

Gopal Singh Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Sep-29-2015

Appellant : Gopal Singh

Respondent : State of Jharkhand

Judgement :

1 Cr. (Jail) Appeal (D.B.) No. 1144 of 2009 ... (Against the judgment of conviction and order of sentence dated 06.03.2009 passed by the 1st Additional Sessions Judge, Bermo at Tenughat in S. T. Case No. 96 of 2003.) ... Gopal Singh . Appellant Versus The State of Jharkhand ... Respondent For the Appellant : Ms. Priya Shreshtha, A.C. For the Respondent : Mr. Vijay Kumar Roy, A.P.P. PRESENT HON'BLE MR. JUSTICE R.R. PRASAD HON'BLE MR. JUSTICE PRAMATH PATNAIK

JUDGMENT

By Court : The appellant was put on trial on the accusation of committing murder of Pedku Singh and also for making an attempt to commit murder of Ravi Singh, the son of the deceased. The trial Court, having found the appellant guilty for the said charges, convicted the appellant for the offence punishable under Sections 302 and 307 of the Indian Penal Code vide its judgment dated 06.03.2009 and sentenced him to undergo imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code and further to undergo R.I. for five years for the offence under Section 307 of the Indian Penal Code. Both the sentences were ordered to be run concurrently.

2. The case of the prosecution, is that, on 30.10.2001, the deceased- Pedku Singh and his wife Fulmani Devi-P.W.6 were taking their son Ravi Singh-P.W.7 to a doctor for his treatment. When they travelled a distance of about half a kilometer, the informant saw the appellant Gopal Singh, having tangi with him, going ahead of them. He stopped near a tree and when they reached at that spot, the appellant all on a sudden inflicted blow by tangi from behind on the neck of Pedku Singh as a result of which he fell down and then again another blow was given on the neck. Meanwhile, Ravi Singh, the son of the deceased aged about 7 and 1/2 years came to rescue his father but the appellant also gave tangi blow on him as a result of which he also became injured. When alarm was raised villagers came over there but by the time Pedku Singh had died. Thereupon, the informant Fulmani Devi-P.W.6 2 came to Jaridih police station where she narrated about the incident as has been stated above. At the same time motive of the occurrence was also given by stating that the appellant was suspecting her to be a witch and on account of witchcraft being played by her, son of the appellant had died.

3. On the basis of the said fardbeyan, a formal F.I.R was drawn and the case was taken up for investigation by the Investigating Officer (not examined). In course of investigation, it does appear that the I.O. having held inquest on the dead body of the deceased prepared an inquest report and then sent the dead body for post mortem examination which was conducted by Dr. Devendra Prasad, Civil Assistant Surgeon, who has also been not examined by the prosecution rather post mortem report has been proved by a formal witness as Ext.2, though the said witness was not acquainted with the doctor still that has been taken into evidence. Admissibility of the postmortem report has been subjected to serious challenge by learned counsel appearing for the appellant. The submission to this aspect would be dealt with later on. However, from the postmortem report, it does appear that the deceased had received the following injuries:- (i) A sharp cut 4 x 3 x cranial bone deep front of the neck. (ii) A sharp cut 6 x 2 x bone deep on the middle of the back side of the neck. (iii) Lacerated wound 2 x 1 x " over right shoulder. Meanwhile, the I.O when found Ravi Singh injured, he referred him for medical examination which was done by Dr. Kalyan Kumar Singh- P.W.1. On examining him, the doctor did find following injures: (i) An incised wound 2 x 1 x 1 over the back side of the head. (ii) A bruise 2 x 1 over the cheek left side 1 below the eye.

The doctor issued injury report (Ext.1) with an opinion that both the injuries are simple in nature and that injury no.1 was caused by sharp edged weapon like tangi whereas injury no.2 was caused by blunt portion of tangi.

4. Meanwhile, the I.O recorded the statements of the witnesses. On completion of the investigation when the charge-sheet was submitted cognizance of the offence was taken against the appellant, who was put on trial after the case was committed to the Court of Sessions.

5. During trial, the prosecution examined as many as nine witnesses. Of them, P.W.2-Nanku Singh, P.W.3-Jagdish Singh, P.W.4 -Gendo Singh and P.W.5-Ratan Lal Singh are the hearsay witnesses, who when came to know 3 about the occurrence either from the informant-Fulmani Devi or from her son Ravi Singh or from other person, came to the place of occurrence and found the deceased dead. P.W.6-Fulmani Devi (the informant) and her son Ravi Singh (P.W.7) are the eye witnesses. According to them while they alongwith the deceased were taking Ravi Singh to the doctor for his treatment on foot and travelled for a distance of half a kilometer, they found the appellant-Gopal Singh going ahead of them. As soon as they reached near Murgi Ladai Tand', the appellant gave tangi blow on the neck of the deceased as a result of which he fell down and then appellant again gave tangi blow on his neck. When Ravi Singh tried to rescue his father he was also assaulted by the appellant. P.W.8-Ratan Lal, a formal witness, has proved the case diary in two parts, which have been marked as Exhibits 1 and 1/1 whereas P.W. 9-Gauri Yadav has proved the postmortem report, which has been marked as Exhibit 2.

6. On closure of the prosecution case, when the appellant was questioned under Section 313 of the Cr.P.C. over the incriminating evidences appearing against him, he denied it. Thereupon, the trial Court by placing its implicit reliance on the testimonies of P.W.6 and the injured witness-P.W.7 finding corroboration from the postmortem report (Ext.2) did find the appellant guilty for committing murder of the deceased and accordingly, recorded the order of conviction and sentence, which is under challenge.

