ 2007, dated 15.3.2007, under Sections 302. 201 and 120-B/34 of

the Indian Penal Code was registered against the appellants and driver of Commander Jeep.

It is also disclosed in the fardbeyan that on 14.3.2007, at about 10:00 p.m., Naresh Jerai along with his brother-in law Mangal Hembrom

(appellants) had reached to village Kukurusud, Tola - Kusosai and after parking the vehicle, both of them along with the driver of the vehicle had

stayed in their house. Naresh Jerai was not happy with his wife Pani Jerai and, therefore, he had been living with his father at Kiruburu and he has

arranged his marriage with another lady to whom he has kept at his father's quarter.

The investigation was carried out, house of deceased Pani Jerai was inspected and certain incriminating articles were seized, statement of witnesses

were recorded and the articles seized were sent to Forensic Science Laboratory for its examination. Attendance of appellants were secured but

the driver of said vehicle remain traceless. Therefore, charge-sheet against both the appellants was submitted after completion of investigation.

Beside charges framed under Sections 302/34 and 201 of the Indian Penal Code against the appellants, separate charge against appellant Naresh

Jerai under Section 494 of the Indian Penal Code was also framed. To substantiate the charges, the prosecution has examined altogether ten

witnesses including the informant, the Investigating Officer and the Doctor and proved documents like Inquest Report, fardbeyan. Post mortem

Report, seizure list etc.

The learned trial Judge, placing reliance on the evidence and documents available on record held both the appellants guilty and inflicted sentence as

indicated above.

4. Learned counsel for the appellants has assailed the impugned judgment on the ground that no eye-witness has come forward to prove the

prosecution case. The learned Sessions Judge has erred in holding the appellants guilty on the circumstantial evidence available on record. The

evidence brought on record by the prosecution are not leading towards guilt of appellants excluding all hypothesis of their innocence. It is an

admitted case of the prosecution that the well from which dead body of Pani Jerai was recovered, is situated at a distance of 200 yards from the

house of deceased. If the deceased was strangled in her house itself, how the dead-body was taken up to the well, is unknown to the case

record. If it is presumed that dead-body of Pani Jerai was carried from the house up to the well then it was expected to be witnessed by some

persons of the village but no such evidence is available on record. Further more, if she was killed, it was not expected that dead-body with slippers

on her feet would be carried. Only because appellant Naresh Jerai was not having cordial relations with his wife, it will not be presumed that he has

committed murder of his wife and threw the dead-body into a well. As a matter of fact the circumstances available on record suggests that the

deceased might have fallen accidentally in the well and died due to asphyxia due to drowning.

By referring ""Modi's Medical Jurisprudence and Toxicology"" , it is submitted that in few cases, death might occur from obstructive asphyxia also

known as dry drowning caused by the laryngeal spasm set up by a small amount of water entering the larynx. In such a case, water does not enter

the lungs and the classical signs of drowning will be absent.

In the case at hand, no injury except bruise 1 1/2" x 1 1/2" over both sides of the neck were noticed by the Doctor at the time of Post-mortem

Examination. No fracture of hyoid bone was found. The witnesses including the informant have stated that water of the well got dirty and that is

also suggestive of the fact that fall of Pani Jerai into the well was accidental one. The evidence collected by the Investigating Officer does not

support the circumstances brought on record by the witnesses and the injuries noticed by the Doctor during post-mortem examination. Since there

was no apparent injury on the person of the deceased, question of oozing blood or mark of blood in the house of the deceased does not arise. The

investigation conducted in the case at hand did not answer as to how blood was fallen on the ground and how the blood mark was available on the

wall of the house of the deceased, whether it was human blood or blood of any animal. The circumstantial evidence available on record is full of

contradictions and suspicion and, therefore, the appellant should not have been held guilty on the basis of such contradictory evidence.

The learned counsel has submitted that the informant is none else but own uncle of the appellant. Naresh Jerai and his father were not having good

relation with the informant. The village property was in jointness. Naresh Jerai and his father Sagar Jerai were living at Kiriburu in a quarter allotted

by Steel Authority of India Limited. The village property was looked after by the informant. He has lodged this case levelling false allegation to put

Sagar Jerai and his family members in a trouble so that he may grab their property and to some extent he has succeeded in keeping Naresh Jerai

behind the bar for such a long period. The Investigating Officer has failed to trace out the vehicle which was allegedly used by the appellants on the

date of occurrence. No registration number of the aforesaid vehicle has been found out. On surmises and conjectures both the appellants have

been charge-sheeted and the learned Sessions Judge has wrongly held the appellants guilty for the offences alleged. The impugned judgment is

liable to be set aside and the appellant deserves acquittal.

