

Madhumati Devi Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jun-22-2016

Appellant : Madhumati Devi

Respondent : State of Jharkhand

Advocate for Pet/Ap. : Mr. Pankaj Kumar

Judgement :

Cr. Appeal (D.B.) No. 1161 of 2008 with Cr. Appeal (D.B.) No. 1162 of 2008 (Against the judgment of conviction dated 15.07.2008 and order of sentence dated 18.07.2008 passed by Additional District & Sessions Judge, Fast Track Court No.II, Ghatshila, East Singhbhum, in S.T. No.377 of 2004) 1. Madhumati Devi in Cr. Appeal (D.B.) No. 1161 of 2008 2. Gandhi Sahu in Cr. Appeal (D.B.) No.1162 of 2008 Appellants Versus State of Jharkhand Respondent ----- For the Appellants : Mr. Pankaj Kumar , Advocate (in both the cases) For the State : Mr. Amaresh Kumar, A.P.P. in Cr. Appeal (D.B.) No. 1161 of 2008 Mr. Binod Singh, A.P.P. in Cr. Appeal (D.B.) No. 1161 of 2008 ----- PRESENT HONBLE MR. JUSTICE PRADIP KUMAR MOHANTY HONBLE MR. JUSTICE D. N. UPADHYAY By Court: Since both the criminal appeals arise out of the common judgment passed by Additional District & Sessions Judge, Fast Track Court No.II, Ghatshila, East Singhbhum, in S.T. No.377 of 2004, they were heard together and hence disposed of by this common judgment. These appeals are directed against the judgment of conviction dated 15.07.2008 and order of sentence dated 18.07.2008 passed by Additional District & Sessions Judge, Fast Track Court

No.II, Ghatshila, East Singhbhum, in S.T. No.377 of 2004 whereby both the appellants, having been found guilty of the charges under Sections 302/120B/201 of the Indian Penal Code, have been sentenced to undergo rigorous imprisonment for life under Sections 302 and 120B of the Indian Penal Code and have further been sentenced to undergo rigorous imprisonment for five years under Section 201 of the Indian Penal Code. Further, appellant-Gandhi Sahu in Cr. Appeal (D.B.) No.1162 of 2008, having been found guilty of the charge under Section 376 of the Indian Penal Code, has also been sentenced to undergo rigorous imprisonment for life. All the sentences have been directed to run concurrently.

2. The case of the prosecution in brief is that the informant-Udhawjee (P.W.16) suspected hands of four accused persons for kidnapping of his daughter Kushboo Kumari- deceased, aged about six years from his house, while she was playing. The informant alleged that on 06.02.1995, he had been to Jamshedpur for official work and when he came back at about 8.15 P.M. to his residence, he was told about disappearance of his child by his wife. Then, he started searching his daughter but she could not be traced. Thereafter, on the same day i.e. on 06.02.1995, he lodged a missing report. The informant further alleged that at about 11.45 A.M. on 07.02.1995, the dead body of his daughter -Khushboo Kumari lying within the bushes towards northern side of his house was recovered.

3. On the basis of the aforesaid fardbayan, Dhalbhumgarh P.S. Case No.8 of 1995 was registered for the offence under Sections 364/376/302/201/120(B) of the Indian Penal Code against the accused persons. The police after investigating the matter, examined the witnesses and filed final form against four accused persons. Thereafter, Additional Chief Judicial Magistrate, Ghatshila, directed the CID to re-investigate the matter. Thereafter on 05.07.1996, this case was transferred to CID. On 06.11.1996, the CID took up the investigation and ultimately filed charge sheet against two accused persons namely, Madhumati Devi and Gandhi Sahu on 07.07.2004, for committing murder of Khushboo Kumari and thereafter, cognizance of the offence was taken against the appellants.

4. In order to prove the charges against the accused, the prosecution has examined, as many as 20 witnesses and one Court Witness i.e. C.W.1 including

Doctor and Investigating Officer and the trial court after going through the materials on record and also considering the evidence of the prosecution witnesses, has found the charges levelled against the accused to be proved and thereafter sentenced them to undergo as aforesaid.

5. Basing upon the circumstantial evidence of the witnesses, mainly evidence of P.W.19-Kanhaiya Upadhyay (I.O.) and one Court witness i.e. C.W.1- Gopal Chandra Mishra, Mr. Pankaj Kumar, learned counsel for the appellants has assailed the judgment of the learned court below on the following grounds:- (I) There is no direct evidence against any of the appellants; (II) P.W.4 to P.W.13 have turned hostile, except P.W.6., who is a tendered witness; (III) There is no material against the appellants to connect them with the present case. (IV) There is no chain of circumstances to establish the guilt of the appellants. (V) There is undue delay in examining the witnesses, both by the I.O. under Section 161 Cr.P.C. and under Section 164 Cr.P.C. in Court and no explanation was given by the prosecution to that effect.

