

Chinta Devi Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Jul-14-2016

Appellant : Chinta Devi

Respondent : The State of Jharkhand

Judgement :

Cr. Appeal (D.B.) No. 604 of 2012 (Against the judgment of conviction dated 29.03.2003 and order of sentence dated 31.03.2003 passed by learned Addl. Sessions Judge, Fast Track Court No.7, Hazaribagh, in Session Trial No.267 of 2002) Chinta Devi, wife of Suresh Kabari, resident of Vikash Nagar, Taratola, P.O. & P.S.: Ramgarh, District-Ramgarh. Appellant Versus The State of Jharkhand Respondent ----- For the Appellant : Mr. Amrita Banerjee, Advocate For the State : Mr. Sanjay Kumar Shrivastava, A.P.P. ----- PRESENT HONBLE MR. JUSTICE PRADIP KUMAR MOHANTY HONBLE MR. JUSTICE D. N. UPADHYAY By Court: This appeal is directed against the judgment of conviction dated 29.03.2003 and order of sentence dated 31.03.2003 passed by learned Addl. Sessions Judge, Fast Track Court No.7, Hazaribagh, in Session Trial No.267 of 2002 whereby the appellant, having been found guilty of the charges under Sections 302/201 of the Indian Penal Code, has been sentenced to undergo rigorous imprisonment for life under Sections 302 of the Indian Penal Code and has further been sentenced to undergo rigorous imprisonment for three years under Section 201 of the Indian Penal Code. However, both the sentences have been directed to run concurrently.

2. The case of the prosecution is that the informant-Ram Janam Prasad (P.W.6) is a phone mechanic working in the Department of Telephone at Ramgarh. After returning from his duty to his house on 28.02.2002 at 6.30 p.m. in the evening, all his children met with him but one son namely, Arjun Kumar (deceased) did not come. He asked to his other children regarding his said son that where is he, upon which other children replied that he had gone to wash his feet. When he did not return, the informant along with others, started searching him out but his son could not be traced out. Thereafter, he went to one Ram Prasad in Mohalla for Sagun, who replied that now it is night and asked them to come in the morning between 10 O'clock to 2 O'clock. Thereafter they returned back to their house through the Station. In the morning at 6.30 A.M., his son Bhim Kumar Yadav (P.W.7)-brother of the deceased informed about the dead body of Arjun Kumar, lying in the half constructed house of Ashok Kumar Yadav. Thereafter, the informant along with his neighbour went to the spot and saw the dead body. The informant and others found blood stains in the courtyard of the house of Suresh Kewari (husband of the present appellant), which was washed by the cow-dung freshly and that was place of Worship. Blood stains were found in the half constructed house situated towards the west of the house of the appellant.

3. On the basis of the aforesaid fardbayan, Ramgarh P.S. Case No.91 of 2002 (G.R. No.523 of 2002) was registered for the offence under Sections 302/201/34 of the Indian Penal Code against the accused persons. The police thereafter took up the investigation and filed charge sheet against the present appellant under Sections 302/201/ 34 of the Indian Penal Code and kept the investigation pending for other accused-person and thereafter, cognizance of the offence was taken against the present appellant. The plea of the defence is completely denial of the allegation.

4. In order to prove the charge against the accused person, prosecution has examined as many as 10 witnesses including Doctor and Investigating Officer and the trial court after going through the materials available 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 him to undergo rigorous imprisonment for life.

5. Basing upon the circumstantial evidence, learned counsel for the appellant has assailed the judgment of the learned court below on the following grounds:- (I) There is no eye witness to the occurrence; (II) Basing upon the circumstantial evidence, the trial court has convicted the appellant; (III) There is no material against the appellant to connect her with the present case and only on the basis of suspicion, she has been implicated in this case. (IV) There is no material available on record to complete the chain of circumstances so as to hold the appellant guilty for the offence, as alleged by the prosecution; (V) The sword, which was seized, has not been produced by the prosecution during investigation and also not sent for chemical examination in FSL; (VI) Ashok Yadav, who is owner of the house from where dead body was recovered, has not been made witness and he has not been examined by the prosecution; (VII) Seizure has not been proved in this case; (VIII) Investigating Officer has not recorded the statement of Vivekanad Thakur; (IX) The appellant is languishing in jail custody for more than 14 years.

