

Shanti Devi Vs. State

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Court : Jharkhand

Decided On : Mar-22-2017

Appellant : Shanti Devi

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Appeal (D.B.) No. 59 of 1992 (R) (Against the Judgment of conviction and Order of sentence dated 09.03.1992, passed by the learned 6th Additional Sessions Judge, Dhanbad, in S.C. No. 272 of 1989) Shanti Devi Appellant Versus The State of Bihar (Now Jharkhand) .. Respondent ----- CORAM : HONBLE MR. JUSTICE H. C. MISHRA HONBLE MR. JUSTICE Dr. S.N. PATHAK ----- For the Appellant : Mr. Mahesh Tewari, Advocate Mr. Abhishek Kumar Dubey, Advocate For the Respondent : Mr. S.K. Shrivastava, APP ----- By Court:- Heard learned counsel for the appellant and learned counsel for the State.

2. The sole appellant is aggrieved by the Judgment of conviction and Order of sentence dated 09.03.1992, passed by the learned 6 th Additional Sessions Judge, Dhanbad, in S.C. No. 272 of 1989, whereby the appellant, who is the wife of the deceased, has been found guilty and convicted for the offence under Sections 302 / 34 and 201 of the Indian Penal Code. Upon hearing on the point of sentence, the appellant has been sentenced to undergo R.I. for life for the offence under Section 302 / 34 of the Indian Penal Code and to undergo R.I. for five years for the offence under Section 201 of the Indian Penal Code, and both sentences

were directed to run concurrently.

3. The prosecution case was instituted on the basis of fardbeyan of the informant, who is the son of the appellant as also of the deceased. In the prosecution case, the informant has alleged that his mother, i.e., the present appellant was having illicit relationship with the co-accused Fagu Karmakar. Fagu Karmakar used to take liquor with the father of the informant and when his father used to sleep, he used to have illicit relationship with his mother. Fagu Karmakar also used to come to his house in absence of his father for continuing his illicit relationship and this affair was going on for some months. On the last Sunday (i.e., on 17.04.1988) at about 05:00 P.M., Fagu Karmakar again visited the house of the informant and Fagu Karmakar and his father took meal together at about 08:00 P.M. Thereafter, Fagu Karmakar told the informant to sleep in the room along with other family members as it was likely to rain, whereupon, the informant, his wife and his brothers and sisters went in a room to sleep. After about an hour, the mother, i.e., the appellant also came to sleep in the same room. In the morning, mother informed the informant that Fagu Karmakar was not there and father of the informant was found dead, with a rope tied in his neck. Thereafter, the informant peeped through the door and found the dead body of his father lying on the bed covered with bed sheet. The mother asked him to keep quiet and she locked the room and went to her parents' place for informing them. She returned in the evening and thereafter, the co-accused Jagdish Karmakar, who happens to be the maternal grandfather of the informant, also came and both of them dug a pit in the kitchen of the house and buried the dead body in the pit. On 19.04.1988, the informant was called by the Mukhiya namely, Ram Prasad, whereupon, he went to the place of Mukhiya with all his family members, where offence was disclosed to him. The informant and his mother also showed the place to the police, where the dead body was buried. The informant claimed that the murder of his father was committed by his mother and Fagu Karmkar, and the dead body was concealed by his mother and Jagdish Karmakar. The fardbeyan of the informant to the aforesaid effect was recorded at the place of occurrence, on the basis of which, Kataras P.S. Case No. 109 of 1988 corresponding to G.R. No. 321 of 1988 was instituted and investigation was taken-up. After investigation, the Police submitted the charge-sheet in the case against the appellant as also against to co-accused namely,

Fagu Karmakar and Jagdish Karmakar.

4. Upon commitment of the case to the Court of Session, charges were framed against the accused Shanti Devi (appellant) and Jagdish Karmakar for the offence under Section 201 of the Indian Penal Code and against the appellant and Fagu Karmakar for the offence under Sections 302 / 34 of the Indian Penal Code, and upon the accused persons' pleading not guilty and claiming to be tried, they were put to trial. It appears that subsequently, in course of trial, Fagu Karmakar became ill and was sent for his treatment to Central Hospital, Ranchi, due to which his trial was separated and the trial continued against the appellant and her father, Jagdish Karmakar. It also appears from the impugned Judgment that the co-accused Jagdish Karmakar was acquitted of the charge after trial.

