

The State of Jharkhand Vs. Dhenā Alias Vishesh Mahto

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Court : Jharkhand

Decided On : Jul-27-2015

Appellant : The State of Jharkhand

Respondent : Dhenā Alias Vishesh Mahto

Judgement :

1 Death Reference (D.B.) No. 4 of 2013 with Cr. Appeal (D.B.) No. 18 of 2014 ... Against the judgment of conviction dated 30.9.2013 and order of sentence dated 3.10.2013 passed by the Additional Judicial Commissioner-III-cum-FTC (CAW), Ranchi in Sessions Trial No. 579 of 2008. ... In Death Reference (D.B.) No. 04 of 2013 The State of Jharkhand Appellant Versus Dhenā @ Vishesh Mahto Respondent In Cr. Appeal (D.B.) No. 18 of 2014 Vishesh Mahto @ Dhenā Appellant Versus The State of Jharkhand Respondent ... In Death Reference (D.B.) No. 04 of 2013 For the Appellant-State : Mr. Shekhar Sinha, A.P.P. For the Respondent : Mr. P.K. Nayak, Advocate In Cr. Appeal (D.B.) No. 18 of 2014 For the Appellant : Mr. P.K. Nayak, Advocate For the Respondent : Mr. Shekhar Sinha, A.P.P. PRESENT HON'BLE MR. JUSTICE R.R. PRASAD HON'BLE MR. JUSTICE PRAMATH PATNAIK By Court : The appellant-Vishesh Mahto @ Dhenā was put on trial in Sessions Trial No. 579 of 2008 on the charge of committing rape upon Mahrani Kumari, aged about 11 years, and then killing her and also for causing disappearance of the evidence of the murder and rape. The Additional Judicial Commissioner-III-cum-FTC (CAW), Ranchi having found the appellant guilty of all the charges recorded the judgment of conviction dated

30.9.2013 and awarded death sentence to the appellant-Vishesh Mahto @ Dhenadevi order dated 3.10.2013. 2 Being aggrieved with the judgment of conviction and order of sentence, an appeal has been preferred on behalf of the State, whereas the court referred the matter under section 366 Cr.P.C. for confirmation of the order upon which Death Reference (D.B.) No. 04 of 2013 has been registered. Accordingly, Reference as well as Appeal were heard together.

2. The case of the prosecution is that on 08.05.2008, the informant-Lal Nand Kishor Nath Sahdeo (P.W.

13) was there in his house along with his family members including his daughter-Mahrani Kumari, aged about 11 years. In the afternoon, it was raining. When it stopped raining Mahrani Kumari at about 3 p.m. came out of the house to come to an orchard for picking up mangoes and litchis but she did not return till 5 o'clock. The informant along with other villagers set out in search of her but they did not find Mahrani Kumari in the village. On the next day i.e. on 9.5.2008 also, they were not able to find out the girl. On 10.5.2008 at about 8 a.m. when Raghu Oraon (P.W.9) was taking out water from his well, he did notice a dead body floating over the water. He informed to the informant-Lal Nand Kishor Nath Shahdeo (P.W.

13) who along with others went there and took out the dead body and found the dead body as that of Mahrani Kumari. They also noticed the injuries on the person of the deceased and, therefore, the informant suspected that somebody after killing her daughter threw the dead body in the well. Meanwhile, one Garib Mochi (P.W. 14), Inspector of Police of Bero Police Station, when received information that a dead body of a girl has been recovered from his well, he went there and recorded the fardbeyan (Ext.-6) of the informant-Lal Nand Kishor Nath Sahdeo (P.W.

13) upon which a formal FIR (Ext.-7) was drawn. 3 The Investigating Officer-P.W.14 undertook the investigation, during which he held inquest on the dead body and prepared an inquest report (Ext.4/A). Thereupon, the Investigating Officer sent the dead body for postmortem examination, which was conducted by Dr. Ajit Kr. Chaudhary-P.W.3., who upon holding autopsy on the dead body did find the following injuries on the persons of the deceased: Abrasion (i) 1/2x1/2 cm

on lateral side and middle part of left arm. (ii) 1x1/2 cm on back of left elbow. Lacerated wound (i) 4x cm x soft tissue over left eyebrow. (ii) 2x cm x bone deep on the bridge of nose with fracture of nosel bone. (iii) 4x cm x soft tissue on left upper lip. (iv) x cm x bone deep over left side of chin with fracture of the underlying mandible bone. Internal:- Fracture of left side of maxilla was found with presence of blood and blood clot mixed with brain matter with the undergoing decomposition. Genital Organ:- Hymen was completely torn from the rim with presence of blood stain and the surrounding area was contused and reddish in colour. The doctor (P.W.3) issued postmortem examination report (Ext.

