

Deoki Devi Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Apr-21-2003

Reported in : [2003(2)JCR682(Jhr)]

Judge : Vishnudeo Narayan and; Lakshman Uraon, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 709 of 2002

Appellant : Deoki Devi

Respondent : State of Jharkhand

Advocate for Def. : Vijaya Gopal, APP

Advocate for Pet/Ap. : Surendra Prasad Sinha, A.C.

Disposition : Appeal dismissed

Judgement :

Lakshman Uraon, J.

1. The appellant, Deoki Devi, has preferred this appeal against the judgment of conviction dated 26.7.2002 and the order of sentence dated 30.7.2002 passed by Shri Dilip Kumar Sinha, Sessions Judge, Lohardaga in ST No. 52/98/7/98, whereby and whereunder the appellant was convicted and sentenced under

Section 302, IPC for committing murder of Khujha Devi.

2. The prosecution case arises on the fardbeyan on Gouri Devi, PW 7, recorded on 19.9.1997 at 19.30 hours by the S.I., Priya Ranjan of Senha P.S., on which he registered Senha P.S. Case No, 48/97 on the same day under his endorsement and signature, Ext. 3, on the basis of which a formal FIR, Ext. 4, was drawn and after investigation charge-sheet under Section 302, IPC was submitted against the appellant, Deoki Devi. The informant, Gouri Devi, was sitting alongwith her children and aunt mother-in-law, Sukhmain Devi, PW 3, near her house under Pipal tree after taking lunch. Her mother-in-law, Khujha Devi (since dead) had gone to her paddy field for weeding out at about 11.30 a.m. At about 2 p.m. wife of Gyan Mahlt (appellant), was running towards the village from the side of river. When the informant asked the reason then she informed that she cut her mother-in-law and was going to P.S. The informant and her aunt mother-in-law, PW 3, Sukhmain Devi, rushed towards the river. They met Cyan Mahli, husband of the appellant, who was going to the village running, and informed them that his wife, Deoki Devi, cut her mother-in-law, Khujha Devi and is fleeing away. He informed that the he is chasing his wife to assault her. The informant and PW 3 when went to the bank of the river then saw Khujha Devi lying on the bank of the river having an umbrella under her head. The blood was oozing out from her neck which was completely cut except some skin portion on the right side of the neck. Her right hand wrist was also cut completely. The informant started weeping. Thereafter some villagers assembled there who brought her to her home. Her mother-in-law, Khujha Devi, was sleeping on the bank of the river. At that time her neck and right hand wrist was cut by the appellant, Deoki Devi, with sharp cutting weapon.

3. The prosecution has produced 11 witnesses in order to substantiate the charge framed against the appellant, Deoki Devi, under Section 302, IPC. PW 1, Bhuwaneshwar Mahli, when returned home at 2.30 p.m. from Lohardaga then he came to know from Badho Oraon (since dead) that the appellant Deoki Devi, caused murder of Khujha Devi on the bank of the river Koel. He went there and saw that the neck and the wrist of the right hand of Khujha Devi was cut and she was dead. He is not an eye-witness of the alleged occurrence. PW 2, Nagendra Nath Kallindi, is a witness of the inquest-report, which was prepared in carbon

process in his presence on which he signed, Ext. 1. PW 3, Suikhmain Devi, is the wife of PW 1 Bhuwaneshwar Mahli, who was sitting alongwith the informant in front of her house. She also came to know from Gayan Mahli that his wife (Deoki Devi) murdered Khujha Devi, mother-in-law of the informant. She also went alongwith the informant, Gauri Devi, to the bank of the river Koel and saw the dead body of Khujha Devi. PW 4, Lalita Devi, PW 5, Purnima Kumari and PW 6, Ritu Kumari, were grazing the cattle on the bank on the river Koel. They are eyewitnesses of the alleged occurrence. PW 7, Gouri Devi, is the informant of this case and a hearsay witness and she was informed by Gyan Mahli while chasing his wife, Deoki Devi, alleging that she caused the murder of Khujha Devi. PW 8, Dhaneshwar Mahli, is a hearsay witness and is a witness of the inquest-report prepared in his presence on which he signed, Ext. 1/3, PW 9, Aghindra Mahli, is a hearsay witness who came to know from Someshwar Oraon. PW 10, Dr. Shatlesh Kumar, conducted the postmortem examination on the dead body of Khujha Devi and prepared postmortem examination report in his pen and signature, Ext. 2, PW 11, Someshwar Oraon, is a formal witness who has proved the formal FIR, Ext. 4, the fardbeyan recorded by the S.I., Priya Ran-jan, and the inquest-report Ext. 5, PW 12, Munilal Singh, has proved the statements recorded under Section 164, Cr PC by the then SDJM, Shri, Shambhu Nath Mishra on'29.9.1997 of Ritu Kumari (Ext. 6), Purnima Kumari (Ext. 7), Lalita Kumari (Ext. 8) and Gyan Mahli (not examined), Ext. 9.

