

With
Criminal Appeal (D.B.) No. 177 of 2002

Criminal Appeal (D.B.) No. 173 of 2002

- Versus--

With

.... **Appellant**

For the Appellants : Mr. Mahesh Kumar Sinha, Advocate
For the State : Mr. Pankaj Kumar Mishra, A.P.P.

Pronounced On: 21.11.2024

3. As per the prosecution case, informant-Pradeep Kumar Kasera [appellant in Cr. Appeal (D.B.) No.177 of 2002] was living in the house

of the deceased- Rewati Devi and her maternal granddaughter, Rishu Kumari. Rewati Devi had a clothes business and a small shop which was looked after by his father, Kolha Kasera [appellant in Cr. Appeal (D.B.) No.173 of 2002]. Kuldeep Kasera is brother of Pradeep Kasera. On earlier occasion also they were involved in theft of Rs.15,000/- and in that case, Kolha Kasera had been interrogated. Thereafter, deceased- Rewati Devi and her granddaughter had been threatened with life. They used to demand money from her. On the night of incidence, Pradeep Kasera was inside the house when the homicidal deaths of Rewati Devi and Rishu Kumari were committed.

4. In order to give a picture that some outsiders had committed the offence, Pradeep Kasera lodged the FIR in the next morning, that in the intervening night of 13/14.12.1997, that he was sleeping in the house on the first floor, whereas the land lady and her granddaughter went to their bed on the ground floor at 8.30 p.m. At around 3 - 4 O' clock in the morning, he heard the scream of landlady, on which when he tried to open the door of his room, he found it to be bolted from the outside. As a result, he could not come to the rescue of the landlady and her granddaughter. On Hulla, his brother- Kuldeep Kumar and others came and opened the door and thereafter, he discovered that the land lady and her granddaughter had been done to death by sharp cutting weapon.

5. On the basis of the written report, Nawadih P.S. Case No.105/97 was registered under Section 376, 302/34 of the IPC against unknown. Police on investigation, found the informant, his brother and father complicit in offence and submitted charge sheet against them who were put on trial for offence under Section 302/34 of the IPC.

6. Altogether eleven witnesses have been examined on behalf of prosecution and relevant documents have been marked as Exhibit 1 - 12 which includes post-mortem examination report, inquest report and statement under Section 164 of the Cr.P.C.

7. After prosecution evidence, statement of the accused persons were recorded under Section 313 of the Cr.P.C. Defence is of innocence and false implication. Two defence witnesses have also been examined. D.W. 2 is the appellant- Pradeep Kasera himself and D.W. 1 is one Rajesh Kumar and relevant documents were marked and produced as Exhibit A and B.

8. Judgment of conviction and sentence has been assailed on the ground that there is no direct or circumstantial evidence to convict the appellants and the judgment is based on conjecture and surmises. It is argued that there is no evidence whatsoever against appellants- Kuldip Kasera and Kolha Kasera that they were involved in the incidence. These appellants were neither living in the house where the incidence took place nor there is any evidence direct or circumstantial to connect them to crime. The chain of circumstances is not complete against the appellants from which a conclusion can be drawn that save and except the appellants, there was no other person who could have committed the offence. The evidence of appellant- Pradeep Kasera who examined himself as D.W. 2, has not been considered by the trial Court.

9. Learned A.P.P. has defended the judgment of conviction and sentence. It is argued that evidence has come on record of past malfeasance in which appellant- Kolha Kasera had committed a theft of Rs.15,000/- of the deceased and when he was confronted and interrogated regarding this, the deceased- Rewati Devi was threatened with life. The double murder was an individual act and had been conjointly committed by the appellants who were closely related to each other and were also working in the shop of the deceased- Rewati Devi.

FINDING

10. There are certain facts which are not in dispute and have not been assailed in appeal. For brevity, admitted facts established by the prosecution evidence and not disputed either during trial or in appeal

are as follows: -

- I. Deceased- Rewati Devi aged 70 years and her maternal granddaughter- Rishu Kumari aged 15 years, died a homicidal death. As per the evidence of the Autopsy Surgeon (P.W. 7), Rishu Kumari sustained extensive injuries over her face and head and the death was due to the ante-mortem injuries. Her grandmother also suffered lacerated and penetrating wound over her face and other vital parts of the body which resulted in her death.
 - II. Place of occurrence was the house of the deceased, description of which has been given by the I.O. (P.W. 10). The place of occurrence has been described in para 3 to be a double storied house of Late Baijnath Sao. On the ground floor, there were seven rooms and the dead body of Rishu Kumari was found drenched in blood in one of the northern rooms on the ground floor. Dead body of Rewati Devi was lying near the kitchen.
 - III. Appellant- Pradeep Kasera was living on the first floor in the northern room. There was stair case from the ground floor to the first floor.
 - IV. Indisputably, appellant- Pradeep Kasera was in the room on the night of the incidence.
- 11.** There is no direct eye witness to the occurrence. As discussed above, it has not been disputed by Pradeep Kasera that he was very much present in the house on the night of the incidence. His main plea of defence is that he was not the author of the ghastly crime, rather some unknown criminals intruded into the house, who committed rape and murder of the deceased. It is relevant to note that FIR was initially lodged by Pradeep Kasera for offence of rape and murder of Rishu Kumari. His main defence is that at the relevant time of incidence, his room was bolted from outside and therefore, he could not come out to rescue of the landlady on hearing her scream.