5. In course of trial, 4 witnesses were examined on behalf of the prosecution, who are P.W.-1 Haradhan Karmakar, the informant, P.W.-2 Ram Prasad Singh, the Mukhiya, P.W.-3 Yamuna Dubey, the I.O. of the case and P.W.-4 Dr. Vinod Kumar, who had conducted the post-mortem examination on the dead body of the deceased. 3 6. P.W.-1 Haradhan Karmakar, has supported the prosecution case and has stated that on the date of occurrence, Fagu Karmakar had visited his place. He had taken meal with his father in the night and asked the informant and other family members to sleep in the room as it was likely to rain. This witness has again stated that his father, his mother and co-accused, Fagu Karmakar, slept in the other room. In the morning, he was informed by his mother that Fagu Karmakar had left the place and his father was dead. He has further stated that though he saw the dead body of his father lying on a chouki, with rope in his neck, but he did not see the dead body, removing the bed sheet. In the evening, his maternal grandfather, Jagdish Karmakar came and his mother and his maternal grandfather dug a pit and buried the dead body. On the third day, they were called by the Mukhiya, before whom everything was disclosed. The Police was informed and he and his mother showed the place where the dead body was concealed and the dead body was recovered. He has identified his signature on the fardbeyan which was marked as Ext.-1. Though this witness has identified the appellant in the Court, but he has stated that he was not identifying Jagdish Karmakar (who is the own maternal grandfather of the witness). In his cross-examination, this

witness has admitted that his wife was with him in the same house, but she was not informed about the occurrence.

7. P.W.-2 Ram Prasad Singh, is the Mukhiya and though he has stated that the appellant, Shanti Devi had confessed before him about her guilt, stating that she and Fagu Karmakar had committed the murder, but in his cross-examination, this witness has admitted that he had not given any such statement before the Police.

8. P.W.-3 Yamuna Dubey, is the I.O. of the case and this witness has stated about the investigations made by him. He has stated that he recovered dead body upon being pointed out by the informant. The appellant was also present in the house. He has also stated that he prepared the inquest report of the dead body which he identified and the same was marked as Ext.-2. He has also stated that he had recorded the statement of Basanti Devi, daughter-in-law of the deceased.

9. P.W.-4 is Dr. Vinod Kumar, who had conducted the post-mortem examination on the dead body of the deceased on 20.04.1988. At the time of post-mortem examination cuticle of skin was peeled off almost all over the body and the post-mortem blisters were present. Neck was cleaned and carefully examined for deciphering any mark of injury, but no external injury was seen either on the neck or any other part of the body. All the organs were normal though they were in the state of decomposition. On dissection of neck, no injury on soft tissue was found. Hyoid bone, Thyroid cartilage, tracheal rings and other organs in the neck were normal, but they were decomposing. He has stated that he was not in a position to prove or disprove throttling due to the advanced state of decomposition and he could not form a definite opinion about the cause of the death. This witness has identified the postmortem report to be in his pen and signature, which was marked as Ext.

3. 10. Learned counsel for appellant has submitted that the impugned Judgment of conviction and Order of sentence passed by the Court below is absolutely illegal, inasmuch as, the prosecution has failed to bring home the charge against the appellant beyond all reasonable doubts. It is submitted that this is a case of circumstantial evidence, as there is no eye witness of the occurrence and only witness on whose evidence, the conviction has been secured is PW-1, who is the

son of the deceased and this appellant. Learned counsel pointed out that there are several discrepancies in the prosecution case as stated in the F.I.R. and as deposed before the Court by the informant, inasmuch as, even though in the FIR it is stated that the mother had also come after sometime and slept in the same room in which the informant was sleeping with other family members, but in his deposition, this witness has stated that his mother was sleeping along with her husband and co-accused, Fagu Karmakar in separate room, which fact is not stated in the F.I.R. Learned counsel has also pointed out that this witness has refused to identify Jagdish Karmakar in the Court, but the fact remains that Jagdish Karmakar is the own maternal grandfather of this witness and it is strange as to why he has refused to identify him. This witness has also stated that he was not knowing the co-accused Fagu Karmakar from before, rather, he came to know about him only on the date of occurrence, but in the F.I.R. it is clearly stated that the appellant was having illicit relationship with Fagu Karmakar from some months before the date of occurrence and Fagu Karmakar was in habit of visiting the house of the informant off and on. Learned counsel accordingly, submitted that the evidence of P.W.-1, Haradhan Karmakar, cannot be relied upon for securing conviction of the appellant. It is also pointed out by the learned counsel that though P.W.-2 Ram Prasad Singh, has stated that the appellant had made extra judicial confession before him, but he has clearly stated he had not given any such statement before the Police and accordingly, his evidence cannot be looked into. Learned counsel further submitted that P.W.-3 Yamuna Dubey, who is the I.O., has stated that it was only on the pointing out by the informant, that the dead body was recovered by the Police, but P.W.-1 Haradhan Karmakar, has stated that he and his mother both had shown the place to the police from where the dead body was recovered. P.W. 4, Dr. Vinod Kumar, has clearly stated that he was not in a position to give any opinion about the death and all tissues and bones of neck were found normal at the time of post-mortem. It is also stated by the P.W. 4 that there was no external injury over the dead body. Learned counsel accordingly, submitted that the prosecution has failed to prove the charge against the appellant beyond all reasonable doubts and it is a fit case in which the appellant ought to have been given at least the benefit of doubt.

