

Dasi Devi Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jul-28-2017

Appellant : Dasi Devi

Respondent : State of Jharkhand

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI CRIMINAL APPEAL (D.B.) No. 594 of 2006 WITH CRIMINAL APPEAL (D.B.) No. 426 of 2011 ----- [Arising out of the Judgment of conviction dated 4 th April 2006 and Order of sentence dated 7th April, 2006, passed by the 1st Additional Judicial Commissioner, Khunti, in Sessions Trial No.345 of 2004] ----- Jagtaran Singh Appellant [In Cr. App. (DB) No. 594 of 2006] Dasi Devi Appellant [In Cr. App. (DB) No. 426 of 2011] -versus- State of Jharkhand Respondent [In both the appeals] ---- PRESENT :HON'BLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE ANANDA SEN ---- For the Appellant : Mr. B.M. Tripathi, Sr. Advocate Mrs. Nutan Sharma, Advocate For the Respondent : None. ----- By Court.:- Since both these appeals arise out of the same case, they have been heard together and are being disposed of by this common Judgment.

2. Heard learned counsel for the appellants. No one appears for the State.

3. The appellants in both the appeals are aggrieved by the Judgment of conviction dated 4th April, 2006 and Order of sentence dated 7th April, 2006, passed by the learned 1st Additional Judicial Commissioner, Khunti, in Sessions Trial No.345 of

2004, whereby, both the appellants have been found guilty and convicted for the offences under Sections 302 / 120-B and 201 of the Indian Penal Code. Upon hearing on the point of sentence, both the appellants have been sentenced to undergo rigorous imprisonment for life for the offences under Sections 302 / 120B of the Indian Penal Code and rigorous imprisonment for 7 years for the offence under Section 201 of the Indian Penal Code and the sentences were directed to run concurrently.

4. The prosecution case was instituted on the basis of the fardbeyan of one Ganga Mahto, who is the brother of the deceased Suresh Mahto. On 08.02.2004, the informant was informed by one Amar Singh of his village that 2 the dead body of his brother, Suresh Mahto was lying near the railway track where after he went and found his brother dead with sharp cutting injuries on his head. Thereafter he came to the house of his brother and asked the wife of the deceased about the whereabouts of the deceased, but, she did not give any reply. He asked the child of the deceased, namely, Sheo Mahto, aged about 12 years, about his father, whereupon the child informed him that his co-villager Jagtaran Singh had come to his house on the previous night at about 08.00 P.M. and called his father. His father went out and this child also followed them, but he was rebuked by Jagtaran Singh to go inside the house. Thereafter the informant went to the back side of the house and found a lot of blood there. He also found trail of blood from that place to the place where dead body was found. The informant has alleged that Jagtaran Singh had illicit affair with the wife of the deceased, which was being objected by the deceased and for that the occurrence had been committed by both of them and the dead body was thrown for concealing the evidence. On the basis of the fardbeyan of the informant, Karra P.S. Case No.9 of 2004 corresponding to G.R. No.72 of 2004 was instituted for the offence under Sections 302, 120-B / 201 of the Indian Penal Code, and investigation was taken up. After investigation, the police submitted the charge-sheet against both the accused.

5. Upon commitment of the case to the Court of Session, charge was framed against both the accused persons for the offence under Sections 302 / 120-B of the Indian Penal Code and Section 201 of the Indian Penal Code, and upon the accused persons' pleading not guilty and claiming to be tried, they were put to trial.

In course of trial, only 4 witnesses were examined on behalf of the prosecution. The investigating officer has not been examined in this case. P.W.-4 Digambar Singh has turned hostile and has given evidence to the effect that the deceased had died due to rail accident.

6. P.W.-1 is Sheo Mahto, who is the son of the deceased. He is a child witness, aged about 12 years, and he was examined by the Court below after being satisfied about his capacity to testify. This witness has stated that the occurrence had taken place about one year ago on a Saturday in the night at about 08.00 P.M. He was in his house, when the accused Jagtaran Singh came to his house and called his father. His father went out and this witness also followed them, whereupon Jagtaran Singh rebuked him and asked him to go inside the house. This witness has stated that he entered the house and saw that his mother also went out of the house from the back door. Thereafter 3 he went and slept. In the next morning, his uncle Ganga Mahto came and asked about his father, whereupon he told him that his father was not in the house. His uncle informed him that his father had been killed and the dead body was on the railway track. This witness also saw the dead body of his father. This witness has also stated that his statement was taken by the police. He has stated that his father had been murdered by Jagtaran Singh and his mother, who were present in the Court. Jagtaran Singh used to visit his house and there was intimacy between Jagtaran Singh and his mother. He has stated that presently, he is living with his uncle. This witness was put to extensive cross examination, in which his attention was drawn towards the statements made by him before the police, and he has stated that he had made those statements before the police, but he has also admitted in his cross examination that it was for the first time that he was deposing in the Court that his father had been murdered by Jagtaran Singh and his mother and it was for the first time that he was deposing in the Court that there was intimacy between Jagtaran Singh and his mother and Jagtaran Singh used to visit his house. This witness has also stated in the cross examination that he is four brothers and his grandfather was also alive and when he was rebuked by Jagtaran Singh, he came and slept with his grandfather.

