

Criminal Appeal (DB) No. 619 of 2018

Against the Judgment of conviction dated 20.11.2017 and order of sentence dated 27.11.2017 passed by Sri Pradeep Kumar, Addl. Judicial Commissioner-V, Ranchi in Session Trial No. 652 of 2012.

Ajit BarlaAPPELLANT
Versus
State of JharkhandRESPONDENT
.....

For the Appellants : Mr. Bhola Nath Rajak, Advocate.
For the State : Mr. Sanjay Kr. Srivastava, A.P.P.
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P R E S E N T

**SRI ANANDA SEN, J.
SRI SUBHASH CHAND, J.**

J U D G M E N T

Per, Ananda Sen, J.

This criminal appeal is directed against the Judgment of conviction dated 20.11.2017 and order of sentence dated 27.11.2017 passed by Sri Pradeep Kumar, learned Addl. Judicial Commissioner-V, Ranchi in Sessions Trial No. 652 of 2012, whereby and whereunder, the appellant having been found guilty of charge under Section 302 of Indian Penal Code, has been sentenced to undergo imprisonment for life and fine of Rs.10,000/-.

2. Learned counsel for the appellant submitted that there are serious contradictions in the statements of the prosecution witnesses, which damages the case of the prosecution. As per him, the accused was arrested from his house, whereas P.W. 4 stated that the appellant was arrested at the place of occurrence. He further argued that the prosecution has failed to prove the motive of commission of murder and when there was no dispute amongst the parties, why the deceased will be murdered by this appellant is a mystery. He also argued that P.W. 4, who claims to be an eye witness, in her evidence, stated that seeing the appellant along with murder weapon, she closed her eyes, thus according to the counsel for the appellant, P.W. 4 is not actually an eye witness to the occurrence. He further submitted that P.W. 7, who is informant of this case, cannot be said to be an eye witness, because, when he reached the place of occurrence, alleged murder had already been taken place. As per the counsel for the appellant it is P.W. 7, who, in fact, has committed the murder, but the entire blame is now being

trusted upon this appellant. He also argued that P.W. 3 is not an eye witness to the occurrence thus his evidence cannot be looked into.

3. Counsel for the State argued that P.W. 4 was sleeping in the same room along with the appellant and other two deceased and she had seen the occurrence with her own eyes and has narrated the same. Her testimony cannot be doubted nor she can be said to be a witness of doubtful character. So far as P.W. 7 is concerned, who is informant of this case, he stated that immediately on hearing the alarm, raised by P.W. 4, he reached the room where the deceased and the appellant were sleeping and saw the deceased with injuries on nose and left cheek and they were lying in a pool of blood. He further stated that the medical evidence corroborates with the ocular evidence. This P.W. 7 had also seen this appellant with axe, which clearly corroborates the evidence of P.W. 4 and proves that it is none, but this appellant who has committed the murder of the deceased. He further submitted that P.W. 3 had also seen the injuries on the person of the deceased and she also corroborated the prosecution story of P.W. 7, who stated that on hearing the scream, he went to the room and saw the deceased lying in injured conditions. Further, the murder weapon was recovered on the confessional statement of this appellant and the confession was properly recorded and the Investigating Officer also disclosed the aforesaid fact in details in his evidence. Thus, as per the State, the prosecution has been able to prove its case beyond all reasonable doubt, therefore the conviction of the appellant needs no interference.

4. The prosecution story is based on the fardbeyan of informant Birsa Munda (P.W.7) in which, he stated that Deepak Horo, who was his brother-in-law was residing in his house. On 25.3.2012, James Kerketta, friend of Deepak Horo, had come and after taking meal, Deepak Horo, James Kerketta, Ajit Barla (this appellant) and Fulmani Barla were sleeping in one room. At 10:30 p.m., when Fulmani Barla raised alarm, the informant went to the room and saw the appellant who by means of *Tangi* (axe) was assaulting Deepak Horo and James Kerketta. Thereafter the informant caught hold the appellant and locked him in a room and gave information to the police. Thereafter, the police came and took the injured persons to Lapung Hospital for treatment from where the injured were referred to RIMS, Ranchi where the injured were declared dead.

