

Lobin Darbey Vs. State of Jharkhand

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Court : Jharkhand

Decided On : May-11-2016

Appellant : Lobin Darbey

Respondent : State of Jharkhand

Judgement :

1 Criminal (Jail) Appeal (DB)No. 993 of 2008 (Against the judgment of conviction and order of sentence dated 11 th January, 2007 and 12th January, 2007 respectively passed by the Additional Sessions Judge1 Sahibganj in connection with Sessions Case no. 128 of 2005 corresponding to G.R. Case no. 38 of 2005, Borio P.S. Case no. 12 of 2005) Lobin Durbey Appellant Vs. The State of Jharkhand Respondent
PRESENT: HON'BLE MR. JUSTICE D.N.UPADHYAY : HON'BLE MR. JUSTICE RATNAKER BHENGRA -----
For the appellant :Mr. Pravin Kumar Rana, Amicus Curiae For the respondent :Mr. Ravi Prakash, A.P.P. -----
By Court: (D.N.Upadhyay,J.) This Criminal Appeal has been preferred from jail against the judgment of conviction and order of sentence dated 11thJanuary, 2007 and 12th January, 2007 respectively passed by the Additional Sessions Judge-1 Sahibganj in connection with Sessions Case no. 128 of 2005 corresponding to G.R. Case no. 38 of 2005, Borio P.S. Case no. 12 of 2005, whereby the appellant has been held guilty for the offence punishable under section 302 of the Indian Penal Code and sentenced to undergo R.I. for life and to pay fine of Rs. 20,000/- and in default further sentenced to undergo R.I. for six months.

2. The facts emerges from the fard-beyan of Phul Kumari (wife of deceased) recorded on 6.2.2005 at 8:30 hrs. at the place of occurrence within P.S. Borio is that on 5.2.2005 at about 7:30 p.m. the informant with her husband was returning home after purchasing grossery items from the market. When they reached near village Pararia, the appellant suddenly appeared and caused assault to Lobin Singh by means of iron rod (Sabal) on his head. Lobin Singh died on the spot. The appellant chased the informant for assaulting her but, she fled away. The informant after returning home narrated the occurrence to other inmates including brother of the deceased. On the basis of fard-beyan of informant Borio P.S. Case no. 12 of 2008 dated 6.2.2005 under Section 302 I.P.C. was registered against the appellant. 2 After due investigation, charge sheet was submitted and, accordingly, cognizance was taken and case was committed to the Court of Sessions and registered as Sessions Case no. 128 of 2005.

3. The appellant stood charged for the offence punishable under section 302 I.P.C. to which he pleaded not guilty and claimed to be tried. To substantiate the charge the prosecution has examined altogether seven witnesses including informant P.W.-1 Phul Kumari, P.W.6 Dr. Arun Kumar Singh who conducted post- mortem examination on the dead body of Lobin Singh, P.W.-7 Jonha Yogendra Murmu who is the investigating officer. The prosecution has proved fard-beyan Ext.3, formal FIR Ext.4, Seizure list Ext.5 and 5/1, Sabal produced before the court exhibited as Material Ext.1 and the post-mortem report Ext.2. The learned Trial Judge placing reliance on the evidence and documents available, held the appellant guilty u/s 302 I.P.C. and inflicted sentences as indicated above.

4. Learned counsel for the appellant has assailed the impugned judgment on the ground that informant is not an eye witness and she had not seen the occurrence. The other prosecution witnesses are formal witnesses who have signed the inquest report or the seizure list. Rohit Durbey P.W.-2 and Nagrik Durbey P.W.-4 are hearsay witnesses whereas P.W.3 Prasadi Ishar has been declared hostile. The informant is not wholly and fully reliable and no conviction can be recorded on the testimony of such witness. According to informant, the appellant sustained injuries by means of Sabal on his head. She did not disclose about number of blows inflicted. The contention of informant does not find support from the post-

mortem report Ext.2 and the evidence of doctor Arun Kumar Singh P.W-6. According to post-mortem report, the deceased had sustained three incised wound caused by sharp cutting weapon and the fourth injury was caused by means of hard and blunt substance, may be by Sabal. Therefore, according to post-mortem report and evidence of P.W.-6 Dr.Arun Kumar Singh, two types of weapons were used for causing injuries to the deceased. The informant did not say anything about use of sharp cutting 3 weapon nor about presence of anyone else except appellant. Conduct of the informant is also not natural and acceptable. After the occurrence, she returned home and peacefully spent her night and in the morning she went to the place of occurrence along with other family members of the deceased. As a matter of fact, she had not witnessed the occurrence and she is not a reliable witness for the reason, she has stated that her husband was carrying grossery items which they had purchased from the market but, the investigating officer did not find any grossery items scattered at the place of occurrence only bicycle of the deceased was recovered from that place. The time of occurrence is 7:30 p.m., place of occurrence is a road and there was no source of light at the place of occurrence then how the informant identified the appellant in darkness of night, has not been explained. The learned trial judge has wrongly held the appellant guilty and, as such, impugned judgment is liable to be set-aside.

5. Learned A.P.P. has opposed the arguments and submitted that informant is an eye witness to the occurrence. At the time of occurrence she along with her husband was returning home from the market. The appellant was having grudge from before. As soon as the appellant found his target within suitable area, he assaulted and killed him at the spot. The informant being a lady did not dare to resist and she was compelled to go home and she had narrated the occurrence to other family members(PW-2 and PW-4).

6. Having heard rival submissions, we have gone through the case record and find substance in the arguments advanced by counsel for the appellant. The contention made by informant does not find support from the circumstances available at the spot. No grossery item was recovered from the place of occurrence though the informant has stated that her husband was returning home after purchasing grossery items from the market and those articles were being carried on the

bicycle. The investigating officer did not support that he found grossery items either kept in a bag or scattered at the place of occurrence, at the time of inspection of place of occurrence. The surprising part of the prosecution case is that the informant 4 has stated that her husband was assaulted by the appellant by means of Sabal, a thick iron rod but, the doctor who conducted post-mortem examination found four injuries on the person of deceased but of which three injuries were caused by means of sharp cutting weapon and those injuries were sufficient in ordinary course of nature to cause death. The doctor has fairly stated that two types of weapons have been used for causing injuries. Under such circumstances, an inference can be drawn that more than one person had committed the offence but, the informant did not say about presence of any other person except appellant.

7. Considering all these aspects, we do not feel it safe to uphold the judgment of conviction and order of sentence passed on the solitary testimony of informant who does not appear to be wholly and fully reliable. In the result, the appellant is acquitted from the charge and the judgment of conviction and order of sentence dated 11th January, 2007 and 12th January, 2007 respectively, passed by the Additional Sessions Judge-1 Sahibganj in connection with Sessions Case no. 128 of 2005 corresponding to G.R. Case no. 38 of 2005 arising out of Borio P.S. Case no. 12 of 2005 is hereby set-aside and the appellant is directed to be released forthwith from custody if, not wanted, in any other case and for that convicting/successor court shall issue appropriate direction, if necessary.

8. Appeal is allowed. (D.N.Upadhyay, J.) (Ratnaker Bhengra, J.) Jharkhand High Court, Ranchi Dated:

11. 05.2016 Nibha / / N.A.F.R.

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