6. On the other hand, Mr. Sanjay Kumar Srivastava, learned Addl. P.P. has vehemently opposed the contentions raised by the learned counsel appearing for the appellant and submits that circumstantial evidence is sufficient to prove the charges against the present appellant. Learned Addl. P.P. has submitted that two of the prosecution witnesses have stated about the seizure of sword from the house of the appellant. Learned counsel has further submitted that blood stains were also collected from the house of the appellant and sent for chemical investigation (Ext.6). The signature of witnesses appearing in the seizure list has been proved by P.W. 1 and marked as Ext.1 and no legible explanation has been given by the present appellant. On the basis of evidence on record, learned Additional Public Prosecutor has submitted that there being no illegality or infirmity in the impugned judgment of conviction and order of sentence, the findings arrived at by the learned trial court, do not require any interference.

7. We have heard learned counsel for both the sides and also perused the materials available on record.

8. P.W.1-Rajeev Singh is Press Reporter. He has deposed in his evidence that he received information that one child was killed in Vikash Nagar. The people

informed him that the occurrence took place in an under constructed house. He went there and found dead body of a child. When he scrutinized at that place, he found the grains of rice thrown on and around the dead body. He further deposed that he came out from the house and found trail of blood from the house where dead body was lying up to the house of Suresh Kewari (husband of the appellant). Some people entered into the house of Suresh Kewari and they started shouting after seeing blood spot in the courtyard of the house of the appellant. It is further deposed, when they reached there, they found small 'Pindas' in the courtyard and blood spot available. He was informed by the people standing over there that the appellant was trying to wipe out blood stains by using liquid of cow dung, but she was prevented by the villagers from doing so. He identified his signature appearing in the seizure list.

9. P.W.2-Raj Kumar Yadav, is a seizure witness, who has proved his signature appearing in both the seizure list, which have been marked as Ext. 1/1 & 1/2.

10. P.W.3-Satyanandan Prasad is the friend of informant and an employee of Telephone Department. In his examination in chief, he deposed that informant-Ram Janam Prasad (father of the deceased) has informed him about missing of his child in the morning. Thereafter, he came to the house of the informant. When he was going along with the informant to inform the police, they came to know that dead body of a boy has been found. While returning, they found the dead body of a boy, lying in a half constructed house of Ashok Yadav and he specifically deposed that there was injury in the abdomen of the dead body. He along with others, saw the blood stains in the house of Suresh Kewari, husband of the appellant and they also reached at the spot through the back side and entered into the courtyard and they saw that blood stains in the court yard and the present appellant was trying to wash the courtyard, which was stopped by the people.

11. P.W.4 -Savita Devi is mother of the deceased, who has deposed that in the evening at around 6 O'clock, she tried to find out the boy, but did not trace him out even after search. In course of search, she had been to the house of Chinta Devi 2-3 times but she did not share any information regarding missing body. When her elder son and people of Mohalla were searching the boy in the morning, they

found the dead body of the deceased within the boundary of the house of Ashok Yadav. There were trails of blood from the house of Ashok Yadav to the house of Chita Devi and the present appellant was trying to wash her courtyard by using liquid cow-dung.

12. P.W.5-is Dr. Suresh Kumar, who conducted autopsy on the dead body of the deceased, had found following injuries:- External Injuries:- (i) Incised wound on the right side of abdomen 1x1 and intestine was found out from the wound. (ii) Incised injury on the upper abdomen 1x1. Intestine was out from the wound. On dissection, abdominal cavity full of clotted blood, heart both chamber emptyL Lungs, Lever, Spleen and Kidney were found Pale. Stomach- ruptured and contained nucoid fluid of 2035 and was normal. The Doctor opined that the death caused due to hemorrhage and shock because of the injuries caused by sharp cutting weapon. He also proved post mortem report. Nothing has been elicited from this witness in his cross examination to demolish the case.

