

Cr. Appeal (D.B.) No. 329 of 2016

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(Against the judgment of conviction dated 17.10.2015 and order of sentence dated 19.11.2015 passed by learned Additional Sessions Judge-I, Khunti in Session Trial Case No.392 of 2012).

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Goma Guria, S/o Etwa Guria

..... Appellant

Versus

The State of Jharkhand

.... Respondent

.....

For the Appellant : Mr. Amit Kumar Tiwari, Advocate

Ms. Nidhi Rani, Advocate

For the State : Mrs. Lily Sahay, Additional Public Prosecutor

PRESENT

Hon'ble Mr. Justice Ananda Sen

Hon'ble Mr. Justice Subhash Chand

J U D G M E N T

CAV On 11.06.2024

Pronounced On 22/07/2024

Per Ananda Sen, J.:

The instant criminal appeal is directed against the conviction of the sole appellant under Sections 302/34 of the Indian Penal Code and under Sections 3 & 4 of Prevention of Witch (Daain) Practices Act vide judgment of conviction dated 17.10.2015 and order of sentence dated 19.11.2015, whereby the sole accused has been convicted for the offence punishable under Section 302 of the Indian Penal Code and was sentenced to imprisonment for life with a fine of Rs.10,000/- and he has further convicted for the offence under Section 3 of Prevention of Witch (Daain) Practices Act and sentenced to imprisonment for 3 months R.I. and fine of Rs.1,000/- and further he was convicted under Section 4 of Prevention of Witch (Daain) Practices Act and was sentenced to R.I. for 6 months and fine of Rs.2,000/-.

2. Learned counsel for the appellant submits that P.W.-3 and

P.W.-4 have been declared hostile. So far as P.W.-1 is concerned, he is a hearsay witness who only stated that he had got information from P.W.-7 (informant) that the wife of P.W.-7 has been murdered, similar is the statement of P.W.-2. The only fact which transpires from the evidence of P.W.-1 and P.W.-2 is that a meeting was called in the village in relation to the murder of the wife of the informant but when the meeting was convened, police came and the meeting could not be held. These two witnesses had absolutely nothing to say against the appellant. He further argues that P.W.-5 and P.W.-6, who are the daughters of the deceased, though claiming themselves to be eye witnesses yet, if their evidence is properly scrutinized it would be clear that they are not eye witness. In fact, their statement also demolishes the claim of P.W.-7 and P.W.-8, who claims to be eye witnesses. P.W.-5 has stated that her father and brother had told her about the occurrence and if that be so, she cannot be said to be an eye witness. Their statements are contradictory and does not inspire confidence. P.W.-5 and P.W.-6 have also stated that after they reached the place of occurrence thereafter, P.W.-7 and P.W.-8 reached. They also stated that when they went to the place of occurrence, they saw the deceased dead. If that be so then P.W.-7 and P.W.-8 also cannot be said to be an eye witness. He also argues that these two witnesses stated that the distance from their house and the place of occurrence is 500 yards, thus, it is impossible for them to be an eye witnesses to the said occurrence. Overall reading of the witnesses will clearly lead to a conclusion that there is no eye witness to the occurrence. He further argues that there are no independent witnesses, who had narrated the fact. In absence of any independent witnesses, the prosecution case is liable to fail. He further submits that alleged murder weapon was neither produced in the Court nor examined by the

Forensic Science Laboratory. The blood stained soil was also not seized. He lastly submits that there is no material to convict the appellant under the Prevention of Witch (Daain) Practices Act as there is no evidence that at any point of time, this appellant had branded the deceased as witch. In this background, it has been prayed that the impugned judgment be set aside and the appellant be acquitted.

3. Learned counsel appearing on behalf of State submits that the testimony of the P.W.-5 should not be strictly construed as she is not mature enough and is a pure rustic villager. The Court should not consider the evidence of rustic villagers, too technically. He further submits that P.W.-7 is an eye witness and there is nothing to disbelieve him. He had seen the occurrence, which would be evident from the evidence of P.W-10 (I.O.), who stated that the distance between the places of occurrence and house of the informant is only 30 meters. From 30 meters, the occurrence can easily be seen. Further P.W.-7, who was working in the barn stated that there is no visual obstruction between the place of occurrence and the barn, thus, to the effect that he has seen the occurrence cannot also be disbelieved. Further, the place of occurrence has also been proved by the I.O. which is near tamarind tree. The injury on the person of the deceased as narrated by the eye witnesses is corroborated with the medical evidence. All these facts clearly goes to suggest that this appellant is the perpetrator of the crime and P.W.-7 and P.W.-8 are the eye witnesses. He lastly submits that though P.W.-5 and P.W.6 stated that they were not examined by the police during investigation but the I.O. categorically stated that their statements were recorded. He prays that on these grounds the appeal may be dismissed.