6. On the other hand, Mr. Amaresh Kumar, learned Addl. P.P. has vehemently opposed the contentions raised by the learned counsel appearing for the appellants and submits that there is ample material against the present appellants. Learned Addl. P.P. has submitted that P.W.14-Shyamlal Sah has deposed that Hulla was raised that dead body of a girl is lying in the bush of the informant's house upon which he reached near the bushes and saw the dead body of the girl. In cross examination, he admitted that he has given his statement (Ext.5) in the court and had also put his signature (Ext.1). P.W.19-Kanahiya Upadhyay, the Investigating Officer of the case and one Court Witness i.e. C.W.1- Gopal Chandra Mishra, have been examined by the prosecution and they have narrated the incident, implicating the present appellants. Learned Addl. P.P. further submitted that from the evidence of P.W.19 also, there is no delay or negligence, since the case was originally investigated by the Police and charge sheet was submitted and thereafter Addl. Sessions Judge, transferred the case to the CID. On the basis of the aforesaid submission, learned Additional Public Prosecutor submitted that there being no illegality or infirmity in the impugned judgment of conviction and order of sentence and the findings arrived at by the learned trial court, is fit to be

upheld.

7. We have heard learned counsel for both the sides and also perused the materials available on record. The accused-appellants were also examined under Section 313 Cr.P.C. to which they pleaded not guilty and claimed to be tried.

8. P.W.1, maid servant of the informant, has simply stated that the deceased was not traced out. She along with others started searching the victim. However, she has not stated anything about the occurrence.

9. P.W.2-Bir Singh has deposed that he did not learn about the occurrence. He further deposed that he has no idea about the CID enquiry. CID did not inquire about the occurrence.

10. P.W.3 Raju Sah has stated that neither he is aware about the occurrence nor he knew the deceased.

11. P.W.4 to P.W.13 have turned hostile, except P.W.6., who is a tendered witness.

12. P.W.14-Shyamlal Sah, has stated that he heard Hulla that the daughter of the informant was missing. Thereafter he went to the spot and found the deceased lying there. He further stated, in the examination in chief, that after hearing Hulla, he went to the spot and the dead body of the deceased was lying near bushes. He also proved his statement recorded under Section 164 Cr.P.C. He also admitted his signature as well as statement made under Section 164 Cr. P.C. in Court.

13. P.W.15- Fakir Chandra Agrawal is the witness, who proved his signature on the inquest report.

14. P.W.16-Udhawjee is the informant as well as father of the deceased, who has specifically stated in the examination-in-chief that he heard from the Railway people that his daughter is missing. His wife has also told him that his daughter - Khusboo Kumari is missing. He has specifically stated that he along with his wife had tried to search but could not succeed. On the next day, the dead body of Khushboo Kumari was found lying near the bushes of the informant's house. This

P.W.16-Udhawjee is the husband of the appellant -Madhumati Devi.

15. P.W.17- is Dr. Ranjan Sinha, who has conducted the autopsy on the dead body of the deceased and found the following injuries:- (I)Face congested, frothing from both nostril, mark of salivation of left angle of mouth and lips were bruised. (II)Bruises 1/2'x1/2' on right side of face at and over the mandibular part of chick and on the point below the mandible. On dissection of the dead body of the deceased, the doctor found ecchymosis present under neath the skin (Antemortem in nature) and hard bone was found to be intact. (III)Multiple wound to irregular shape, pale abrasion on right thigh, leg and left leg (Post mortem in nature). (IV)Bruises (1/4'x 1/4') and abrasion (1/4'x 1/4') on the inner aspect of thigh on left side with Haemorrhage (Antemortem in nature) (V) On examination of valve and vagina:- (a) Dried blood was present around the vagina, and annus, there was bleeding from vagina also. There was clot of blue black colour inside the vagina; (b) Hymen was freshly lacerated and bleeding profusely; (c)Dried seminal stain present around vagina and valve; (d) On vaginal swab examination- there was few dead spermatozoa within the vicinity of bloody smear under microscope. These are antimortem in nature. According to Doctor, the death was caused due to excessive hemorrhage and asphyxia due to gaging after committing sexual intercourse (rape). He also proved the post mortem report (Ext.4 and 4/1).

