

Kesia Devi Vs. State of Jharkhand

Kesia Devi Vs. State of Jharkhand

SooperKanoon Citation : sooperkanoon.com/66778

Court : Jharkhand

Decided On : Oct-27-2015

Appellant : Kesia Devi

Respondent : State of Jharkhand

Judgement :

1 Criminal Appeal (D.B.) No. 1620 of 2004 with Criminal Appeal (D.B.) No. 853 of 2010 ----- (Against the judgment of conviction dated 06.02.2004 and order of sentence dated 09.02.2004 passed by the Additional Sessions Judge, Fast Track Court No. -VIII, Hazaribagh, in Sessions Trial No. 188 of 2003) ----- Kesia Devi, wife of Jodhi Mahto, resident of village-Khairatari, P.O & P.S.:Barkagaon, District: Hazaribag Appellant in Cr. A.(DB) No. 1620/04 Jodhi Mahto @ Jhodhi Mahto, Son of Late Khedan Mahto, R/o Village Kheratari, P.O and P.S. Barkagaon, District: Hazaribagh Appellant in Cr. A.(DB) No. 853/10 Vs. The State of Jharkhand Respondent . For the Appellants : M/s Binod Kumar Dubey, Pankaj Kr. Dubey Arvind Prajapati, Advocate. For the State : Mr. Shekhar Singh, A.P.P. (In Cr. A. 1620/04) : Mr. V.K. Tiwary, A.P.P (In Cr. A. 853/10) PRESENT HON'BLE MR. JUSTICE R.R. PRASAD HON'BLE MR. JUSTICE PRAMATH PATNAIK

JUDGMENT

By Court : These two appeals arising of the common judgment and order were heard together and are being disposed of by the common order.

2. Both the appellants were put on trial on the accusation of committing murder of Saroiya Devi in furtherance of their common intention. The Trial, having found both the appellants guilty for the charge, convicted them for the offence punishable under Section 302/34 of the Indian Penal Code vide its judgment dated 06.02.2004 and accordingly, sentenced each of them to undergo imprisonment for life and to pay a fine of Rs. 500/- vide its order dated 09.02.2004.

3. The case of the prosecution, as has been projected in the fardbeyan (Ext. 4), is that deceased-Saroiya Devi was the first wife of the appellant- Jodhi Mahto @ Jhodhi Mahto. In course of time, Jodhi Mahto @ Jhodhi Mahto married to Kesia Devi (appellant). When Jodhi Mahto @ Jhodhi 2 Mahto neglected his first wife- Saroiya Devi, she brought a case against the appellant- Jodhi Mahto @ Jhodhi Mahto for maintenance. That case was compromised. After compromise arrived at, the appellant- Jodhi Mahto @ Jhodhi Mahto again started neglecting his first wife- Saroiya Devi. In such event, Saroiya Devi made known to all that she would again file a case against her husband- Jodhi Mahto @ Jhodhi Mahto. That annoyed the appellant- Jodhi Mahto @ Jhodhi Mahto. On account of that appellant- Jodhi Mahto @ Jhodhi Mahto and his second wife-Kesia Devi on 26.11.2002 at 7.00 a.m. came to the room where Saria Devi at the door of the room was making a mat. Appellant- Jodhi Mahto @ Jhodhi Mahto, who was having spade with him, assaulted over the back portion of the head of Saroiya Devi, as a result of which, she fell down on the floor of the room. Thereupon, the appellant-Kesia Devi caught hold of the leg of Saroiya Devi and the appellant-Jodhi Mahto @ Jhodhi Mahto by putting his legs over the chest of Saroiya Devi pressed it hard and then made an attempt to assault with spade over the neck but it somehow hit over the chin. Meanwhile appellant-Kesia Devi assaulted Saroiya Devi by leg and also with the handle of the spade. After assaulting Saroiya Devi, both of them, dragged Saroiya Devi inside the room and locked the room from outside and threatened the informant-Jhuna Devi and the wife of his younger brother not to speak anyone about the occurrence. When the appellant went away, the informant-Jhuna Devi raised alarm, upon which, several persons assembled over there and saw the dead body of the deceased.

