

Thutha Kharia Vs. State of Bihar

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Court : Jharkhand

Decided On : Feb-27-2017

Appellant : Thutha Kharia

Respondent : State of Bihar

Judgement :

1 Criminal Appeal No. 119 of 1992(R) ----- (Against the Judgment of conviction and Order of sentence dated 15/5/1992 passed by the Sessions Judge, Gumla, in S.T. No. 181 of 1991) ----- Thutha Kharia Appellant Versus The State of Bihar (Now Jharkhand) ... Respondent ----- For the Appellant : Mr. Rajesh Kumar Singh, Advocate For the State : APP. ----- PRESENT HONBLE MR. JUSTICE H. C. MISHRA HONBLE MR. JUSTICE Dr. S.N. PATHAK ----- By Court :- Heard learned counsel for the appellant and the learned counsel for the State.

2. The appellant is aggrieved by the Judgment of conviction and Order of sentence dated 15.5.1992 passed by the learned Sessions Judge, Gumla, in S.T. No. 181 of 1991, whereby the appellant has been found guilty and convicted for the offence under Sections 302 and 201 of the I.P.C. Upon hearing on the point of sentence, the appellant has been sentenced to undergo RI for life for the offence under Section 302 of the I.P.C., and he has also been sentence to undergo RI for two years for the offence under Section 201 of the I.P.C., and both the sentences were directed to run concurrently.

3. The FIR was lodged by P.W.-1 Sugli Khariain, who is the daughter of deceased lady, according to which on 21.6.1991, i.e., on Friday, the deceased Suni Khariain had gone out of her house for taking haria (a local intoxicating drink). The deceased did not return and informant did not search her thinking that she might have gone to the house of some relative. She did not return on Saturday also, and on Sunday the informant was informed by one Jagannath Singh and Mangra Kharia that her mother was killed by the accused appellant and her dead body was buried in the bari packed in a bag. On the basis of the information given by the informant, the FIR was lodged, being Palkot P.S Case No. 36 of 1991, corresponding to G.R. No. 464 of 1991, and the investigation was taken up. In course of investigation, the dead body of the deceased was recovered and upon completion of the investigation, charge-sheet was submitted against the accused appellant. 2 4. Upon commitment of the case to the court of Session, charge was framed against the appellant for the offences under Sections 302 and 201 of the I.P.C., and upon the accused's pleading not guilty and claiming to be tried, he was put to trial. In course of trial the prosecution has examined 11 witnesses including the informant, I.O and the Doctor, who had conducted the post-mortem examination on the dead body of the deceased. P.W.-4 Amin Kharia, P.W.- 6 Bhodo Pahan, P.W.-7 Choye Kharia, P.W.-8 Dasai Pahan and P.W.-9 Virsa Kharia were only tendered by the prosecution.

5. P.W.-1 Sugli Khariain, who is the informant in the case, has stated that the date of occurrence was Friday and her mother went out of the house for taking haria. Thereafter she did not return back. This witness thought that her mother might have stayed somewhere. On Saturday she was searched but she was not found. On Sunday morning one Jaganath Singh informed her that her mother was murdered by the accused Thutha Kharia and he had buried the dead body in his bari. The same information was also given to her by Mangra Kharia, whereupon she came to the Police Station and lodged the FIR, on which her thumb impression was taken. She has identified the accused present in the Court. In her cross-examination she has stated that the accused is her brother in relation and she has denied the suggestion that the accused has been falsely implicated in this case.

6. P.W.-3 is Mangra Kharia who is also the eye witness to the occurrence and he is one of the persons who had informed the informant P.W.-1 Sugli Kharia about the occurrence. This witness has stated that the day of occurrence was Friday. The accused Thutha had called him for taking haria at his place and they were taking haria. At the same time the deceased came there and she also sat there, whereupon Thutha brought a tangi and assaulted her causing her death. This witness fled away from the place due to fear. In the night the accused Thutha again came and compelled him to help the accused in concealing the dead body, whereupon the dead body was kept in a bag and was buried in the bari. He has stated that on Sunday he gave this information to the daughter of the deceased. The police had come to the village and he had shown the place where the dead body was buried and the dead body was recovered. He has also identified the accused in the Court. This witness was cross-examined by the defence, in which he has admitted that he was in drunken state at the time of occurrence. He has stated that as he had not prevented Thutha from committing the murder, as he himself fled away from the place due to fear. He remained in his house on Saturday and on Sunday he informed the daughter of the deceased, who is his father's sister. He has also stated that the accused Thutha is his uncle. He has denied the suggestion to have given false evidence.