7. P.W.-2 is Ganga Mahto, who is the informant of the case. This witness has also stated that the occurrence had taken place about 1 year ago on a Saturday, and on Sunday morning, he was informed by one Amar Singh that the dead body of his brother Suresh Mahto was lying by the side of railway track. This witness went there and saw the dead body of his brother with injuries on his head and other parts of the body. He came to the house of his brother and asked Dasi Devi about the whereabouts of his brother, but she did not reply. Thereafter he asked his nephew Sheo Mahto about the whereabouts of his father, whereupon his nephew informed that in the night Jagtaran Singh had come to the house and had called his father, who went with him. This witness went to the backside of the house and found blood there. He also found the trail of blood from that place to the place where the dead body was found. This witness has stated that Dasi Devi was having intimacy with Jagtaran Singh for several days, which was being objected by Suresh, due to which Suresh was murdered by both of them. This witness has stated that the police came to the place where the dead body was found and his fardbeyan was recorded, upon which he put his signature. He identified his 4 signature on the fardbeyan which was marked Exhibit 1 and the signatures of witnesses on the fardbeyan which were marked Exhibits 1/1 and 1/2. This witness, in his cross examination, has admitted that his father is alive and on the day of occurrence, he was living in the house of the deceased. He has also admitted that he had asked his father about the whereabouts of Suresh Mahto, but his father could not reply anything and he had also asked his brother whether there was any noise in the evening near the house, whereupon his brother had replied that there was no noise.

8. P.W.-3 Dr. Prince Pingua is the Medical Officer, who had conducted the post-mortem examination on the dead body of the deceased on 08.02.2004 and had found several ante-mortem lacerated and incised wounds on the dead body of the deceased, which he has detailed in his evidence. He has stated that all the injuries were ante-mortem in nature and caused by sharp cutting heavy instrument. He has identified the post-mortem report to be in his pen and signature, which was marked Exhibit 2.

9. As stated earlier, the Investigating Officer has not been examined in this case and the remaining witness, i.e., P.W.4 Digambar Singh has turned hostile. The F.I.R. and other necessary documents could not be proved in the case.

10. Learned counsel for the appellants has submitted that the impugned Judgment passed by the Trial Court below cannot be sustained in the eyes of law, as the prosecution has utterly failed to prove the case against the appellants beyond all reasonable doubts. It is submitted that there is no eye witness to the occurrence of murder and the child witness, though has stated that the accused Jagtaran Singh had called his father and while the child witness was also following them, he was rebuked to go inside the house and thereafter the dead body of the deceased was found, but, the fact remains that the attention of the child witness was drawn towards the statements made by him before the police, which he has reiterated to have given before the police. Learned counsel submitted that due to non-examination of the Investigating Officer, necessary contradictions could not be taken from him, which has caused serious prejudice to the defence. The child witness has admitted that for the first time he was deposing in the Court, that both the accused persons had committed the murder of the deceased and there was intimacy between his mother and the co-accused. It is also submitted by the learned counsel that though it has come in evidence of P.W.2 Ganga Mahto 5 that there was lot of blood behind the house of the deceased and trail of blood was also there up to the place where the dead body was found, but in absence of examination of the Investigating Officer, this evidence also could not be corroborated. Learned counsel submitted that in the facts of this case, there was practically no material on record to convict the appellants and, accordingly, the impugned Judgment of conviction and Order of sentence cannot be sustained in the eyes of law.

11. We have gone through the record with the help of learned counsel for the appellants and from the evidence on record, we find that except the evidence of child witness that the accused Jagtaran Singh had come to the house in the night and had taken his father along with him, and had rebuked the child to go inside the house, as also evidence that thereafter his mother went out from the back door of the house, and in the morning dead body was found, there is no material on record

against the appellants. Indeed, the defence has drawn the attention of the child witness towards the statements made by him before the police, which he had answered in affirmative, but the defence could not get the chance to get the necessary contradictions, if any, from the Investigating Officer in absence of his examination. This child witness has also admitted that for the first time he was deposing in the Court that there was intimacy between his mother and the co-accused Jagtaran Singh and both of them had committed the murder of his father. Though the child witness as well as P.W. 2 Ganga Mahto have admitted that the father of the deceased was alive and on the day of occurrence, and he was present in the house of the deceased, but he has also not been examined by the prosecution. In the cross examination of P.W.2 Ganga Mahto, he has admitted that he had asked his father about the whereabouts of Suresh Mahto, but his father could not reply anything and he had also asked his brother whether there was any noise in the evening near the house, whereupon his brother replied that there was no noise. The presence of blood behind the house of the deceased and trail of blood up to the place where the dead body was found, also could not be proved in absence of examination of the Investigating Officer. There is no evidence at all, of entering into any criminal conspiracy by both the accused persons to commit the crime, in order to substantiate the charge under Section 120-B of the Indian Penal Code. We are of the considered view that the prosecution has utterly failed to prove the charges against both the appellants beyond all reasonable doubts, and it is a fit case in which both the accused 6 appellants ought to have been acquitted by the Trial Court, finding them not guilty. As such, the impugned Judgment of conviction and Order of sentence passed by the Trial Court below, cannot be sustained in the eyes of law, and are fit to be set aside.

12. For the foregoing reasons, the impugned Judgment of conviction dated 4th April 2006 and Order of sentence dated 7th April, 2006, passed by learned 1st Additional Judicial Commissioner, Khunti, in Sessions Trial No.345 of 2004, are hereby, set aside. Both the appellants are not found guilty and they are acquitted of the charges. The appellant Dasi Devi is on bail and she is discharged from the liability of her bail bond. The appellant Jagtaran Singh is in custody. Let him be released and set at liberty forthwith, if his detention is not required in any other

case.

13. Both these appeals are accordingly, allowed. Let the Lower Court Records be transmitted to the Court concerned forthwith, along with a copy of this Judgment. (H.C. Mishra, J.) (Ananda Sen, J.) High Court of Jharkhand, Ranchi The, 28th July, 2017 Kumar/AFR

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