2) with an opinion that the injuries were ante-mortem in nature and have been caused by hard and blunt substance and that the death occurred due to head injury associated with shock and hemorrhage. Meanwhile, the Investigating Officer recorded the statements 4 of the witnesses. In course of investigation, the Investigating Officer got the statement of P.W.4-Pawan Baitha and P.W.7-Maru Oraon recorded by a Magistrate-Amit Shekhar (P.W.12), under section 164 Cr.P.C. On their disclosure when this appellant was arrested, he is said to have confessed before the police and that confession made by the appellant led to recovery of a Tangi used in commission of the offence of murder and was seized under the seizure list (Ext. 1/A).

4. On completion of the investigation, against this appellant, charge-sheet was submitted upon which cognizance of the offence, as aforesaid, was taken against this appellant. So far the other accused namely, Ranjit Singh, is concerned, investigation was kept open. When the case of this appellant was committed to the Court of Sessions the appellant was put on trial.

5. During trial, the prosecution in order to prove its case examined altogether 14 witnesses. Of them, P.W. 1-Raju Oraon has testified that when Mahrani Kumari, daughter of the informant, went missing, he along with others searched her for two days but did not find any trace of the girl. On 10.5.2008 the dead body was found floating in a well which was taken out in presence of P.Ws. 5, 8 and 9 who have also testified in the same manner. P.W. 2 as well as P.Ws. 9 and 10 are also the witnesses to the seizure of Tangi from behind the bush. P.W. 4- Pawan Baitha and

P.W.7- Maru Oraon, on whose testimonies entire case of the prosecution hinges, have testified that while they were grazing their cattle in an orchard, the appellant came and asked as to whose daughter the girl (Mahrani Kumari) is? When they disclosed about the name of father of the girl, the appellant went towards her. After sometime, they heard sound of screaming of the girl. They also saw the appellant assaulting the girl with Tangi. While they were about to leave the orchard, the appellant came to them and held out threat not to disclose anybody otherwise they will have to face consequences. P.W.13-Lal Nand Kishor Nath Sahdeo happens to be the informant who did testify in the same manner as he had made statement in his fardbeyan (Ext.6).

6. After closure of the prosecution case, when the appellant was questioned under Section 313 of Cr.P.C. about the incriminating material appearing against him, he denied.

7. Thereupon, the appellant in his defence has also examined one witness as D.W.1- Munni Devi, who happens to be the wife of the appellant wherein she has testified that she had been kept by the informant as concubine, which was being objected by the appellant and therefore, in order to get rid of him, the informant got a case manufactured through P.W.4-Pawan Baitha and P.W.7- Maru Oraon, who were the servants of the informant.

8. The trial court having placed its implicit reliance on the testimonies of the P.W.4 and P.W.7, claiming themselves to be the eye witnesses of the incident, did find the appellant guilty for committing rape of the deceased and also for committing her murder and thereby the court recorded the order of conviction and sentence against the appellant which is under challenge.

9. Mr. P.K. Nayak, learned counsel appearing for the appellant- Vishesh Mahto @ Dhena, submits that the entire case of the prosecution hinges upon the testimonies of P.W.4 and P.W.7, but they never appear to be the trustworthy for the reasons that those two witnesses, who claimed to have seen the occurrence, did not disclose about the occurrence to anyone for about 22 days, during which they had even been taken into custody by the police. However, the police succeeded in getting their statements recorded on 3.6.2008 under section 164

Cr.P.C. implicating this appellant at the instance of the informant. Under the circumstances, they never appear to be the trustworthy. Still the court has recorded the order of conviction and has awarded the death sentence to the appellant and thereby the court committed a grave illegality in recording the order of conviction and sentence. Further it was submitted that the reason for falsely implicating the appellant, is obvious whereby the appellant, as per the evidence of D.W.1, wife of the appellant, was quite annoyed with the informant who had kept the wife of the appellant as concubine and thereby the informant wanted to get rid of this appellant. In that pursuant the informant got this appellant implicated through P.W.4 and P.W.7, who were the servants of the informant.

