

Bimla Devi Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jun-07-2017

Appellant : Bimla Devi

Respondent : State of Jharkhand

Judgement :

Criminal Appeal (D.B) No.1261 of 2004 ---- Against the judgment of conviction dated 24.6.2004 and order of sentence dated 26.6.2004 passed by the Additional District and Sessions Judge, Fast Track Court-1, Chaibasa in S.T.No.37 of 2004. ---- Bimla Devi Appellant VERSUS The State of Jharkhand..... Respondents For the Appellant: Ms. Shewta Singh, Advocate For the State : Mrs. Sadhna Kumar, Advocate P R E S E N T THE HON'BLE THE CHIEF JUSTICE THE HON'BLE MR. JUSTICE ANANDA SEN Reserved on 04.5.2017 Delivered on 7 .6.2017 Ananda Sen, J.

The present criminal appeal is directed against the judgment of conviction and order of sentence dated 24.6.2004 and 26.6.2004 respectively passed by Additional District and Sessions Judge, Fast Track Court-1 at Chaibasa, in Sessions Trial No.37 of 2004, arising out of Muffasil P.S.case no.128 of 2003, corresponding to G.R. No.482 of 2003 whereby and whereunder the appellant was found having guilty of committing murder, has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. The case of the prosecution on the basis of the fardbeyan of Dasun Devi (P.W.6) is that on 26.11.2003 at about 12.00 noon she along with her daughter Rita Devi (deceased) had gone to Khetro Pond to take a bath. After taking bath, she took the child of Rita Devi in her lap and sat on the bank of the pond. While Rita Devi was taking bath, Bimla Devi (second wife of Suresh Sao) came there and pelted a brick on her but it did not hit her. Again Bimla Devi tried to throw another brick but Rita fled from there and entered into the house of one Adivasi. Bimla Devi chased Rita having a knife in her hand and finally caught her. The informant tried to rescue Rita but Bimla assaulted on her chest with a knife and fled away. Rita was taken to the hospital but she died during the course of treatment.

3. On the basis of aforesaid fardbeyan, Muffasil P.S. Case No.128 of 2003 was registered under Section 302 of the Indian Penal Code. After investigation, the police submitted charge sheet against the appellant under Section 302 of the Indian Penal Code. Cognizance of the offence was taken and the case was committed to the Court of Session which was registered as S.T. Case No.128 of 2003.

4. Charge was framed against the appellant under Section 302 of the Indian Penal Code to which she did not plead guilty and claimed to be tried.

5. Altogether nine witnesses were examined in this case. After examination of the prosecution witnesses, accused was examined under Section 313 of the Code of Criminal Procedure. The accused did not lead any evidence in her defence.

6. The learned trial court, after appreciating the evidences of the prosecution witnesses and the materials available on record, found the appellant guilty of the offences and accordingly, recorded the judgment of conviction and sentenced her to life, which is under challenge here.

7. We have heard learned counsel for the appellant and learned A.P.P and also have gone through the records of the case.

8. The learned counsel for the appellant has assailed the impugned judgment on the ground that none of the witnesses have seen the occurrence rather the inmates of the Adivasi's house, where the stabbing took place, have been declared hostile in this case. He further submitted that the version of the prosecution witnesses, with regard to place of occurrence, is contradictory to each other. He further submitted that on the one hand, the informant stated that the deceased was assaulted outside of the house but at the same time, the inmates of Adivasi's house stated that the accused entered into their house by chasing the deceased.

9. On the other hand, the learned A.P.P opposed the argument of the appellant and submitted that the manner in which P.Ws. 3, 4 and 5 have given their statement leads to show that they were assisting the accused. She further submitted that P.Ws, 3 and 4 have stated that the accused had chased the deceased and she was lying in their house in unconscious condition and they lifted the deceased with the help of other persons and kept her under a tree which goes to show that the occurrence had taken place at their house. The motive behind the murder has also been sufficiently established by the prosecution witnesses by saying that the deceased was SAUTAN of the accused and P.W.8 was not giving maintenance to her to which she was annoyed from both the deceased and P.W.8. She further submitted that the doctor also opined that the death was caused by sharp cutting weapon may be knife which corroborates the evidence of other witnesses. On these submissions she prays to dismiss this appeal.

10. From the records, we find that the trial court has come to conclusion that although P.Ws. 3 and 4 have been declared hostile, yet they accepted in their evidence that they saw the deceased in their house in an unconscious condition and thereafter she was brought outside the house and was laid under the tree. They also stated that they have seen this appellant entered the house. Eye witness, P.W.6 has given a description of the occurrence and stated that this appellant chased the deceased and entered the house of the Adivasi's. The appellant also entered the house and thereafter she left after inflicting injury on the deceased.

11. Further P.W.3, though declared hostile, but stated that this appellant, had chased the deceased. Thus, on the point of chase by this appellant, the evidence of informant and the witness (P.W.3) is consistent. Eye witness, P.W.6, stated that the deceased was assaulted by means of knife on her chest. Dr.Lalit Minz, P.W.7, who conducted post mortem examination found following injuries. Elliptical bone 2 below left middle third clavicle. Size of wound 1 x 1/2 x 6 deep. On dissection: Muscles was cut between the 3rd and 4th left costal ribs, left upper lobe of left lung found penetrated. Pericardial space was filled by blood. Left atrium was found penetrated. Other viscera found normal. Stomach: consisted of water, Uterus : small rigor mortis present in the four limbs. Doctor opined that death occurred due to injury inflicted by sharp cutting object like knife.

12. Thus, we find that the evidence of eye witness, P.W.6 is corroborated by the evidence of Doctor.

13. P.W.8 is the husband of the deceased and husband of the appellant also (being noted that P.W.8 had two wives), who stated that he saw that the deceased near the house of Adivasi in wounded state under a tree. P.W.6 disclosed that this appellant inflicted knife blow on the deceased. The deceased was lying beneath the tree, outside house of Adivasi also finds corroboration from her evidence. P.W.3, after being declared hostile, in cross-examination admitted that she gave statement before the police that on the fateful day, she was sitting in her house with her friend Mochi Kunkal and at that point of time, one lady by shouting 'help help' entered into the house and she was being chased by another lady with a 'knife'. She also stated that second lady, who was chasing first lady, inflicted knife blow to the first one. She further stated before the police that mother of injured lady told that Rita Devi was assaulted by Bimla Devi. She also stated that they took the injured out of their house and kept her outside the house. This witness in her examination-in-chief had identified the appellant in court as the lady, who chased the deceased. This statement of P.W.3, though declared hostile, cannot be discarded.

14. The Hon'ble Supreme Court in the case of *Mrinal Das and others vs. State of Tripura* [(2011) 9 SCC479 at paragraph 67 has held as under: It is settled law that

corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.

15. From the aforementioned decision, it is quite clear that if witness has become hostile, his entire evidence cannot be thrown out as unreliable. From conjoined reading of evidence of P.Ws 3 and 6 and Dr.Lalit Minz, P.W.7, the materials available on record, this Court finds that the prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt. The trial court thus has rightly convicted the appellant under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life. 16, We find no merit in this appeal and hence, the same is dismissed. (Ananda Sen, J.) Pradip Kumar Mohanty, C.J.

(Pradip Kumar Mohanty, C.J.) Jharkhand High Court, Ranchi, The 7/6, 2017, NAFR/N. Dev.

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