7. P.W.-2 is Jaganath Singh, who had also informed the informant about the occurrence. This witness has stated that he had informed the informant on Sunday that his mother was murdered by the accused Thutha at his house and the dead body was buried. This witness has also stated that Thutha himself informed him about the occurrence and he had also seen the blood, shed at the place of occurrence, which was smeared by the cow dung. This witness has identified the accused Thutha in the Court. He has also stated that the police came and the inquest report of the dead body was prepared on which he had put his signature, which upon his identification was marked as Ext.-1. He has further stated that the police had also searched the house of the accused Thutha from where a blood stained axe was recovered and the seizure-list was prepared. He has identified his signature and the signature of other witness on the seizure-list, which on his identification, were marked as Exts.-1/1 and 1/ 2. He has stated that on this seizure-list the thumb impression of Thutha was also taken. This witness has

further stated that the dead body was recovered on pointing out by the Mangra Kharia . In his cross-examination this witness has stated that Thutha had informed him about the occurrence on Saturday, but he did not inform the informant on Saturday. The dead body was buried in the field. He had denied the suggestion to have given false evidence.

8. P.W.-5 Sado Kharia, is the husband of the informant Sugli Kharia. This witness has also supported the prosecution case to the extent that they were informed about the occurrence by Jagganath Singh and Mangra Khariya. Mangra Kharia had also informed that the accused had committed murder by tangi, and in the night Thutha again came and compelled him to help in concealing the dead body. This witness had also accompanied his wife to the Police Station. He has identified the accused in the Court. In his cross-examination this witness has stated that Jagganath Singh and Mangra Kharia had given information initially to his wife, who had informed him. He has also stated that upon getting information they went to the Police Station and not to the place where the dead body was buried. This witness has denied the suggestion to have given false evidence.

9. P.W. 10 is Dr. Raj Kumar Beck, who had conducted post-mortem examination on the dead body of the deceased on 24.06.1991 and had found the 4 following ante-mortem injuries on the dead body:- 1. Incised wound 3x1x 1 below left knee with fracture of underlying bone.

2. Incised wound 2 x x below left knee with fracture of underlying bone.

3. Incised 3x 1 x 1 on left temporal parietal area, with blood clots present with brain matter out and fracture of underlying bone.

4. Incised wound 3 x 1 x 1 of abdomen with intestine coming out. He has stated that all the injuries were ante-mortem in nature, caused by sharp cutting weapon, grievous in nature and sufficient in ordinary course to cause death. The cause of death was shock and haemorrhage. Time elapsed since death within 4 to 5 days. He has identified the postmortem report to be in his pen and signature, which was marked Ext.

2. In his cross-examination he has stated that there was no indication in the post-mortem report to show that the dead body was taken out of the burial ground and sent for post-mortem examination. He has stated that in case of decomposed body, sometimes it is difficult to find out whether the injuries were post-mortem or ante-mortem, but in view of the fact that there were blood clots, he came to the conclusion that the injuries were ante-mortem. There cannot be any presence of blood clot in the post-mortem injury.

10. P.W.-11 is Sita Ram Paswan, who is the I.O. of the case. This witness has proved the F.I.R., which was marked Ext.3. He has also stated that after recovery of the dead body packed in a bag he prepared the inquest report of the dead body. He has proved the inquest report which was marked Ext.4. He has stated that he recovered blood stained axe from the house of the accused and prepared the seizure list in presence of two witnesses and he has proved the seizure list which was marked Ext.5. He has stated that he sent the dead body for post-mortem examination. This witness has stated about the investigation made by him. He has stated in his cross-examination that he did not find any blood stain at the place of occurrence, as the same had already been smeared. He has stated that at the place where the dead body was buried, the bag was visible.