12. The defence put forward by Pradeep Kasera is intrinsically unsustainable for the reason that when he was locked inside the room, how did he knew that rape was committed. Rape theory spun by this appellant, was not substantiated during investigation and charge sheet was not submitted for offence under Section 376 of the IPC. Falsity of the defence plea is further exposed, as there is no evidence on record to show that when the house was locked from inside, who came to open the latches of the door of this appellant's room. Fact of the matter remains that this appellant was inside the house, where the double murder was committed and instead of offering any plausible explanation to the commission of offence, the narratives set up by him have been falsified.

13. It has also come in evidence of P.W. 1 that P.W. 1 and P.W. 2, who were neighbors of the deceased on Hulla, when they reached the place of occurrence, they saw that all these appellants were present and came from inside the house and were raising alarm that Rewati Devi and Rishu Kumari have been murdered. Testimony of P.W. 4 and P.W. 5, who also arrived at the place of occurrence, it is evident that appellant- Pradeep Kasera lived in the house on the fateful night and when they arrived there, they had access to the interior of the house which was the crime scene. Meaning thereby that it was appellant- Pradeep Kasera, who had opened the door from inside.

14. Pradeep Kasera has been examined as D.W. 2. He has deposed in para 5 that he heard the cries for help of both the deceased, but he could not come out from the room as it had been bolted from outside. In para 6, he has deposed that he cried for help, on which his brother Kuldip Kumar and others came and opened his room. This does not clarify the riddle as to how they entered into the house for opening his room when at night the house was supposedly locked from inside. In para 8, he has tried to spin another story that nephew of the deceased- Rewati Devi used to brand her as witch. There is no corroborative

evidence regarding this and has come for the first time in his defence evidence. He has admitted in para 19 that he had not himself informed the police or the parents of the deceased- Rishu Kumari.

15. His undergarments were seized by the police which had blood-stain marks (Exhibit 7/C). The blood of both the deceased were also seized from the place of occurrence and marked as Exhibit 7 and 7/B which were sent for forensic examination. The blood sample was found of human origin (Exhibit 11) as per the FSL report.

16. On earlier occasion, cash to the tune of Rs.10,000/- was stolen from her purse. P.W. 6 has deposed in para 3 that the shop of the deceased was looked after by Kolha Kasera, who was the father of this appellant- Pradeep Kasera and he used to persistently demand money from her. P.W. 8 has also deposed in para 16 that the relationship of the appellants with the deceased was strained. P.W. 9 is the daughter of deceased- Rewati Devi and mother of Rishu Kumari. She has deposed in para 7 that the lock of her room of her mother, was broken and the jewellery was missing for which the crime was committed by Pradeep Kasera.

17. On combined reading of testimony of witnesses, it is proved beyond any shadow of doubt that appellant- Pradeep Kasera was in the house at the night when the double murder was committed. It was incumbent on his part to explain as to how the elderly lady and her minor granddaughter were brutally killed as he could only have thrown light on this aspect. Instead of offering any plausible explanation, he attempted to spin false defence stories, initially of rape and murder by unknown and later of committing murder by the nephew of the deceased by branding her a witch. Blood stains were also found on the cloth of the appellant. These defence pleas have been found to be false for the reasons discussed in the foregoing paragraphs. The only irresistible conclusion that can be drawn is that it was this appellant, who was the author of the ghastly crime. **Judgment of**

conviction and sentence passed by the learned trial Court, is accordingly affirmed against this appellant (Pradeep Kasera).

18. As far as the other appellants are concerned, prosecution has failed to prove anything beyond the past financial dispute with the deceased- Rewati Devi as Kolha Kasera was looking after her shop. Both these appellants were living separately and there is no evidence that they were present in the house on the fateful night. The evidence that in wee hours when the witnesses arrived at the place of occurrence on Hulla, found them to be present there, cannot be the sole basis for conviction. Under the circumstance, the judgment of conviction and sentence passed against the appellants (Kuldip Kasera and Kolha Kasera) is set aside.

Criminal Appeal (D.B.) No. 173 of 2002 is allowed and Criminal Appeal (D.B.) No. 177 of 2002 stands dismissed.

Pending Interlocutory Application, if any, is disposed of.

Appellants in Criminal Appeal (D.B.) No. 173 of 2002 are on bail. Sureties are discharged from the liabilities of their bail bonds.

Appellant in Criminal Appeal (D.B.) No. 177 of 2002 is on bail. His bail is cancelled and he is directed to surrender before the trial Court to serve the remaining part of sentence.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 21st November, 2024

AFR/Anit