13. P.W.6-Ram Janam Prasad is the informant and father of the deceased- Arjun Kumar. He has specifically stated in his examination-in-chief that when he returned from the Office in the evening, he did not find his son-Arjun. Thereafter, he along with his other children searched the deceased till mid night. On 01.03.2002, while he was proceeding towards police station for giving information, he got information that dead body of a child has been found. He was informed that the deceased was lying in the house of Ashok Yadav. He went to the spot and found the dead body. The trails of blood were found from the boundary of Ashok Yadav to the door of the present appellant. He has proved Fardbeyan as Ext.3 and also proved inquest report (Ext.4).

14. P.W.7-Bhim Kumar Yadav is elder brother of the deceased-Arjun Kumar. He also supported the statement of P.W.6.

15. P.W.8- Ramchandra Paswan is the Investigating Officer. He had investigated the matter and completed the investigation and filed charge sheet. He has proved Ext.5 and Ext.6- FSL report.

16. P.W.9- Ram Swaroop Singh is the friend of P.W.-6 and he also supported the statement of P.W.6.

17. P.W.10- Bishundeo Paswan is the A.S.I. He prepared and identified his signature on Inquest Report, Fardbeyan and Seizure list, which have been marked Exts. 4/2, 3/2 and 1/3 respectively.

18. The learned counsel for the appellant has relied upon the decisions of the Hon'ble Supreme Court reported in (2003)9 SCC67{Anil Kumar Singh v. State of Bihar} and (2006) 10 SCC172{Ramreddy Rajesh Khanna Reddy v. State of A.P.}.

19. We have heard learned counsel for both the sides as well as the decisions cited by the appellant. On perusal of the evidence, it is clear that the seizure list has not been proved by the prosecution. P.Ws. 1 and 2 have only proved their signatures. Admittedly neither sword was produced before the trial court nor sent for its chemical examination before Forensic Science Laboratory. From the evidence, it is also clear that the seizure of Sword was not proved by the prosecution and only signature over there has been proved and further charge sheet, in this regard, has not been submitted by the Investigating Officer (P.W.8) and he has not stated anything about the filing of the charge sheet and the place where the dead body was lying was not proved by the prosecution. It is settled principle that in order to base a conviction on circumstantial evidence, each and every piece of incriminating circumstance must clearly be established by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than the one of guilt of the accused and the circumstances cannot be explained on any hypothesis other than the guilt of the accused. The court has to be cautious and avoid the risk of allowing mere suspicion, howsoever, strong, to take the place of proof. Suspicion howsoever grave it may, it cannot take the place of proof. Further for basing a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be

cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.

20. From the above, it is clear that there is no material before this Court to convict the appellant as the Author of the crime inasmuch as only material against her is that seizure of blood stains earth, which was sent to FSL and after chemical examination, human blood was detected but only on the basis of such evidence, conviction of the appellant cannot be sustained.

21. 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 further chain of circumstance is not complete and, thereby, the learned trial court committed illegality in recording the judgment of conviction and order of sentence against the appellant .

22. In the result, this criminal appeal is allowed and the judgment of conviction dated 29.03.2003 and order of sentence dated 31.03.2003 passed by learned Addl. Sessions Judge, Fast Track Court No.7, Hazaribagh, in Session Trial No.267 of 2002 is hereby set aside. Appellant- Chinta Devi, having been found not guilty of the charges levelled against her, is accordingly, acquitted. The appellant- Chinta Devi, who is in jail, shall be released forthwith, if her detention is not required in any other case. (Pradip Kumar Mohanty, J.) (D.N. Upadhyay, J.) Jharkhand High Court, Ranchi Dated the 14th July, 2016 Ravi/N.A.F.R

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