

Lal Marandi and Ors. Vs. State

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Court : Jharkhand

Decided On : Nov-30-2017

Appellant : Lal Marandi and Ors.

Respondent : State

Judgement :

1 Cr. Appeal (DB) No.64 of 1993 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Appeal (DB) No. 64 of 1993 (P) (Against the Judgment of conviction and Order of sentence dated 20th January, 1993, passed by the VIth Additional Sessions Judge, Dumka, in S.T. No. 327 of 1990.) 1. Lal Marandi 2. Bablu Marandi ... Appellants Versus The State of Bihar (Now Jharkhand) .. Respondent PRESENT HONBLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE ANIL KUMAR CHOUDHARY .. For the Appellants : Mr. Sunil Kumar Mahto, Advocate For the State : Mrs. Sadhna Kumar, APP .. By Court:- Heard learned counsel for the appellants and learned Addl. P.P. for the State.

2. The appellants are aggrieved by Judgment of conviction and Order of sentence dated 20th January, 1993, passed by the learned VIth Additional Sessions Judge, Dumka, in S.T. No. 327 of 1990 whereby, both the appellants who are the father and son, have been found guilty and convicted for the offence under Sections 302/34 of the Indian Penal Code. Upon hearing on the point of sentence, they have been sentenced to undergo R.I. for life for the said offence.

3. The prosecution case was instituted on the basis of the fardbeyan of Munni Kisku, who is the wife of the deceased Jhandu Hansda. Shorn of unnecessary details in the farbeyan, it is alleged that her brother Lal Marandi, Bablu Marandi and other named persons had called her husband to their house for a feast on 21.11.1989 and on 22.11.1989, the brother of the informant, Lal Marandi came at about 9.00 A.M. and informed that his brother-in-law, i.e., the husband of the informant, died in the night. When the informant enquired from her brother, he informed that in the night, after eating and drinking, her 2 Cr. Appeal (DB) No.64 of 1993 husband had 2-3 vomits, and he died. Upon getting the information, the informant along with her daughter, brother-in-law as well as other persons, went to her brother's place, where in the courtyard of the house, she found the dead body of her husband lying on a cot. There was lot of blood and there were cut injuries on the dead body and she asked her brother-in-law to inform the police. She has stated that there was dispute between them due a jack fruit tree, and she has alleged that due to the said dispute, the accused persons had called her husband to their house and committed his murder. On the basis of fardbeyan of the informant, Jarmundi P.S. Case No. 155 of 1989 corresponding to G.R. No. 878 of 1989, was instituted for the offence under Section 302 of the Indian Penal Code against unknown. After investigation, the police submitted the charge sheet against the accused appellants.

4. Upon commitment of the case to the Court of Session, charge was framed against the accused appellants for the offence under Sections 302/34 of the Indian Penal Code, and upon the accused-appellants' pleading not guilty and claiming to be tried, they were put to trial.

5. In course of trial, the prosecution has examined as many as 10 witnesses in the case, including the Investigating Officer. The Doctor, who had conducted the post-mortem examination on the dead body of the deceased was not examined in the case. PW-5 Nilmani Hansda, the daughter of the deceased and P.W.-8 Mahadeo Tudu, were only tendered by the prosecution. One another witness PW-7 Neel @ Nilu Hembram, has not stated anything against the accused. He has only deposed that he learnt that the deceased had died in the house of the accused.

6. P.W.-6 Munni Kisku, is the informant of this case and the wife of the deceased Jhandu Hansda. This witness has stated that the occurrence had taken 3 Cr. Appeal (DB) No.64 of 1993 place about an year ago. On Tuesday, the accused persons came to her house and they took her husband along with them. On Wednesday, Lal Marandi came and informed that her husband had died. He also informed that the deceased had died after taking liquor. On getting the information, she along with her daughter, her brother-in-law and other persons, including the Pradhan of the village, went to her brothers place and found the dead body on the cot. She found that the ear, eyes and nose were missing from the dead body and his cloths were stained by blood. She remained there in the night. She has also stated that there was dispute between the parties for a jack fruit tree. The police came on the next day and recorded her fardbeyan and finding the same true, she put her thumb impression on the fardbeyan. She identified both accused stating that they are father and son. This witness was put to extensive cross examination, but there is nothing in her cross examination to discredit her testimony.

7. P.W.-1 Bodo Hansda, the brother-in-law of the informant and P.W.-2 Makhu Hansda, the daughter of the informant, have also supported the prosecution case as stated in the FIR, stating that the deceased was taken by the accused persons to their house and on the next day, the accused Lal Marandi came and informed that the deceased had died due to taking liquor and thereafter, they went there and saw the dead body with injuries. There is nothing in their cross examinations to discredit their testimony.

8. P.W.-4 Lakhan Marandi has stated that on the date of occurrence, the wife of the deceased had come to him and requested him to accompany her to her brothers place, as she had been informed that her husband had died. This witness had accompanied the informant and other persons to the place of the accused persons, where he saw the dead body of the deceased with injuries. There is nothing of much importance in his cross examination also. 4 Cr. Appeal (DB) No.64 of 1993 9. P.W.- 9 Bijay Prasad Das, who was a compounder in Sadar Hospital, Dumka, is a formal witness and has proved the post-mortem report to be in the pen and signature of the Dr. B.B. Sharma, who had conducted the post-mortem examination on the dead body of the deceased and he was transferred

from that place. The post-mortem report was marked as Ext.

1. 10. P.W.-3 Balmiki Kumar, is the part I.O., of the case, who had only recorded the statement of one witness, had arrested the accused Bablu Marandi and had submitted the charge-sheet in the case.