10. Mr. Shekhar Sinha, learned counsel appearing for the State, submits that though there appears to be delay on the part of P.W.4 and P.W.7 in making disclosure of the occurrence but that would not be fatal for the prosecution, as no reason appears to be there on the part of those witnesses to falsely implicate the appellant and thereby the trial court by putting reliance on the testimonies of P.W.4 and P.W.7 has rightly recorded the order of conviction and sentence after finding the offence being quite heinous, as 11 years old girl was done to death after being raped.

11. We have already noticed the case of the prosecution that on 8.5.2008 the deceased Mahrani Kumari, aged about 11 years, left home for coming to the orchard for picking up mangoes and litchis but did not return home by 5 o'clock. Thereupon she was searched by the informant-Lal Nand Kishor Nath Shahdeo (P.W.13) and other persons. Neither she was found on 8.5.2008 nor on 9.5.2008. On 10.5.2008 when Raghu Oraon (P.W.9) was taking out water from the 7 well, he found a dead body floating over the water. When it was taken out in presence of P.W.2-Santosh Mahto, P.W.5-Meena Devi, P.W.8- Lal Bhushan Nath Shahdeo, P.W.9-Raghu Oraon and P.W.10- Nagendra Kumar Singh as well as P.W.13-Lal Nand Kishor Nath Shahdeo (informant), it was found to be the dead body of Mahrani Kumari. After 22 days, the Investigating Officer (P.W.14) did record the statements of P.W.4- Pawan Baitha and P.W.7-Marv Oraon who did disclose to the police that while they were grazing cattle in the orchard, they found the appellant there who asked as to whose daughter the girl (Mahrani Kumari), is?

Upon it, they disclosed that she is the daughter of Lal Nand Kishor Nath Shahdeo-informant (P.W.13). According to them, the appellant went to the girl and then they saw the appellant assaulting her with Tangi. Both of them (P.Ws.4 and

7) have testified in the same manner before the court but the question which does arise as to whether their testimonies are worth reliable? 12. It appears from the evidences of P.W.4 and P.W.7 that the orchard was very near to the house of the informant but these witnesses after seeing the occurrence did not inform the informant, as according to them, the appellant had held out threat not to disclose to anyone. Nothing appears to be there on the record as to why P.W.4 and P.W.7 took the threat so seriously, as the prosecution has not come forward to place on record that the appellant was having criminal background. Moreover, according to their testimonies as elicited in the cross examination, both of them had been apprehended by the police and had been kept in custody for 22 days. This fact even has been admitted by the informant (P.W.13) in his cross examination. P.W.4 in his cross examination has also testified that he was even subjected to assault by the police. Had it been true that those two witnesses would have seen this appellant committing murder, both of them would have immediately divulged the said fact to the police but surprisingly they did not disclose to the police for 21 days even though they were in custody of the police. The police did extract from them about the culpability of the appellant which, in the face of the case made out by the appellant by way of defence, appears to have been manufactured at the instance of the informant.

13. Thus the conduct of P.W.4 and P.W.7 certainly seems to be unnatural, as these witnesses, if would have seen the appellant committing murder, would have immediately disclosed to the informant who was known to him and if not to the informant then even to the police, who as per them and also as per the informant had been confined by the police for 22 long days. This unnatural conduct of P.W.4 and P.W.7 never inspire confidence to be believed.

14. Furthermore, we do find which has been emerging out from the evidence of P.W.7 that at the time of occurrence when the deceased was in the orchard small children were also there. In that event, it is not expected from the appellant that he

would be killing the deceased in presence of P.W.4 and P.W.7 and even in presence of those children who as per the P.W.7 were there in the orchard but all these circumstances were never considered by the trial court in right perspective and thereby the trial court committed illegality in placing reliance on the testimonies of P.W.4 and P.W.7 and accordingly, judgment of conviction and order of sentence passed by trial court against the appellant-Vishesh Mahto @ Dhena is hereby set aside.

15. Consequently, appellant-Vishesh Mahto @ Dhena is acquitted of all the charges levelled against him and is directed to be released forthwith, if not wanted in any other cases. 9 16. In the result, Cr. Appeal (D.B.) No. 18 of 2014 stands allowed.

17. Death Reference (D.B.) No. 04 of 2013 is answered in the aforesaid term. (R.R. Prasad, J.) (Pramath Patnaik, J.) Jharkhand High Court, Ranchi Dated the 27th July, 2015 MM

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