5. Learned APP has opposed the arguments and submitted that the informant is none else but own uncle of the appellant - Naresh Jerai. It is

nowhere stated that relation between Naresh Jerai and the informant was strained from before. The contention made by the informant in his

fardbeyan is quite natural and his conduct to find out the dead-body of Pani Jerai was quite genuine and appealing. The circumstantial evidence

brought on record unerringly point towards guilt of the appellant. The witnesses have stated that on 14.3.2007, at about 10:00 p.m.. Naresh Jerai

along with his brother-in-law had come to his house situated within the village Kukurusud, Tola - Kusosai, P.S. - Majhgaon, on a Commander

Jeep. According to statement of PW 1 and PW 5, the vehicle was parked near house of the informant. The appellants with the driver stayed in the

house of Naresh Jerai where deceased was residing. In the morning of about 7:30 a.m. they left the village, it about 9:30 a.m. slippers belonging to

the deceased lying near the well were noticed by some women of the village. The matter was brought to the notice of the informant who collected

information about Pani Jerai and learnt that she is not at home and house is under lock. Thereafter, a hook (Jhaggar) was put into the well and

dead-body of Pani Jerai was detected. The matter was brought to the notice of Munda and then to the Police. Accordingly, the fardbeyan was

recorded and investigation was carried out. The Police after due investigation submitted charge-sheet against the appellants. PW 1 and PW 5 have

fully supported the prosecution case. Rajan Tiriya - PW 2, at the instruction of Munda had gone to inform the Police and he has supported this fact

in his deposition in Court. According to the evidence of Doctor, it was not a case of accidental fall or death of Pani Jerai due to drowning. The

Doctor has ruled out such possibility in his evidence.

Dr. Swapan Kumar Singh - PW 9 has conducted autopsy on the dead-body of Pani Jerai and he has found bruise on both sides of the neck and

the Doctor is firm about his opinion that death of Pani Jerai was due to asphyxia due to strangulation of neck. The Investigating Officer had

collected incriminating articles from the house of the deceased where the appellants had spent their night falling between 14 and 15 March. 2007.

The witnesses in whose presence inquest report and seizure list were prepared, have supported the prosecution case. The prosecution has well

proved its case beyond shadow of doubts and there is no merit in this appeal and the same is liable to be dismissed.

6. After hearing rival submissions, we have gone through the case record, evidences adduced and documents marked exhibit by the prosecution.

Admittedly, the prosecution case is based on circumstantial evidence and therefore we have to scrutinize, whether circumstantial evidence adduced

by the prosecution is sufficient to complete the chain pointing towards guilt of the appellants.

To find out answer we have examined the evidence of informant - Kanu Ram Jerai (PW 1). He has stated he could learn from some women of the

village that slippers belonging to deceased are lying near a Government well. He told them to find out whether Pani Jerai (deceased) is available at

home or not? He was informed that house of Pani Jerai is put under lock. Thereafter, he called some more women of the village and in their

presence hook was put with a rope into well. After a while saree of the deceased stuck in the hook and after pulling the hook up to the surface of

water, dead-body of Pani Jerai was seen. The matter was brought to the notice of Munda of the village who sent his Dakua (PW 2) to Majhgaon

Police for giving information. The Police arrived at the spot and took out the dead-body of Pani Jerai from the well. Fardbeyan of informant was

recorded and investigation was carried out. It further transpires from the evidence of PW 1, PW 5 and PW 8 that appellant Naresh Jerai was not

having cordial relation with his wife (Pani Jerai-deceased) and prior to the occurrence he has arranged his marriage with another lady to whom he

had kept in the quarter of his father situated at Kiriburu. What reflects from the evidence of these witnesses is that appellant Naresh Jerai instead of

living with his wife in the village, was living with his father in his quarter at Kiriburu. The strained relation prevailing between the appellant Naresh

Jerai and deceased - Pani Jerai is apparent from the evidence available.

PWs 1,5,6 and 7 have clearly stated that on 14.3.2007 both the appellants on a Commander Jeep had come to the village and the appellants had

stayed in his house situated in the village where Pani Jerai was residing. From the evidence of PWs 1 and 4 it also transpires that in the morning at

about 7:30 a.m. of 15.3.2007, the appellants left the village on said Commander Jeep but before leaving, they have provided rice beer to

neighbours. Thus evidence on record makes it clear, on that fateful night i.e. between 14/15 March, 2007, the appellants had come to the village

and stayed in the house occupied by deceased Pani Jerai. In course of investigation, empty bottles of liquor and blood spot in the room of Pani

Jerai had been seen. Articles available at the place of occurrence supports that the appellants had spent their night in that very house and they had

consumed liquor too.

7. Learned counsel for the appellants has been giving stress that Pani Jerai might have fallen into the well accidentally and that might be the reason

behind her death and to give force to his arguments, it was submitted that slippers of Pani Jerai were lying near the well and those slippers were

noticed by the witnesses. Furthermore, water of the well also got dirty.

Learned counsel has also referred Modi's Medical Jurisprudence and Toxicology and submitted that in a case of dry drowning death may occur

due to asphyxia and in such case of dry drowning, water is not found in lungs.

To rule out aforesaid arguments, we have again gone through the evidence available on record and Modi's Medical Jurisprudence and Toxicology.