On the basis of the aforesaid Fardbeyan of the informant, Lapung P.S. Case No. 10/2012 dated 26.3.2012 was registered for the offence under

Section 302 of Indian Penal Code, against the appellant. Subsequently, the matter was taken up for investigation and after completion of investigation, charge sheet bearing No. 27 of 2012 was submitted against the appellant and, accordingly, cognizance of the offence was taken and the case was committed to Court of Sessions for trial.

5. In order to prove the charges against the accused, the prosecution has examined altogether seven witnesses, who are as follows;

P.W.-1, Kailash Munda and **P.W. 2- Sukru Lohra** are hearsay witnesses.

PW- 3, Hiramani Barla, wife is the informant, who deposed that at the time of occurrence, she was at her house and she knew about the occurrence from her husband. She further deposed that four persons i.e. both the deceased, appellant and P.W. 4 were sleeping in a room where the occurrence had taken place. She further deposed that while the appellant was trying to flee from the place of occurrence, her husband caught hold of him and locked him in a room. She identified her signature in the seizure list, which was marked as Ext.-1.

In her cross-examination, she deposed that she does not know what was written in the document, which she signed.

P.W.-4, Fulmani Barla, the sister of the informant, who deposed that she along with both the deceased and appellant were sleeping in the same room. She woke up, because of illumination of battery lamp, when she saw this appellant was standing armed with axe (*tangi*). She further deposed that this appellant threatened her to keep quite and thereafter he committed murder of both the deceased with *tangi* (axe). She also deposed that on her scream, P.W. 7 came and got the door of the room opened by this appellant. This appellant after opening the door, was trying to flee, but P.W. 7 caught him and locked him in another room. Thereafter P.W. 7 informed the police. The police came and arrested this appellant. She also deposed that on the confession of this appellant, the police recovered the murder weapon.

P.W.5- Dr. C.S. Prasad, is the Medical Officer of this case, who deposed that he conducted the postmortem examination of the dead body of deceased Deepak and James Kerketta. After postmortem of Deepak, he found the following injuries;

(1) INCISED WOUND:

(a) 9cm x 1 cm x bone deep on the fronto lateral nose middle part adjoining right cheek, cutting the soft tissue and nasal bone and both sided maxilla bone.

(b) 6 cmx 1 cm x bone deep on right occipital region, cutting the soft tissue and right occipital bone.

INTERNAL- There was diffused contusion of right side of scalp and right temporal muscle with depressed fracture of 9cm x 8 cm size on right tempo parietal bone. There was contusion of brain and presence of subdural blood and blood clots on both side of brain.

The Doctor opined that the injuries on the person of the deceased were ante mortem, the incised wound caused by heavy sharp cutting weapon and rest by hard and blunt substance. He further opined that the death was due to the said injuries. This post mortem report has been marked as Ext.-2.

After postmortem of James Kerketta, he found the following injuries;

- (1) Abrasion- 2 cm x 2 cm on the front of the right shoulder.
- (2) Incised wound 9cm x 1 cm x bone deep in fronto lateral left head, cutting the soft tissue, left occipital bone, durameter and brain.
- (3) Lacerated wound: 4 cm x 1 cm x bone deep, 3 cm x ½ cm x bone deep and 1 cm x 1 cm x bone deep on left cheek upper part with fracture of left naxila bone.

INTERNAL- There was diffused contusion of whole of the scalp and both temporalis muscle with depressed fracture of 8 cm x 4 cm size of left tempora parietal bone and crack fracture of 7 cm long of temporo-parietal bone and crack fracture of 6 cm long of right frontal bone. There was contusion of brain both side and presence of subdural blood and blood clots over both side of brain.

The Doctor opined that the injuries on the person of the deceased were ante mortem, the incised wound was caused by heavy sharp cutting weapon and rest by hard and blunt substance. He further opined that the death was due to the said injuries. This post mortem report has been marked as Ext.-3.

P.W.6- Pawan Kumar Singh is the Investigating Officer of this case, who deposed that he has investigated this case. He prepared the arrest memo and arrested this appellant. He also recorded the confessional statement of this appellant (marked as Ext.-4), and on his confession, he recovered the murder weapon. During investigation, he has also recorded the re-statement of the informant, P.W.7 as well as the statements of other persons. The seizure list was in his own handwriting, which was marked as Ext.-1/1. He further deposed that he submitted the chargesheet against this appellant.

P.W.7- Birsa Munda, the informant of this case, deposed that on the date of occurrence i.e. on 25.3.2012, four persons i.e. this appellant, both the deceased and P.W. 4 were sleeping in the same room in the house of P.W. 7.