7. Ms. Priya Shrestha, learned counsel appointed as Amicus Curiae submits that the trial Court committed a grave error in taking the postmortem report in evidence as Gauri Yadav-P.W.9, who has proved the post mortem report, has candidly accepted in his cross examination that he was not acquainted with the doctor and in that event taking the postmortem report in evidence never appears to be in accordance with law and hence that cannot be taken notice of as the postmortem report cannot be taken to be even part of the record. In view of it being not proved in accordance with law, nothing remains to be there for the prosecution to establish the death of the deceased as an act of homicide on the part of the appellant and thereby, the trial Court committed illegality in recording the order of conviction and sentence under Section 302 of the Indian Penal Code for committing murder of the deceased. In this regard, learned counsel for the appellant has referred to the decision rendered in the case of Munna Kumar Vs. State of Bihar as 4 reported in (2005) 12 SCC209 whereby according to learned counsel appearing for the appellant the fact of the case was similar to that of the present case as in that case the witness who had proved the postmortem examination report was also not acquainted with the doctor and on account of doctor being not examined and the postmortem report being not proved in accordance with law, the Honble Supreme Court was pleased to hold that the prosecution has failed to prove the case of homicide, even though the fact of the case was that one of the appellant had shot dead the deceased. By referring to the said decision submission was advanced that same principle be adopted in this case as the prosecution on account of reason as stated above can be said to have failed to prove the case as that of a case of homicide. Further, submission was advanced to the effect that the appellant has also been convicted for the offence punishable under Section 307 I.P.C for causing injuries to P.W.7-Ravi Singh but those injuries have never been found to be grievous by the doctor nor according to doctor are of the nature which was dangerous to the life and thereby, conviction under Section 307 of the Indian Penal Code was also bad.

8. As against this, Mr. Vijay Kumar Roy, learned A.P.P appearing for the State submits that P.W.6, the informant, and her son Ravi Singh -P.W.7 are the eye witnesses to the occurrence who have testified that while the informant and the deceased were taking their son to the doctor for his treatment, the appellant in the

way assaulted the deceased with tangi as a result of which he died immediately and when Ravi Singh (P.W.

7) came to rescue his father he was also assaulted causing injuries on his person and the ocular evidence gets corroboration from the postmortem report (Ext.2) which does indicate that the deceased had received two injuries over his neck which can be said to be corroborative to the ocular evidence and thereby the trial Court did not commit any illegality in recording the order of conviction and sentence against the appellant.

9. Having heard learned counsels appearing for the parties and on perusal of the record we do find that according to the case of the prosecution, as has been testified by the informant, P.W.6-Fulmani Devi and also by her son Ravi Singh-P.W.7, while the deceased and the informant were taking Ravi Singh to a doctor for his treatment they came across with the appellant in the way who gave tangi blow on the neck of the deceased and when P.W.7 came to rescue his father he was also assaulted, as a result of which he received injuries. However, the injuries which were received by P.W.7 were simple in nature. The deceased on being assaulted by the appellant died. Admittedly, the doctor who had held autopsy on the dead body of the deceased was not examined by the prosecution instead of that post mortem report was proved by a formal witness P.W.9-Gauri Yadav as Ext.2 which was taken into evidence by the Court in spite of the fact that he in his cross examination has testified that he was not acquainted with the doctor who had held autopsy on the dead body. In that view of the matter, postmortem report cannot be said to have been taken into evidence in accordance with law. In that event, in view of the decision rendered in the case of Munna Kumar (Supra), the postmortem report cannot be taken into admissible piece of evidence. In such situation the prosecution cannot be said to have proved the case of homicide even if the testimonies are there of the witnesses to the effect that the appellant had inflicted injuries on the person of the deceased for the reason that no evidence is there to prove that the injuries caused by the appellant were sufficient to cause death and thereby the trial Court did commit illegality in recording the order of conviction and sentence under Section 302 of the I.P.C. However, keeping in view the testimonies of P.Ws. 6 and 7 whose evidences are

consistent to the effect that the appellant had inflicted injuries on the person of the deceased, we, by placing reliance on the decision rendered in a case of Munna Kumar (supra), do find the appellant guilty for the offence under Section 307 of the Indian Penal Code on account of assault being made upon the deceased.

10. Further, it be recorded that appellant has also been convicted under Section 307 of the Indian Penal Code for causing injuries on the person of P.W.7-Ravi Singh but keeping in view the nature of injuries which were found to be simple and thereby, conviction recorded by the trial Court under Section 307 I.P.C appears to be bad. Instead of affirming the judgment of conviction under Section 307 I.P.C, the appellant is convicted for the offence under Section 324 I.P.C and is liable to be sentenced for a period of three years, which he has already undergone.

11. Since the appellant, who has been in custody since more than 13 years, has been found guilty for the offence punishable under Section 307 of the Indian Penal Code for inflicting injuries upon the deceased, he is sentenced for the period already undergone. 6 12. In that event, the appellant is directed to be released forthwith if not wanted in any other case. In the result, this appeal is allowed but in part. (R.R. Prasad, J.) (Pramath Patnaik, J.) Jharkhand High Court, Ranchi Dated 29th September, 2015 Alankar/Saket/N.A.F.R

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