11. It appears from the record that all the circumstances appearing in the evidence against the accused were put to him in his statement recorded under Section 313 of the Cr.P.C. No witness was examined on behalf of the defence.

12. On the basis of the evidence on record the Trial Court below had convicted the appellant and sentenced him for the offence under Sections 302 and 201 of the I.P.C. as stated above. 5 13. Learned Counsel for the appellant has submitted that the impugned Judgement of conviction and Order of sentence passed by the Court below cannot be sustained in the eyes of law. It is submitted that the informant and her husband are not the eye-witness to the occurrence, rather the only eye witness to the occurrence is P.W. 3 Mangra Kharia, who though has supported the prosecution case, but he has admitted that he was in drunken state at the time of occurrence. Learned Counsel accordingly, submitted that the evidence of this witness cannot be relied upon. Learned Counsel has also submitted that if the

evidence of this witness is not taken into consideration, there is no other eye-witness to the occurrence and accordingly, it is a fit case for acquittal of the accused.

14. Learned Counsel for the State on the other hand has opposed the prayer and submitted that the informant was informed by P.W. 3 Mangra Kharia who is the eye-witness to the occurrence and also by P.W.2 Jaganath Singh. P.W.3 has fully supported the case stating that it was this accused who had committed the murder of the deceased assaulting him by tangi. The said blood stained tangi was also recovered by the police from the house of the accused upon search, and accordingly, the prosecution has been able to prove the case against the accused beyond all reasonable doubts.

15. Having heard the learned counsels for both the sides and upon going through the record, we find that P.W.-3 Mangra Kharia is the only eye witness to the occurrence. He has fully supported the prosecution case stating that it was the accused appellant who had committed murder of the deceased assaulting her by tangi, whereupon out of fear this witness fled away from the place. He was also compelled in the night by the accused to help him in concealing the dead body and he helped the accused in concealing the dead body, from where the dead body was recovered by the Police, on pointing out by this witness. Though this witness has stated that he was in a drunken state, but there is nothing in the evidence of this witness to show that he was in such a drunken state of mind that his evidence cannot be believed. After all, the dead body was recovered at the instance of this witness, and the manner of occurrence as stated by this witness is corroborated by the recovery of the weapon of offence, i.e., the blood stained axe, from the house of the accused appellant. There also appears to be no reason as to why he shall falsely implicate the accused. Indeed no suggestion has been given to this witness about any enmity, rather it has come in his cross-examination that both the parties are his close relatives, the informant 6 being his father's sister, whereas the accused being his uncle. In that view of the matter there appears no occasion for this witness even to falsely implicate the accused. P.W.2 Jagannath Singh is the other witness to whom the accused himself had informed about the occurrence. The other witnesses are the hearsay witnesses.

16. We find from the evidence on record that ocular evidence of the eye witness has not only led to the recovery of the dead body, rather also to the recovery of weapon of offence from the house of the accused and is also fully corroborated by the medical evidence of P.W.10 Dr. Raj Kumar Beck, who found four incised wounds on the dead body, which were ante-mortem in nature and sufficient to cause death. He has stated that the death had taken place about 4 to 5 days earlier, which also fully corroborates the case, in as much as, the postmortem examination was conducted on 24.6.1991 and the occurrence had taken place on 21.6.1991. We are of the considered view that the prosecution has been able to prove the case against the accused beyond all reasonable doubts.

17. In view of the aforementioned discussions, we do not find any illegality in the impugned Judgment of conviction and Order of sentence dated 15.5.1992 passed by the learned Sessions Judge, Gumla, in S.T. No. 181 of 1991, which we hereby, confirm. The appellant is on bail. His bail bond is hereby, cancelled and he is directed to surrender in the Court below for serving out the sentence. The Trial Court is also directed to issue process compelling the surrender / production of the appellant for serving out the sentence.

18. This appeal is accordingly, dismissed with the directions as above. Let the Lower Court Record be sent back forthwith, along with the copy of this Judgment to the Court concerned. (H. C. Mishra, J.) (Dr. S.N. Pathak, J.) Jharkhand High Court, Ranchi Dated the 27th February, 2017 P.K.S./Anjali

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