On hearing scream of P.W.4 at about 10:30 p.m, he reached the place of occurrence and saw this appellant committing the murder of the deceased persons. Deepak had injuries on the nose and right cheek and James had injuries on right shoulder and on the left side of the head. He informed the police and the police reached there at 12:00 O'clock. This appellant was arrested from a room where he was locked. He further deposed that the axe smeared with blood and earth soaked with blood were seized by the police. The police recorded the fardbeyan of this witness, which was marked as Ext.-5. Inquest reports of both the deceased were prepared, which were marked as Ext.-6 and 7.

6. Some documentary evidences were also produced and exhibited on behalf of the prosecution, which are as follows:-

- Ext.-1: Signature of P.W. 3 on seizure list dated 26.3.2012.
- Ext.-1/1: Seizure list dated 26.3.2012.
- Ext.-2: Postmortem report of deceased Deepak Horo.
- Ext.-3: Postmortem report of deceased James Kerketta.
- Ext.-4: Confessional statement of appellant.
- Ext.-5: Informant's Fardbeyan dated 26.3.2012.
- Ext.-5/1: Signature of informant on fardbeyan.
- Ext.-5/2: Signature of Jolen Kerketta on Fardbeyan.
- Ext.-6: Attested photocopy of inquest report of deceased Deepak Horo.
- Ext.-6/1: Signature of informant on Ext.-6.
- Ext.-6/2: Signature of Jolen Kerketta on Ext.-6.
- Ext.-7: Attested photocopy of inquest report of deceased James Kerketta.
- Ext.-7/1: Signature of Informant (P.W.7) on Ext.-7.
- Ext.-7/2: Signature of Jolen Kerketta on Ext.-7
- Ext.-8&9: Reports of Director, FSL, Jharkhand, Ranchi, which were exhibited under Section 293(1) Cr.P.C.

7. After closing of evidences, the statement of the appellant under Section 313 Cr.P.C was recorded, in which he has pleaded not guilty.

8. 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 appellant to be proved and, thereafter, convicted and sentenced him, as aforesaid.

9. We have gone through the record and evidences as well as impugned judgment. We find that P.W. 4 is the eye witness to the occurrence. She has deposed that she along with the deceased and this appellant were sleeping in the same room. She woke up at night because of illumination of the room by battery lamp at the behest of the appellant. When she woke up, she saw this appellant standing with axe. This appellant

threatened this witness to keep quiet or else she would be done to death. Thereafter this appellant assaulted Deepak Horo by axe on his nose and on the right cheek and then assaulted James Kerketta on the left side of his head and the right shoulder with the said axe. Thereafter this witness screamed when P.W. 7, the informant, came and got the door open by this appellant. The appellant while opening the door tried to flee, but P.W. 7 caught him and locked him in another room. From her evidence, it is quite clear that all these four persons i.e. P.W. 4, both the deceased and this appellant were sleeping in the same room and when she woke up, she saw the occurrence with her own eyes. There is nothing in her evidence to disbelieve her. Her statement is corroborated by the evidence of P.W.7.

10. From the evidence of P.W.7, we further find that he also stated that in the said room four persons were sleeping who are the appellant, both the deceased and P.W. 4. Thus the fact that four persons were sleeping in the same room, where the incident of murder had taken place, has been corroborated. From his evidence, it is also evident that P.W. 4 screamed, when this witness went to the room and saw this appellant with axe who had committed the murder of both the deceased. Deepak Horo had injury on his nose and on the right side of cheek, whereas, James Kerketta had injury on the right shoulder and on the head. The injuries, which have been narrated by this witness (P.W.7), get corroboration from the evidence of P.W. 4.

11. When we analyze the evidence of Doctor, we also find that Deepak Horo sustained injury on the right cheek and cutting of nasal bone and there is cut on right occipital region also. So far as James Kerketta is concerned, there was incised wound in the Fronto lateral left head and also on the left chin upper part with fracture. The wound of both the deceased were incised and were caused by heavy sharp cutting weapon and rest by hard and blunt substance. Thus the nature of injury, which the doctor has found, corroborates with the ocular evidences of P.W. 4 and 7.