4. Meanwhile, an information was received at Barkagaon Police Station that one person has killed his wife at village Khairatari. On getting such information, Malik Mahto, Sub-Inspector of Police, (P.W.

8) came to the place of occurrence and recorded the fardbeyan of the informant- 3 Jhuna Devi (P.W. 6), who narrated about the incident, as has been stated above. On the basis of said fardbeyan a formal F.I.R. (Ext.

4) was drawn and the case was registered against the appellants. P.W. 8 himself took up the investigation, during which, he held inquest on the dead body of the deceased and prepared an inquest report (Ext. 5). Thereupon, the dead body was sent for postmortem examination, which was conducted by Dr. C.P. Chaudhary (P.W. 7), who upon holding autopsy did find the following injuries on the person of the deceased: (i).Lacerated wound 3/4 X12 X bone deep over chin. (ii).Abrasion 1/4 X14 at right side of forehead. (iii).Lacerated wound 1 X34X bone deep over occipital region. On dissection:-- Sternum was found fractured with haematoma underneath. Ribs, three to nine, were found fractured on left side and 4th to 8th ribs were found fractured on right side. Both the lungs were found ruptured.

5. The doctor (P.W-7) issued post-mortem examination report (Exhibit-

3) with an opinion that death was caused due to hemorrhage and shock due to the injuries to thoracic region caused by hard and blunt substance.

6. Meanwhile, the I.O., during investigation, seized earth smeared with blood, spade having blood marks over it and a shawl from the place of occurrence, under Seizure list (Ext 6). He also recorded the statement of the witnesses.

7. On completion of investigation, when the charge-sheet was submitted the Court took cognizance of the offence against the appellants. In course of time, when the case was committed to the Court of Sessions, the appellants were put on trial, during which, the prosecution in order to prove its case beyond all reasonable doubt has examined altogether nine witnesses. Of them, P.W. 1-Pradeep Kumar, the son of the informant and 4 P.W. 6-Jhuna Devi (informant) are the eye witnesses. According to P.W. 6, while the deceased was preparing a mat and she

was burning the hearth, she saw Jodhi Mahto @ Jhodhi Mahto came with a spade and gave a spade blow over the head of Saroiya Devi, as a result of which, she fell down and then the appellant-Kesia Devi also did assault her. When Saroiya Devi fell down, then again appellant- Jodhi Mahto @ Jhodhi Mahtogave spade blow, as a result of which she sustained injuries over the forehead and chin. The appellant-Kesia Devi caught hold of the leg of Saroiya Devi and appellant- Jodhi Mahto @ Jhodhi Mahto rode over the chest and smashed it, as a result of which, Saroiya Devi died. When Saroiya Devi died they dragged the dead body inside the room and get the room locked. P.W. 6 has also testified that when she and her son, Pradeep Kumar tried to raise alarm, both of them were threatened by the appellant- Jodhi Mahto @ Jhodhi Mahto. Almost similar is the testimony of P.W. 1, the son of the informant, who at the time of occurrence was at the courtyard. According to him, the appellant- Jodhi Mahto @ Jhodhi Mahto went through his courtyard with Kulhari in his hand and assaulted Saroiya Devi over her head, as a result of which, she fell down and then the appellant- Jodhi Mahto @ Jhodhi Mahto dragged her inside the room. Meanwhile the appellant-Kesia Devi also assaulted over the head of the deceased with Kari causing injuries. P.W. 2-Jagdeo Mahto, P.W. 3-Butan Mahto, P.W. 4-Pankaj Kumar and P.W. 5-Soshila Kumari are the hearsay witnesses, who derived knowledge either from P.W. 1 or P.W. 6 or from both.

8. Upon closure of the prosecution case, when the incriminating evidences appearing against the appellants were put to the appellants under Section 313 of the Cr.P.C., they denied it.

9. Thereupon, the trial Court having placed its reliance on the 5 testimonies of P.W. 1 as well as P.W. 6 getting corroboration from the medical evidence and also from the objective findings of the I.O did find the appellants guilty and accordingly recorded the order of conviction and sentence, which is under challenge.

