

Bindu Ram Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Sep-01-2012

Appellant : Bindu Ram

Respondent : State of Jharkhand

Judgement :

Criminal Appeal (D.B.) No. 287 of 2002 (Against the judgment of conviction and order of sentence dated 21.5.2001 passed by the 1st Additional Sessions Judge, Palamau at Daltonganj in Sessions Trial No. 486 of 1995. Bindu Ram --- --- --- Appellant Versus The State of Jharkhand --- --- --- Respondent For the Appellant: Mr. Ram Prakash Singh (A.C) For the Respondent: Mr. S.S. Choudhary, APP PRESENT THE HONBLE MR. JUSTICE D.N. PATEL THE HONBLE MR. JUSTICE PRASHANT KUMAR Per D.N. Patel, J.

The present appeal has been preferred against the judgment of conviction and order of sentence passed by 1st Additional Sessions Judge, Palamau at Daltonganj on 21.5.2001 in Sessions Trial No. 486 of 1995 whereby the present appellant/accused was mainly punished under section 302 of the I.P.C. for life imprisonment.

2. It is the case of prosecution that the incident has taken place on 9th of April 1995 at about 5 P.M.. P.W. 4 is the informant who has informed the police on 10th of April, 1995 at about 2 A.M. Informant is the brother of the deceased Geeta Devi. It is the case of prosecution that brother-in-law who is appellant/accused was in jail custody in some another case, thereafter, he was enlarged on bail. The wife of the

accused who is sister of the informant was staying with the parents of the deceased as the appellant/accused was enlarged on bail in some another case, he came at the residence of the informant who is P.W. 4 and was insisting for sending his wife, namely, Geeta Devi with him. There was some quarrel during day time as per FIR and thereafter the informant had gone out for some work and upon returning at his house, he came to know about the fact that his sister Geeta Devi was not alive. Dead body was in the house of P.W. -2- 4. Brother-in-law of P.W. 4 who is appellant/accused was also in the same house. This is how the offence was revealed and FIR was filed before Nagar Untari Police Station, District- Garhwa. Investigation was carried out. Prosecution has examined as many as six witnesses and on the basis of evidences on record, the learned trial court has convicted the appellant/accused on circumstantial evidence for the offence punishable under section 302 of the I.P.C. for life imprisonment. Against this judgment of conviction and order of sentence dated 21.5.2001, the present appeal has been preferred.

3. This court has appointed Sri Ram Prakash Singh as Amicus Curiae on behalf of the appellant/accused as no body appears on behalf of the appellant. Counsel for the appellant has vehemently submitted that there is no eye witness of the whole incident. Moreover, the case of prosecution is fully improved by P.W.

4. There is no narration of extra judicial confession in the FIR. Moreover, the circumstances upon which the reliance has been placed upon by the learned trial court is at paragraph no. 21 of the judgment. These circumstances were never pointed out while recording the statement under section 313 of the Cr.P.C. before the accused. These are the crucial circumstances which are never asked in the statement under section 313 of the Cr.P.C., specially of his presence in the house and about the previous quarrel with the deceased and hence also the judgment of conviction and order of sentence passed by the learned trial court deserves to be quashed and set aside. It is further submitted by the learned counsel for the appellant that the appellant/accused is in jail since the date of offence i. e. from April,1995. Approximately 17 years of period has already been lapsed and appellant/accused is in jail since last 17 years. Thus, the judgment of conviction and order of sentence, deserves to be quashed and set aside. It is further

submitted by the counsel for the appellant that the -3- prosecution witness nos. 1,2 and 3 have given their evidences on the basis of the facts stated by P.W.

4. Thus, P.W. 4 is the only witness who has narrated the incident but looking to the deposition of P.W. 4, specially cross examination, there is lot of material improvement in the case of prosecution. There is no extra judicial confession by the appellant/accused before anyone, much less before P.W.

4. This aspect of the matter has not been properly appreciated and hence the judgment of conviction and order of sentence passed by the trial court deserves to be quashed and set aside.

4. Learned Additional P.P. appearing for the State vehemently submitted that the appellant/accused was in the house where the murder had taken place. Appellant/accused was in jail in another case, he was enlarged on previous day of incident and he was insisting that his wife Geeta Devi should accompany him at his house but it was resisted by P.W. 4 and the whole incident has taken place. At the residence of P.W. 4 the presence of the appellant/accused has also been established by the prosecution. There was a quarrel between the deceased and the appellant/accused, the motive is also established by the prosecution and the deposition of P.W. 4 is getting enough corroboration by the medical evidence. Thus, the prosecution witnesses have mainly proved three circumstances which have been narrated at paragraph no. 21 of the judgment passed by the learned trial court and on the basis of these three circumstances, the learned trial court has rightly punished the appellant/accused for the offence punishable under section 302 of the I.P.C. and hence this criminal appeal deserves to be dismissed.

5. Having heard the counsels for both the sides and looking to the evidences on record, it appears that the appellant/accused was in jail in connection with some another case, thereafter he was enlarged on bail and appellant/accused came at the house of P.W. 4 on 8th April, 1995. As per the FIR, it further appears that the -4- appellant/accused was insisting that his wife, namely, Geeta Devi should accompany him but it was resisted by P.W.

4. Looking to the deposition of P.W. 4, there is material improvement in the case of the prosecution. P.W. 4 has narrated in his deposition that there was extra judicial confession whereas no reference to his extra judicial confession in the FIR. Moreover, looking to the depositions of other prosecution witnesses, namely, P.Ws. 1, 2 and 3, their depositions are revealing the fact that they were informed by P.W. 4 about the death of Geeta Devi. Thus, no body has seen the whole incident. The case of the prosecution is based upon the circumstantial evidence. The prosecution has mainly relied upon three circumstances. (i) The accused was pressing the deceased to accompany him to his house on 9.4.1995 to which the deceased was not agreed. (ii) P.Ws. 2 and 3 the two child witnesses, who were living in the neighbourhood of the P.O. house saw the accused quarrelling with the deceased just prior to the occurrence. (iii) Accused was found in the P.O. house along with the deceased (wife) since before the occurrence and even after the occurrence from where he was arrested by the police officer. These are the three circumstances which have been narrated in the paragraph no. 21 of the impugned judgment. It is rightly submitted by the counsel for the appellant that circumstances nos. 1,2 and 3 were never placed before the appellant/accused while recording statement under section 313 of the Cr. P.C. We have carefully perused the statements recorded by the trial court of the appellant/accused under section 313 of the Cr.P.C. Moreover, the circumstances which are referred in paragraph no. 22 of the judgment has also not been placed before the appellant/accused while recording statement under section 313 of the Cr. P.C. Whether the -5- appellant/accused was present in the house? Whether there was any quarrel and whether he was present even after the occurrence has taken place, nor the circumstances about the confession was placed before him.

6. In view of the facts and the evidences on record and the statement recorded under section 313 Cr. P.C. have not been properly appreciated by the learned trial court and hence, we hereby quash and set aside the judgment of conviction and order of sentence passed by the 1st Additional Sessions Judge, Palamau at Daltonganj on 21.05.2001 in Sessions Trial No. 486 of 1995. Appellant/accused, namely, Bindu Ram is hereby ordered to be forthwith released from the judicial custody, if his presence is not required in the jail, in any other case. Appeal is allowed and disposed of. (D. N. Patel, J.) (Prashant Kumar, J.) Jharkhand High

Court, Ranchi Dated 1st September, 2012 Raman/Sharda/NAFR

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