11. P.W.-10 Banarshi Choudhary, is the main I.O. in the case. This witness has stated that on 23.11.1989, he was posted as Officer-Incharge of Jarmundi Police Station, on which date, he had recorded the fardbeyan of the informant- Munni Kisku, and she had put her thumb impression on the fardbeyan. He has identified the fardbeyan to be in his pen and signature, which was marked Ext.

2. He had recorded the re-statement of the informant and had prepared the inquest report of the dead body in the presence of the witnesses and same was proved and marked as Ext.

4. He sent the dead body for post- mortem examination. He has given the details of the place of occurrence and he had found the dead body in the courtyard of the house, lying on a cot. He was informed that the deceased was sleeping by the side where the dead body was found, and that place was found smeared. This witness also found the jack fruit tree, which was the point of dispute between the parties. He has stated that he had apprehended one accused but could not apprehend another accused. Thereafter, due to his transfer, he handed over the charge of the investigation. In his cross examination, this witness has stated that he had not seen any document with respect to the dispute between the parties. Some discrepancies, in the evidence of PW-6 Munni Kisku, was taken from this witness, but they are not of 5 Cr. Appeal (DB) No.64 of 1993 much importance. He has denied the suggestion to have made faulty investigation.

12. The statements of the accused persons were recorded under Section 313 of the Cr.P.C., where they have denied the evidence against them, and the accused Lal Marandi has also stated that the deceased had died due to taking liquor. On the basis of the evidence on record, both the accused were convicted and sentenced for the offence as aforesaid.

13. Learned counsel for the appellants has submitted that the impugned Judgment of conviction and Order of sentence are absolutely illegal and cannot be sustained in the eyes of law, in view of the fact that both the accused have been convicted under Section 302/34 of the Indian Penal Code, but the fact remains that there is no eye witness to the occurrence. It is only suspected that due to dispute for the jack fruit tree, the accused persons have committed the murder of the deceased, but it is very doubtful that the accused would kill his own sister's husband for such a trivial dispute. Learned counsel submitted that in absence of any eye witness and the dispute between the parties being so trivial, the prosecution case is absolutely doubtful. It is also submitted by the learned counsel that the doctor conducting the post-mortem examination on the dead body of the deceased, has not been examined in the case and as such, cause of death could not be ascertained. Learned counsel for the appellants accordingly, submitted that the impugned Judgment of conviction and Order of sentence cannot be sustained in the eyes of law and in the facts of case, both the appellants were entitled at least for the benefits of doubt.

14. Learned Addl. P.P. appearing for the State, on the other hand, has opposed the prayer and has submitted that though there is no eye witness to the occurrence, but the facts remains that the dead body of the deceased has been 6 Cr. Appeal (DB) No.64 of 1993 found in the house of these appellants. The explanation was given by the accused persons that the deceased died due to taking liquor after vomiting, but there were injuries on the dead body, which could not be explained by the prosecution. It is submitted that even the inquest report, which has been proved by the I.O., clearly shows that there were bleeding injuries on the dead body of the deceased. Both the ears were cut and one eye was also extricated out, which clearly shows that it was not a case of death due to taking spurious liquor or something like that. Learned counsel submitted that since the dead body was found in the house of the accused with bleeding injuries, which was not explained by the accused persons, there were strong circumstances only pointing out towards the guilt of the accused, As such, there is no illegality in the impugned Judgment of conviction and Order of sentence.

15. Having heard learned counsels for the both sides and upon going through the evidence on record, we find that admittedly there is no eye witness to the occurrence and admittedly there is such a trivial dispute between the parties that in normal circumstance, one would not commit murder of his own sister's husband only for that, but the fact remains that the dead body of the deceased was found in the house of the accused appellants with severe bleeding injuries, and the appellants have not given any explanation as to the injuries found on the dead body. The inquest report as well as the post-mortem report which has been formally proved, clearly shows that there were ante-mortem injuries on the dead body and the defence has failed to explain the injuries on the dead body. The dead body was kept lying in the house of the appellants for two days, but the appellants did not even thought it proper to inform the police rather, when the informant came to their house and found the dead body, thereafter the police was informed. In the statement of the accused recorded 7 Cr. Appeal (DB) No.64 of 1993 under Section 313 of the Cr.P.C., the only explanation that has been given by the accused, is that the deceased had died due to taking liquor, which fact is not at all acceptable in view of the injuries found on the dead body.

16. We are of the considered view that there is strong circumstantial evidence against both the appellants who are the father and son, pointing only towards the guilt of the accused persons. We find that the conviction and sentence of the appellants was properly made by the Trial Court below.

17. For the foregoing discussions, we do not find any illegality in the impugned Judgment of conviction and Order of sentence dated 20th January, 1993, passed by the learned VIth Additional Sessions Judge, Dumka, in S.T. No. 327 of 1990, whereby, both the appellants were convicted and sentenced for the offence under Sections 302/34 of the Indian Penal Code, which we hereby, affirm. Both the appellants are on bail. The bail of both the appellants, are hereby, cancelled and they are directed to surrender in the Court below forthwith for undergoing the sentence. The Trial Court below is also directed to issue process compelling the production / surrender of the appellants for serving out the sentence.

18. There is no merit in this appeal and the same is accordingly, dismissed. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy this Judgment. (H.C. Mishra, J.) (Anil Kumar Choudhary, J.) Jharkhand High Court, Ranchi Dated the 30th November, 2017 NAFR/ Smita/ Sonu

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