11. Learned counsel for the State, on the other hand, opposed the prayer and has submitted that the informant PW-1 Haradhan Karmakar is none else than the son of the informant and he has also stated about the illicit relationship of his mother with the co-accused, which is normally not possible unless there is some truth in it. It is submitted by the learned counsel that the dead body of the deceased was also seen by the informant, though covered with bed sheet and he is an eye witness to the concealing of the dead body by the appellant and her father after digging a pit in the house itself, from where the dead body was recovered. Learned counsel accordingly, submitted that the prosecution has been able to complete the chain of the circumstances against the appellant, to establish that due to the illicit relationship with the co-accused Fagu Karmakar, the father of the informant was murdered and the dead body was concealed. Learned counsel submitted that there is no illegality in the impugned Judgment of conviction and Order of sentence.

12. Having heard learned counsels for both the sides and upon going through the record, we find that this is a case of circumstantial evidence. The deceased was in habit of taking liquor with the co-accused, who was having an affair with his wife. According to the prosecution case, on the date of occurrence also the co-accused, Fagu Karmakar had taken meal along with the deceased and thereafter, it is alleged that when he slept, he was done to death by throttling by rope, which was also found tied in the neck. The fact however remains that though the case has been made of committing the murder of the deceased by throttling him by tying rope in the neck, but the fact remains that the tissues and body parts of the neck were found to be normal, no external or internal injury was found by the doctor during the autopsy and except the post-mortem decomposition due to the lapse of time, nothing abnormal was found. The story of making extra judicial confession before P.W. 2, Ram Prasad Singh also cannot be relied upon in view of the admission by him in his cross-examination that he had not made any such statement before the Police. 6 Though in the FIR it is stated that the co-accused Fagu Karmakar was known to the informant from before as he used to visit the house of the informant off and on, for establishing illicit relationship with his mother, but in his evidence, the informant has stated that he came to know about the said co-accused only on the date of occurrence and he identified him for the

first time on the same date, which is against the statement made in the F.I.R. Though in the F.I.R. it is stated that in the night of occurrence, this appellant was sleeping in the same room in which the informant was also sleeping, but this part has been concealed in his evidence by P.W. 1, Haradhan Karmakar and he has made out a new story that this appellant was sleeping in the same room in which her husband and other co-accused were sleeping. The informant has also refused to identify the co-accused, Jagdish Karmakar, who is none else than his own maternal grandfather and this also casts sufficient doubt on the evidence of the informant. We are of the considered view that even though the informant has supported the prosecution case, but due to the aforementioned discrepancies, his evidence cannot be relied upon, in absence of any corroboration by other witnesses or the medical evidence. The fact remains that the I.O., P.W.-3 Yamuna Dubey, has stated that he had recorded the statement of the daughter- in-law of the deceased, but P.W. 1, Haradhan Karmakar has come to say that his wife was not knowing anything about the occurrence. As such, we are of the considered view that the conviction and sentence of the appellant cannot be sustained on the sole testimony of P.W.-1 Haradhan Karmakar, and the appellant is entitled to the benefit of doubt.

13. In view of the foregoing discussions, the impugned Judgment of conviction and Order of sentence dated 09.03.1992, passed by the learned 6th Additional Sessions Judge, Dhanbad, in S.C. No. 272 of 1989, are hereby, set aside. The appellant, Shanti Devi is given the benefit of doubt and she is acquitted of the charge. The appellant is on bail and she is discharged from the liabilities of her bail bond.

14. This appeal is accordingly, allowed. Let the Lower Court Record be sent back forthwith to the Court concerned along with a copy of this Judgment. (H. C. Mishra, J.) (Dr. S.N. Pathak, J.) Jharkhand High Court, Ranchi Dated, the 22nd March, 2017 Kunal/punit

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