4. The learned Sessions Judge, Lohardaga, considered the oral and documentary evidence, relied upon the evidence of the eye-witnesses, Pw 4, PW 5, PW 6 and the Doctor, PW 8 and found the appellant guilty. He convicted and sentenced her under Section 302, IPC.

5. Assailing the judgment and order of conviction and sentence passed by the learned Sessions Judge, Lohardaga, the learned amicus curiae, Mr. Surenda Prasad Sinha, has submitted that there is no eye-witness of the manner of the alleged occurrence. The I.O. has not been examined which has greatly prejudiced the appellant as she could not take contradiction of the prosecution witnesses, specially, PW 4, Lalita Devi, PW 5, Purnima Kumari and PW 6, Ritu Kumari. The weapon of assault which is alleged to be a sharp-edged weapon, could not be

recovered. The Magistrate who recorded the statement of PWs 4, 5 and 6 under Section 164, Cr PC has not taken oath hence the statements recorded by him and proved by a formal witness, PW 2, Nagendra Nath Kalindi, cannot be taken into consideration as evidence.

6. The learned APP in course of his submission has argued that in this case the appellant, Deoki Devi, made extra-judicial confession before PW 3, Sukhmain Devi and PW 7, Gouri Devi, regarding the murder of Khijha Devi caused by her and was going to the P.S. Her extra-judicial confession was corroborated by PWs 4, 5 and 6 in their statements recorded under Section 164, Cr PC and also in course of their evidence in the Court. The medical evidence, PW 10, Dr. Shailesh Kumar, who conducted the postmortem examination, found lacerated wounds on occipital area and left side of the neck. Her throat was cut through except the muscle and skin of the right side. Her right wrist with radius was also found cut with lacerated wound which corroborates the prosecution case regarding the cutting of neck and the right wrist of the deceased, Khijha Devi, by some sharp-edged weapon by this appellant. The non-examination of the I.O. has not caused any prejudice as the ocular evidence of the eye-witnesses, PWs 4, 5 and 6, without any doubt goes to lead to the only conclusion that while Khijha Devi was sleeping on the bank of the river, Koel, on sand, her neck and wrist was cut by this appellant, Deoki Devi. The appellant threw the sharp-edged weapon into the water of the river. Koel, and fled away. Hence the weapon of assault could not be recovered. The I.O. prepared the inquest- report in presence of the witnesses, PW 2, Nagendra Nath Kalindi and PW 8, Dhaneshwar Mahli, Ext. 5, which proves that the dead body of Khijha Devi was found lying on the bank of the river, Koel, on 20.9.1997 at 8.30 a.m. which is the P.O. The learned Sessions Judge considered all these evidence meticulously and has rightly convicted and sentenced the appellant to undergo imprisonment for life under Section 302, IPC.

7. In this present case the I.O. has not been examined but the formal witness has proved the formal FIR, Ext. 4, the fardbeyan receded by the Officer-in-Charge and the inquest-report in carbon process, Ext. 5. The informant, PW 7, Gauri Devi, and her aunt mother-in-law, PW 3, Sukhmain Devi, were sitting near their house under a Pipal tree. They saw the appellant, Deoki Devi, running towards the village from

the river side. When the informant PW 7, wanted to know the reason; they were informed that she caused the murder of his mother-in-law (Khijha Devi) and was going to the P.S. When PW 3, Sukhmain Devi, and PW 7, Gauri Devi, went to the P.O. i.e. on the bank of the river, Koel, they saw that the neck and the wrist of Khijha Devi were completely cut having some portion of skin on the right side on the neck. PW 4, Lalita Devi, PW 5, Purnima Kumari and PW 6, Ritu Kumari, are the eye-witnesses of the alleged occurrence who were grazing their cattle on the bank of the river, Koel, where Khijha Devi had slept on the sand on the river keeping her umbrella under her head. All these three witnesses saw that the appellant, Deoki Devi, assaulted her mother-in-law causing her death and was fleeing away. They went near Khijha Devi and found that her neck was completely cut. Her right wrist was also found cut. PW 6, Ritu Kumari, has further deposed that Gyan Mahli was on the other side of the bank of the river, Koel. When he came to the Western side and found Khijha Devi murdered by his wife, Deoki Devi, then he chased her. All these three witnesses, PWs 4, 5 and 6, were grazing their cattle very near to the place where Khijha Devi had slept on the Western bank of the river, Koel, on the sand keeping an umbrella under her head. PW 10, Dr. Shailesh Kumar, conducted the postmortem examination on the dead body of Khijha Devi on 20.9.1997 at 105 p.m. and found rigor mortis present in all four limbs. He found (1) Lacerated wound 4' x 1' on occipital area bone deep. (2) Lacerated wound on left side of neck 6' x 1', throat cut through and through except muscle and skin on right side. (3) Lacerated wound on right wrist with radius and ulna and parts of metacarpal bones partially cut 2' x 2'. He found occipital bone of the neck and the head 1' above the occipital and severed meninges underneath with dark clotted blood and laceration of occipitals of brain corresponding to injury Nos. 1 and 2. All major blood vessels, trachea, oesophagus and cervical part of vertebral column was cut alongwith spinal cord in relation to injury No. 2. This witness opined that all the injuries were antemortem in nature caused by heavy sharp cutting weapon and the death was due to shock and haemorrhage due to damage of vital organs such as brain, spinal cord, trachea and major blood vessels. The time elapsed since death was 24-36 hours from the time of the postmortem examination. The postmortem examination report under his pen and signature is Ext. 2. He opined that there is possibility of use of more than one