4. The prosecution story is based on the *fardbeyan*, which is Exhibit-2 and the same is at the instance of Jura Guriya. In the *fardbeyan* he stated that on 17.12.2011 at about 7.30 hours, he was working in the Khalihan where he heard scream of his wife, Mangri Guria seeking help. After hearing the scream of his wife, he immediately reached near the house of Mora Guria and saw that his nephew Goma Guria assaulted Mangri Guria with Tangi. Blood was oozing out from the body of Mangri Guria and she was lying on the ground. It is alleged that informant called his son, daughter and villagers, when Goma Guria saw the villagers coming, he fled away from there. It is alleged that Goma Guria gave several blows of tangi on Mangri Guria due to which she sustained injury on her leg, forehead and back and died on the spot. At the time of occurrence his wife went to the well to fetch water and while returning she reached near the house of Mora Guria near the tamarind tree where Goma Guria killed her by means of tangi. The cause of the occurrence is that the wife of Goma Guria died in the month of November and accused claimed that his wife died due to witch practices of Mangri Guria and claimed that Mangri Guria used black magic.

5. On the aforesaid *fardbeyan*, Torpa (Tapkara) P.S. Case No.54 of 2011 was registered under Sections 302 of IPC and under Section 3/4 of Prevention of Witch (Daain) Practices Act. The police after investigation filed chargesheet under Sections 302/34 and under Section 3/4 of Prevention of Witch (Daain) Practices Act.

6. As the appellant pleaded not guilty, charge was framed and he was put on trial. Ten witnesses were examined in this case, who are as follows:-

- (i)P.W.-1- *Jawant Gudiya*
- (ii)P.W.2- *John Gudiya*
- (iii) P.W.-3- *Macko Condulna*
- (iv)P.W.-4- *Sukhram Gudiya*
- (v)P.W.-5- *Anita Gudiya*
- (vi)P.W.-6- *Saloni Gudiya*
- (vii)P.W.-7- *Jura Gudiya, informant of this case.*

(viii) P.W.-8- *Sukhram Gudiya*

(ix) P.W.-9- *Dr. Vijay Kumar Prasad, Medical Officer*

(x) P.W.-10- *Shivlal Tuddu, I.O. of this case.*

7. The following documents were also exhibited by the prosecution:-

Exhibit-1 Postmortem report

Exhibit-2 Fardbayan

Exhibit-2/1 Forwarding on fardbayan

Exhibit-2/2 Endorsement in fardbayan

Exhibit-3 Inquest report

Exhibit-4 Seizure List

Exhibit-5 confessional statement of accused.

Admittedly, P.W.-1 and P.W.-2 are hearsay witness.

P.W.-3 and P.W.-4 are declared hostile in this case. In their cross-examination nothing important could be extracted.

P.W.-5 is the daughter of the deceased. She deposed that Goma Guria assaulted Mangri Guria with Tangi, blood was oozing out from the body of Mangri Guria and she was lying on the ground. She was at her house and when she heard her mother screaming. She went there and saw her mother dead. On hearing the scream, her father and brother also reached there. In her cross-examination, she stated that her house is half kilometer far from the place of occurrence. Further she stated that she has been informed about the incident by her father and brother.

P.W.-6 is another daughter of the deceased, who stated that her mother had gone to the well for bringing water when the appellant assaulted her mother with tangi due to which her mother died. On raising alarm, she and her sister went to the place of occurrence and saw the appellant fleeing after killing her mother, branding her as witch. Thereafter, her father and brother also reached there. In her cross-examination, she stated that the place of occurrence is 500 yard from her house. She further stated that she and her sister reached, before her father reached there.

P.W.-7 is the informant of this case, who stated that at that time of occurrence, he was at the *khaliyan* and his wife went to the

well to bring water, where she was assaulted by the appellant near the tamarind tree with a tangi (axe). He saw the entire occurrence and the fleeing of the appellant towards the field. The appellant killed the deceased branding her as a witch. When police reached the place of occurrence, he told the entire incident to them. In cross-examination, he stated that there is not tree in between the *khaliyan* and the tamarind tree.

P.W.-8 is the son of the deceased, who stated that at the time of occurrence he was at *khaliyan* with his father and his mother went to the well, to bring water, where the appellant assaulted her with tangi near the tamarind tree. On hearing scream of her mother, he and his father went there and saw the appellant giving tangi blow upon the deceased and fleeing towards west direction. Thereafter, they have taken the deceased from the place of occurrence to their house. The appellant after branding her as witch killed her saying that her sister-in-law died due to her witch craft. In cross-examination, he stated that when he and his father reached there his sister were already present at the place of occurrence. At that time, nobody was present there except them and he saw the appellant fleeing towards western direction.

P.W. 9, Dr. Vijay Kumar Prasad deposed that he has conducted the postmortem of deceased- Mangri Guria and found following:-"

"Rigor mortis present in all four limbs and injury No.(1) An incised wound 2.5"x 1" deep to bone at right side of interior part of head. (2) Lacerated wound at both lower limbs. There was compound fracture of both limbs bone. The fracture bone was come out from the wound. The bone was fractured into many bone pieces. (3) Inside wound- 1"x 0.5" x deep to bone of right side of back. On postmortem dissection-

The interior part of skull bone of head was fractured. There was blood and blood clots in interior part of brain materials. Both side of chamber of heart was empty."