10. Mr. Binod Kumar Dubey, learned counsel appearing for the appellants submits that though the trial Court has placed its reliance on the testimonies of P.W. 1 and P.W. 6, but, none of the persons appear to be the eye witness to the occurrence. Had they been the witness to the occurrence, they must have intervened in the

matter to save the deceased but none of the witnesses seems to have done anything in order to rescue the deceased and thereby, their presence at the place of occurrence is very much doubted. Further submission, which was advanced in this regard is that the testimonies of P.W. 1 and P.W.6 is not consistent and hence, the trial Court should not have recorded the judgment of conviction and order of sentence on the testimonies of both the witnesses. It was further submitted that so far appellant-Kesia Devi is concerned, she has not been alleged to have assaulted the deceased with a weapon. Though she as per testimony of P.W. 6 has committed an overt act by catching hold of the deceased but that testimony of P.W. 6 does not get corroboration from the evidence of P.W. 1, who has never said anything like that and, therefore, appellant-Kesia Devi seems to have falsely been implicated in this case and hence she deserves to be acquitted.

11. As against this, Mr. Tiwary, learned counsel appearing for the State submits that according to P.W. 1 and P.W. 6, who are the eye witnesses, both the appellants committed overt act. P.W. 6 is quite categorical that the appellant-Jodhi Mahto @ Jhodhi Mahto assaulted the deceased with spade over his head and other parts of the body whereas appellant-Kesia Devi had caught hold of the leg of the deceased while appellant- Jodhi 6 Mahto @ Jhodhi Mahto was making assault on the person of the deceased by spade and thereby the trial Court has rightly come to conclusion that both the appellants were sharing the common intention for committing murder of Saroiya Devi. Further it was submitted that the testimony of the witnesses not only gets corroboration from the medical evidence but also from the objective findings of the Investigating Officer who did find earth smeared with blood, spade having blood marks over it, which was left by the appellant-Jodhi Mahto @ Jhodhi Mahto at the place of occurrence and thereby, the trial Court was absolutely justified in recording the judgment of conviction and order of sentence, which never warrants to be interfered with by this Court.

12. Having heard learned counsel appearing for the parties and on perusal of the record, we do find that the case of the prosecution, as has been testified by the informant-Jhuna Devi, (P.W.

6) is that while she was putting fire on the hearth, the deceased- Saroiya Devi was preparing a mat. In the meantime, the appellant- Jodhi Mahto @ Jhodhi Mahto came over there having spade with him. He gave a spade blow over the head of the deceased- Saroiya Devi, as a result of which, Saroiya Devi fell down. Thereupon, the appellant-Kesia Devi caught hold of the leg of the deceased whereas the appellant- Jodhi Mahto @ Jhodhi Mahto rode over the chest of the deceased and smashed it, as a result of which, the deceased died. During that course, the appellant- Jodhi Mahto @ Jhodhi Mahto also assaulted over the head and chin of the deceased by spade causing injury. The testimony of P.W. 6, substantially gets corroboration from the evidence of P.W. 1-Pradeep Kumar, another eye witness, who has also testified that while he was warming himself by making fire in the courtyard, he saw the appellant-Jodhi Mahto @ Jhodhi Mahto going towards the room of the deceased with Kulhari. As soon as he came near 7 the deceased- Saroiya Devi, he gave a blow on the head of the deceased, as a result of which she fell down. Thereupon, the appellant-Kesia Devi assaulted on the head of the deceased with Kari causing injury. Thus, there appears to be major discrepancies in between the testimonies of P.W. 1 and P.W. 6, so far it relates to accusation against appellant-Kesia Devi, who according to P.W. 1 did assault the deceased with Kari after the deceased had fallen on the ground on being assaulted by appellant- Jodhi Mahto @ Jhodhi Mahto whereas P.W. 6 has testified that the appellant- Kesia Devi caught hold of the leg of the deceased when the deceased after being assaulted by the appellant- Jodhi Mahto @ Jhodhi Mahto had fallen on the ground. In that event the testimony of the aforesaid two witnesses contradicts each other so far it relates to the role placed by appellant-Kesia Devi in the commission in the murder of the deceased. That creates a grave doubt as to whether the appellant-Kesia Devi had played any role in the commission of the offence of murder. It gets further strengthened from the evidence of P.W. 3-Butan Mahto, who did testify in his cross- examination that he came to know from Pradeep Kumar (P.W.