weapons in assault. But the another weapon may not be stick or iron rod. However, the opinion of the medical witness regarding the weapon of assault causing lacerated wounds on the person of the deceased does not cast any cloud of suspicion to the very spectrum of the prosecution case.

8. The genesis of the alleged occurrence has not been mentioned in the Jardebayan and the prosecution has not brought on the record any reason of the alleged murder which does not require any proof in a murder case when the eye-witnesses are consistent in their evidence. All the three eye-witnesses, i.e. PW 4, Lalita Devi, PW 5, Purnima Kumari and PW 6, Ritu Kumari, are the independent eye-witnesses having no animus to depose falsely against the appellant. They had no enmity with this appellant. They have unequivocally supported the prosecution case that this appellant, Deoki Devi, assaulted Khijha Devi while she was sleeping on the bank of the river, Koel, resulting her death as they were grazing their cattle very near to the P.O. and when Deoki Devi fled away from the P.O. then they went near Khijha Devi. They found that the neck of Khijha Devi was completely cut and the right wrist was also cut with sharp edged weapon and she had died. Therefore, I see ring of truth in their evidence. The other witnesses who are the hearsay witnesses about the occurrence are PW 1, Bhuwaneshwar Mahli, PW 3, Sukhmain Devi and PW 7, informant, Gouri Devi. When they heard about the murder of Khijha Devi by this appellant, they went to the bank of the river and found the dead body of Khijha Devi lying there in a pool of blood. PW 2, Nagendra Nath Kalindi and PW 8, Dhaneshwar Mahli, have deposed that in their presence the I.O. prepared the inquest-report of the dead body of Khijha Devi on which they signed, Ext. 1 and Ext. 1/3 respectively. The informant, PW 7, Gouri Devi, and PW 9, Aghindra Mahli, have deposed that there was on enmity in between the deceased and the appellant. The other witnesses including the eye-witnesses, PWs 4, 5 and 6, are also not on inimical term with the appellant, Deoki Devi. They are independent witnesses who have corroborated the ocular evidence of the eye-witnesses, PWs 4, 5 and 6 that when they heard about the murder of Khijha Devi committed by this appellant, went to the bank of the river, Koel, and saw the dead body of Khijha Devi whose head was severed and her right wrist was also cut. The inquest-report, Ext. 5, corroborates the fact regarding the P.O. and the lacerated cut wound on the neck and right wrist of Khijha Devi. The Doctor, PW 10, who

conducted the postmortem examination on the dead body of Khijha Devi, also found lacerated wound of 4' x 1' on the occipital area x bone deep and lacerated wound on the left side of the neck 6' x 1' and throat was cut through and through except some muscle and skin of right side and also found lacerated wound on right wrist with radius and ulna and parts of metacarpal bones partially cut 2' x 2'. Thus, I find that the ocular evidence of the independent eyewitnesses, i.e. PW 4 Lalita Devi, PW 5, Purnima Kumari and PW 6, Ritu Kumari, have been found corroborated by the medical witness, PW 10, who prepared the postmortem examination report, Ext. 2 in his pen and signature after conducting the postmortem examination on the dead body of Khijha Devi. I do not find any legal infirmity in the ocular evidence of the independent eye-witnesses, PWs 4, 5 and 6 corroborated by the medical evidence of Dr. Shailesh Kumar, PW 10. The non-examination of the I.O. has not prejudiced the appellant in any manner when the time of the alleged occurrence and the commission of the alleged assault by this appellant on the person of Khijha Devi, has been fully corroborated by the independent ocular eye-witnesses of the same village who had got no enmity with the appellant. I find that the learned Sessions Judge has meticulously considered all the oral and documentary evidence on the record and rightly came to the conclusion in convicting and sentencing the appellant under Section 302, IPC. There is no legal infirmity in the impugned judgment and order of the learned Court below.

9. I see no merit in this appeal which fails. In the result this criminal appeal is, hereby, dismissed. The judgment and order of conviction and sentence passed by the learned Sessions Judge, Lohardaga in ST No. 52/98/7/98, is, accordingly, affirmed.

Vishnudeo Narayan, J.

10. I agree.