He opined that the death was due to some heavy sharp cutting substance on account of shock and hemorrhage caused by the above mentioned injuries. The postmortem report was marked as Exhibit-1.

P.W.-10, Shivlal Tuddu (I.O.) deposed that on 18.12.2011, he got information that in village- Gutuhatu Kripatoli a lady was murdered. Thereafter, they reached the place of occurrence where they found the dead body of Mangri Guriya in the courtyard. He has taken the *fardbeyan* of the informant, which was marked as Ext.-2, forwarding report of the same was marked as Ext.-2/1 and on the basis of which the case was registered by Pushpraj Ojha, which was signed by him and is marked as Ext.-2/2. In presence of two witnesses, Johan Guriya and Jaiwant Guriya the inquest report was prepared, which was marked as Ext-3. He has described the entire boundary of the place of occurrence in details. He sent the dead body to the Sadar Hospital, Khunti for postmortem and had taken statement of several witnesses. On the same day the appellant surrendered before the police and also produced the murder weapon, which was seized in presence of Mako Candolna, which was marked as Exhibit-4. He also recorded the confessional statement of the appellant, which was marked as Exhibit-5. After investigation, he has submitted the chargesheet No.21 of 2012 dated 29.02.2012 under Section 302 of IPC and 3/4 of Prevention of Witch (Daain) Practices Act before the Court.

8. From the evidence led by the prosecution, we find that the place of occurrence is near the tamarind tree where the assault had taken place. There are four eye witnesses to the occurrence, they are informant, P.W.-5 and P.W.-6, who are two daughters of the informant and P.W.-8 who is the son of the deceased. The question is whether they can be said to be actual eye witness or not? Though after analysing their evidence, we find that there is some discrepancy as to who reached the place of occurrence first when the assault was committed, but this is a very minor discrepancy, which cannot negate the entire prosecution case. P.W.-5, who is the daughter stated that when she heard scream of her mother she came out of the house and saw her mother lying

dead. P.W.-6, who is another daughter stated that she also reached the place of occurrence after hearing the scream along with his sister (P.W.-5) and they had seen this appellant giving axe blow on the deceased, as a result, she died. It is also stated that the appellant fled away from the place of occurrence. As per their statement the distance between the place of occurrence and their house is only 50 yards. P.W.-7 is the informant, who was in the barn (khalian). He stated that his wife went to fetch water. The fact that his wife had gone to fetch water is substantiated from the evidence of P.W.-6 also. This witness stated that he had seen this appellant assaulting the deceased near the tamarind tree with an axe. The defence had doubted as to whether this witness could have seen the occurrence or not, considering the distance from the place of occurrence and the place where this witness was working, but this witness has categorically stated that there was no obstruction and there was no tree to obstruct the view. The Investigating Officer, who is P.W.-10 has stated that distance between the place of occurrence and house of the informant was 30 meters. Thus, when the deceased lady was attacked and she screamed the two daughters, who were within 30 meters from the place of occurrence came out and reached the place of occurrence and could see this appellant assaulting the deceased. P.W.-7 who was in his barn (khalian) also could see the occurrence as he has stated that there was no visual obstruction. P.W.-8, son of the deceased had also seen the occurrence. This witness was also working with his father i.e. P.W.-7 in the barn (khalian). Both P.W.-7 and P.W.-8 stated that the reasons of assault. It was because the appellant was branding the deceased as a witch. As stated earlier, the fact that whether the daughters reached the place of occurrence earlier or the father and son is a immaterial in this case. The material fact is that from the evidence, it is clear that

all of them could see the occurrence. There is nothing in the cross-examination, which can raise doubt about their credibility. So far as the medical evidence is concerned, we found that there are several incised wounds on the person of the deceased. There is injury on the head, both lower limbs and skull bone was also fractured and blood clot was found on the part of the brain. Doctor also opined that the injury may caused by sharp and heavy weapon. Axe is a sharp and heavy weapon. The post-mortem report was properly proved by the Doctor. The I.O. also proved the place of occurrence and stated that he has recorded the statement of P.W.-5 and P.W.-6. Though at one point of time these, P.Ws. have stated that they were not examined by the I.O., but considering the age and the fact that they are rustic villagers and they are unaware of the procedure, the statement of I.O. is clear that he had recorded the statement of these two witnesses and there is nothing to disbelieve the I.O. The ocular evidence clearly matches with the medical evidence. In this case, we find that there is no element of doubt from the evidence of the eye witnesses. The prosecution has been able to prove the charges against the appellant. The judgment of conviction dated 17.10.2015 and order of sentence dated 19.11.2015 passed by learned Additional Sessions Judge-I, Khunti in Session Trial Case No.392 of 2012 needs no interference and is thus affirmed.

9. Accordingly, the instant Criminal Appeal stands dismissed.

(Ananda Sen, J.)

Subhash Chand, J: I agree.

(Subhash Chand, J.)

High Court of Jharkhand, Ranchi
Dated 22/07/2024
NAFR /R.S./ Cp 03.