12. So far as P.W. 3 is concerned, she was in her house at the time of occurrence and she heard the scream of P.W.4. She also stated that four persons i.e. both the deceased, appellant and P.W. 4 were sleeping in the same room. She further stated that she saw the appellant running away but he was caught by P.W.7 and was locked in another room. P.W. 3 also narrated about the injuries on the persons of the deceased, which corroborates with the testimony of P.Ws. 4 and 7 and also with the evidence of the Doctor and the postmortem report. Admittedly, P.W. 1 is not an eye

witness, rather he is a hearsay witness, who heard about the occurrence and so is the P.W.2. P.W.6 is the Investigating Officer, who conducted the investigation. He also stated about the place of occurrence, which corroborates with the statement of all eye witnesses. He also stated that this appellant was arrested and on his confession, the murder weapon was recovered.

13. So far the discrepancies pointed out by the appellant is concerned, we find that the same is not of much importance to reverse the finding of the Trial Court. There is consistent statement that when the appellant was trying to flee, he was caught by P.W. 7 who locked him in a room. The police arrested him later on. This fact is admitted. The fact remains is that P.W. 4 had seen the appellant committing the murder of the deceased. P.W. 7 immediately reached the place of occurrence, who had also seen this appellant armed with *tangi* in the room and both the deceased were lying in pool of blood. P.W.3 also seen this appellant when he was trying to flee from the place of occurrence. Thus the testimony of eye witnesses cannot be discredited nor there is any material to disbelieve them. Their evidence has not been shaken.

14. We also find that the axe and the blood soaked earth were sent for forensic examination. The forensic report has been exhibited. Human blood was found on the axe and also on the earth, which is evident from Ext.-8 i.e. forensic report.

15. The defence has raised a plea that without any motive, the appellant cannot be convicted for the offence under Section 302 IPC. We disagree with his argument. When there is eye witness, who had seen the commission of murder and their evidence is credible, it is not necessary that the prosecution has to prove the motive behind the offence. The Hon'ble Supreme Court in the case of **Madan Vs. State of Uttar Pradesh**, reported in **2023 SCC OnLine SC 1473** in paragraph 65 and 66 had held as under;

“65. The next contention raised on behalf of the appellants is that the motive attributed by the prosecution is a very weak motive. It is submitted that the motive attributed is on account of political enmity due to elections which were held two and half years prior to the date of incident. The motive is specifically brought on record in the evidence of Lokendra (PW-1) and Irshad Khan (PW-7). Harpal Singh (PW-10) also deposed about the enmity between the families of Ishwar and Ram Kishan. In any case, the present case is a case of direct evidence. It is a settled law that though motive could be an important aspect in a case based on circumstantial evidence, in the case of direct evidence, the motive would not be that relevant. In this respect, we may gainfully refer to the judgment of this Court in the case of State of Andhra Pradesh v. Bogam Chandraiah, which reads thus:

“11.Another failing in the judgment is that the High Court has held that the prosecution has failed to prove adequate motive for the commission of the offence without bearing in mind the well settled rule that when there is direct evidence of an acceptable nature regarding the commission of an offence the question of motive cannot loom large in the mind of the court.”

66. This Court, in the case of *Darbara Singh v. State of Punjab*, , has observed thus:

“15. So far as the issue of motive is concerned, it is a settled legal proposition that motive has great significance in a case involving circumstantial evidence, but where direct evidence is available, which is worth relying upon, motive loses its significance.....”

16. Admittedly, the death is homicidal and the doctor also found that the cause of death is injury, which was inflicted upon the deceased. Further as held earlier, the ocular evidence corroborates with the medical evidence. Further there is nothing to disbelieve in the statement of eye witnesses.

17. Under the aforesaid circumstances, this Court finds that the Trial Court is justified in recording the order of conviction and sentence. We also find that the prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt. Accordingly the Judgment of conviction dated 20.11.2017 and order of sentence dated 27.11.2017 passed by Sri Pradeep Kumar, learned Addl. Judicial Commissioner-V, Ranchi in Sessions Trial No. 652 of 2012 do not warrant any interference by this Court and, hence, it is affirmed.

18. In the result, this appeal is **dismissed**. Let the Trial Court Records be sent back to the Court concerned forthwith, along with a copy of this judgment.

19. Pending interlocutory application, if any, is also disposed of.

(ANANDA SEN, J.)

(SUBHASH CHAND, J.)

Jharkhand High Court, Ranchi.

Dated: the 10th June, 2024.

NAFR/Anu/Cp.-3.