Some sort of suggestions have been given to Dr. Swapan Kumar Singh (PW 9) but the Doctor has flatly refused to accept that such type of death

cannot be caused due to fall in well or river. The Doctor has admitted that no ligature mark was found over neck. No detailed cross-examination

has been done to the Doctor to disprove his finding given in the post-mortem report. According to the post-mortem report, bruise 1½ x ½

inches over both side of neck red in colour were found. Conclusive opinion of the Doctor is "cause of death - asphyxia due to strangulation of

neck".

According to Modi's Medical Jurisprudence and Toxicology strangulation is defined as the compression of the neck by a force other

than hanging. Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any

other means without suspending the body. When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as

throttling. In such case death is usually due to asphyxia. Appearance on the neck may vary according to the means used.

It is also indicated, if fingers are used (throttling), marks of pressure by thumb and the fingertips are usually found on the either side of the

windpipe. The thumb mark is ordinarily higher and wider on one side of the front of the neck, and the finger marks are situated on its other side

obliquely downwards and outwards, and one below the other. However, the marks are sometimes found clustered together, so that they cannot be

distinguished separately. These fingertip bruises, each discshaped and 1-2 cm in diameter, look like red bruises (six penny bruises) if examined

soon after death, but they look brown, dry and parchment like sometimes after death.

8. We have already stated the external injury appearing on the neck noticed by the Doctor during post-mortem examination. Besides bruises,

vomits was present over nose and mouth. Haemorrhage in subcutaneous tissues of neck beneath bruises. The finding of the Doctor appearing in

the post-mortem report clearly suggests that death was due to asphyxia as a result of strangulation. Though, learned counsel has not put any

question to the Doctor but after going through Modi's Medical Jurisprudence and Toxicology and the evidence of the Doctor, it was not at all a

case of accidental fall in the water and death due to asphyxia as a result of drowning. If a person will accidentally fall into well, he must sustain

other injuries like abrasion, may be haematomas if any part of the body come in contact with any hard substance of the well. In a case of dry drowning,

the injuries which the Doctor has noticed on neck and on dissection of head and neck shall never occur. Besides the medical evidence if a person

will go to fetch water from a well and fall accidentally in the well, the bucket and rope shall be available outside the well or into the water but it was

not detected during investigation. Therefore, the circumstances available near the well and the medical evidence clearly ruled out story of accidental

fall of deceased into that well. It is often seen that the offender after committing crime try to mislead the investigation and for that he either destroy

the evidence of the offence or sometimes create something to confuse the Investigating Officer.

In view of evidence of Investigating Officer there are two places of occurrence - first is house of deceased Pani Jerai and second is well from

where dead-body was recovered.

It has also come in the evidence that aforesaid well was situated 200 yards from house of the deceased and it is not acceptable that she had gone

there to fetch water and then fell down. The dirty water noticed by the witnesses further suggests that it was one being used by the villagers.

Normally in the morning hour the villagers go to fetch water from well but it is nowhere stated by any of the witnesses that any villager was seen

fetching water from that well.

We do not agree that availability of slippers of deceased near the well would lead to a fact that she had fallen into the well accidentally. To discard

aforesaid arguments of the defence, we have given reasoning in the preceding lines.

9. To sum up the findings, we just want to connect link of circumstantial evidence which unerringly lead to a conclusion that appellants had been to

the village on 14.3.2007 and they spent their night in the house, committed the offence and after causing the evidence of murder to disappear, left

the village in the morning. The links of chain of circumstantial evidence are motive that appellant Naresh Jerai was not having cordial relation with

his wife Pani Jerai (deceased). He was not regularly residing with her in the village rather he has arranged his marriage with another lady and kept

the second wife in the house of his father at Kiriburu. The appellants had come to the village during night at about 10:00 p.m. on a Commander

Jeep and they were seen by the witnesses while they were going to their house after parking the vehicle near the house of informant. They spent

their night and left the village in the morning which fact found support from the evidence of PWs 1, 5, 6 and 7. The place of occurrence inspected

by the Investigating Officer further corroborates that the appellants had been to their house and they consumed liquor during night. The articles

kept in the house of the deceased were not in order rather found scattered and mismanaged. After arrival of the appellants to their house, Pani

Jerai was not seen alive by any of the villagers. The post-mortem report does not suggests death of Pani Jerai within 24 hours rather it suggests

death occurred within 48 hours. Meaning thereby her death might have occurred between 14 and 16 March, 2007. Thus, we find that chain of

circumstantial evidence brought on record by the prosecution is complete and that unerringly point towards guilt of the appellant excluding all

hypothesis of their innocence.

10. We have carefully gone through the case record and we do not find any merit in this appeal and the same stands dismissed. The appellant No.

2 - Mangal Singh Hembram is on bail, his bail bond is cancelled and he is directed to surrender before convicting/successor Court within six weeks

from today failing compliance bail amount shall stand forfeited and the convicting/successor Court shall issue process to secure his attendance.