16. P.W.18 is Ajit Kumar Singh, J.M. 1st Class. He had recorded the statement under Section 161 Cr.P.C of P.W.14- Shyamlal Sah and also the Court Witness i.e. C.W.1-Gopal Chandra Mishra.

17. P.W.19-Kanhaiya Upadhyay, is the Investigating Officer, who on being transferred on 06.11.1996, received the case and investigated the matter and ultimately filed charge sheet against the present appellants.

18. P.W.20-Ashok Ranjan Sinha is the Advocate Clerk and proved inquest report and also formal FIR.

19. The plea of the defence is completely denial of the allegation.

20. Counsel for the appellants has relied upon catena of decisions of the Hon'ble Supreme Court including the decisions reported in AIR 1973 SC1409(Ranbir v. State of Punjab), (1996) 7 SCC194[Krishna Pal (Dr) vs. State of U.P.] and [(2005) 3 Supreme Court Cases 685 {Bijender Singh vs. State of Haryana and Anr.}] 21. We have heard learned counsel for both the sides as well as the decisions cited by the appellants. On perusal of the evidence of P.W.14-Shyamlal Sah and the statements recorded under Section 164 Cr.P.C, it is crystal clear that he had not seen the present appellants with the deceased. It is stated that when he tried to open the cover of the drum, at that point of time, one old woman (white complexion) did not allow him to open the drum and he was also prevented by that lady against opening of said drum. P.W.14 also identified the appellant-Madhumati Devi, who prevented him to open the cover of the drum. C.W.1- Gopal Chandra Mishra has stated about the factum of the drum, which was covered and surrounded by the present appellant- Madhumati Devi. The drum was out of the house. He specifically stated that on next date, the dead body was recovered but the box was lying in the courtyard of the informant (appellant -Madhumati Devi's husband house). He also stated that P.W.13-Noorjahan tried to open the drum but the appellant- Madhumati Devi did not allow her. However, P.W.13-Noorjahan, in her evidence, has stated that she has not stated anything about opening of the drum or preventing by the present appellant-Madhumati Devi in doing the same.

22. Considering the evidence of P.W.14 and the Court Witness i.e. C.W.1, this Court is of the view that these witnesses are not reliable witnesses, as they had not seen the occurrence and they were not in a position to explain the circumstances. Further, there is undue delay in examining the witnesses, both by the Investigating Officer under Section 161 Cr.P.C. and under Section 164 Cr.P.C. in Court and no explanation was given by the prosecution. Further, considering the evidence on record, it appears that there is no material against the present appellants. P.W.14, who was examined by the Police on 10.06.2004 i.e. after 9 years of the date of occurrence and 8 years from the date when the Investigating Officer started investigation and on 29.06.2004, his statement under Section 164 Cr.P.C. was recorded. Court Witness i.e. C.W.1 was examined by the Police under Section 161 Cr.P.C. on 13.06.2004 and on 06.07.2004, statement under Section 164 Cr.P.C was recorded. Appellant-Gandhi Sahu was arrested on 10.06.2004

whereas Appellant- Madhumati Devi was arrested on 13.06.2004.

23. From the above, it reveals that after arrest of the accused persons, these three witnesses P.W.14, P.W.13 and Court Witness i.e. C.W.1 were examined by the prosecution and there is no material at all that the appellants are the author of the crime.

24. After considering the submissions of the learned counsel for both the parties, this Court is of the view that the prosecution has not been able to prove its case beyond all reasonable doubts. Inasmuch as, the trial court did not take into account all the material aspects of the matter, in its right perspective and, thereby, it committed illegality in recording the judgment of conviction and order of sentence against the appellants.

25. As such, both the criminal appeals are allowed and the judgment of conviction dated 15.07.2008 and order of sentence dated 18.07.2008 passed by Additional District & Sessions Judge, F.T.C-II, Ghatshila, East Singhbhum, in S.T. No.377 of 2004 is hereby set aside. Appellant- Madhumati Devi in Cr. Appeal (D.B.) No.1161 of 2008 having been found not guilty of the charges levelled against her, is accordingly, acquitted. Therefore, appellant-Madhumati Devi in Cr. Appeal (D.B.) No.1161 of 2008, who is in jail, shall be released forthwith, if not wanted in any other case.

26. The appellant- Gandhi Sahu, in Cr. Appeal (D.B.) No.1162 of 2008, is also acquitted. Since Gandhi Sahu is on bail, he is discharged from the liability of the bail bonds. (Pradip Kumar Mohanty, J.) (D.N. Upadhyay, J.) Jharkhand High Court, Ranchi Dated the 22nd June, 2016 Ravi/N.A.F.R

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