1) that it was appellant- Jodhi Mahto @ Jhodhi Mahto who had killed the deceased. Not only that the medical evidence also belies the testimony of P.W. 1 wherein he has testified that the appellant-Kesia Devi did assault the deceased with Kari causing injury. But from the evidence of P.W. 6 it does appear that all

those three injuries found on the person of the deceased had been caused by the appellant- Jodhi Mahto @ Jhodhi Mahto as P.W. 6 has testified that appellant-Jodhi Mahto @ Jhodhi Mahto first assaulted the deceased with spade on the back portion of the head and then over the forehead and thereafter made an attempt to cut the neck, which hit over the chin. No fourth injury has been found by the doctor on the person of the deceased. In these circumstances, one would be highly suspicious as to whether appellant-Kesia Devi did play any role in furtherance of the common intention to commit murder of the deceased and hence, she deserves benefit of doubt. Accordingly, she is acquitted of the charge, for which, she has been found guilty by the trial Court. Thus, judgment of conviction and order of sentence is set aside so far it relates the appellant-Kesia Devi.

13. So far as appellant- Jodhi Mahto @ Jhodhi Mahto is concerned, the evidences of the witnesses, P.W. 1 and P.W. 6, are consistent that Jodhi Mahto @ Jhodhi Mahto did assault Saroiya Devi while she was sitting at the door of the room and was preparing a mat. P.W. 6 is quite categorical over the manner, in which, this deceased was assaulted with spade causing injuries resulting into her death. The testimonies of the witnesses, particularly of P.W. 6, gets corroboration from the medical evidence as the doctor did find injuries over the occipital region of the scalp forehead and also over chin. Furthermore, the testimony of the witnesses gets corroboration from the objective finding of the Investigating Officer (P.W. 8), who during inspection of the place of occurrence did find earth smeared with blood and spade having blood marks over it at the place of occurrence. Not only that the I.O. did find even leaves of date tree (which is used in making mat) and also unfurnished mat at the place of occurrence. That apart motive has also been proved by the prosecution as the witnesses, including P.W. 1 and 6, have testified that when the appellant- Jodhi Mahto @ Jhodhi Mahto after marrying second wife stopped maintaining his first wife-Saroiya Devi (deceased), the deceased lodged a case for maintenance. Later on that case got compromised with the intervention of the well wishers. But subsequently the appellant- Jodhi Mahto @ Jhodhi Mahto stopped maintaining his first wife and started subjecting her to torture. On account of that the deceased had 9 declared that she will be lodging a case again and that annoyed the appellant-Jodhi Mahto @ Jhodhi Mahto, who subsequently killed the deceased. Thus, the prosecution has been able to establish beyond all reasonable

doubt that the appellant - Jodhi Mahto @ Jhodhi Mahto killed the deceased. However, in the facts and circumstances, as has been discussed above, in the context of the case of the appellant-Kesia Devi, we convict the appellant-- Jodhi Mahto @ Jhodhi Mahto under Section 302 of the Indian Penal code instead of under Section 302/34 of the Indian Penal Code. The sentence passed against him by the trial Court shall remain intact.

14. So far appellant-Kesia Devi, is concerned, she on account of reasons mentioned above, is hereby acquitted and is directed to be released forthwith, if not wanted in any other case.

15. Thus, Cr. Appeal (DB) No.1620 of 2004 is hereby allowed whereas Cr. Appeal (DB) No. 853 of 2010 is hereby dismissed with modification in the order of conviction, as indicated above. (R.R. Prasad, J.) (Pramath Patnaik, J.) Jharkhand High Court, Ranchi Dated 27th October, 2015 Alankar/N.A.F.R

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com