
(2021) 07 JH CK 0030

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1013 Of 2015

Arti And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 28-07-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302
Prevention Of Witch (Daain) Practices Act, 1999 — Section 3

Citation : (2021) 07 JH CK 0030

Hon'ble Judges : Rongon Mukhopadhyay, J;Rajesh Kumar, J

Bench : Division Bench

Advocate : Birendra Kumar, Vijay Kumar Sinha, Shekhar Sinha

Final Decision : Allowed

Judgement

1. Heard Mr. Birendra Kumar, learned counsel for the appellants and Mr. Shekhar Sinha, learned P.P. for the State.

2. This appeal is directed against the judgment and order of conviction and sentence dated 27.07.2015 (sentence passed on 31.07.2015) passed by the

learned Sessions Judge, Lohardaga in Sessions Trial No. 44 of 2013 whereby and whereunder the appellants have been convicted for the offences

punishable under Sections 302/34 and 201/34 of I.P.C. and have been sentenced to undergo S.I. for life and a fine of Rs. 10,000/- for the offence

under Section 302/34 of I.P.C. No separate sentence has been passed for the offence under Section 201/34 of I.P.C.

3. The prosecution story arising out of an FIR instituted by Jairam Munda is to the effect that the son of the informant had gone to his in-lawsâ??

place on 05.02.2013 at village Panchpadwa in the district of Lohardaga. On 06.02.2013 at about 8 AM, he came to know that his son has been

murdered by Boda Munda @ Suman Munda, Birsa Munda @ Runka Munda, Jama Munda @ Sushil Munda and Arti Kumari @ Sukar Kumari. At

this he along with his another son reached Panchpadwa, where he found his son having been murdered and thrown at Panchpadwa Tongri. The

reason for the occurrence is that the son of the informant "Mansukh Munda used to remain sick and in spite of being treated at various places, he

was not getting well. It has been alleged that the informant and his family members were thinking of taking Mansukh Munda to Devas for treatment

and this intention was disclosed to his brother Hadu Munda and on this issue there appeared a fissure in the relationship between the families of the

informant and Hadu Munda. It has been alleged that the family of Hadu Munda left for Panchpadwa. The informant had sent his son to bring them

back, but they did not return. On 28.01.2013, the son of the informant Markas Munda had died and there was friction between both the sides for

practicing witchcraft which resulted in the occurrence. The informant could come to know that his son Markas Munda had gone to the house of

Bauda Munda on 05.02.2013 and near the door stop, Arti Kumari had started assaulting him with fists, slaps and danda. It has been alleged that all the

accused persons had dragged Markas Munda towards the jungle and assaulted him on his head with lathi and stones which resulted in his death. It has

also been stated that his relation Baura Munda has seen the occurrence. Based on the aforesaid allegations, Jobang P. S. Case No. 2 of 2013 was

instituted under Section 302 & 201/34 of I.P.C. in which after investigation charge-sheet was submitted leading to taking of cognizance and after the

case was committed to the court of Sessions, charge was framed for the offences punishable under Sections 302/34 & 201/34 of I.P.C. and under

Section 3 of the Prevention of Witch (Daain) Practices Act, 1999, to which the accused pleaded not guilty and claimed to be tried.

4. In course of trial, 7 witnesses were examined by the prosecution.

5. P.W. 1 "Boda Munda @ Bauda Munda has stated that the incident is of 6 months back. He had gone to Kisko to prepare his Aadhar Card and

he returned back to his house from Kisko at about 8 PM. He has stated that while returning home, he has seen his son-in-law Markas Munda being

assaulted with lathi and danda by 4-5 persons. He has further stated that after assaulting him, he was dragged towards the forest where he was hit by

a big stone leading to his death. He has further stated that the persons involved are Birsa Munda @ Runka Munda, Bora Munda @ Suman Munda,

Jama Munda @ Sushil Munda and Aarti Kumari @ Sukar Kumari. He has stated that thereafter on account of fear, he had gone to his residence. In

cross-examination, this witness has stated that it was dark when the incident had taken place. He has further deposed that due to darkness, persons

who were standing at a distance could not be recognized. He has also stated that he does not know as to when his son-in-law had come to his house.

After coming from Kisko, he had straightway gone to his house. He has further stated that all the accused are from his village with whom, this

witness is not on very friendly terms. Replying to a court question, this witness has stated that he was at a distance of 150 yards from the place of

occurrence.

6. P.W. 2 â?" Sohrai Munda has stated that on the date of occurrence, he along with P.W. 1 was returning from Kisko to their respective homes. On

reaching the village they heard the sound of shouting and when they reached near the house of P.W. 1, they had seen Markas Munda being assaulted

by the accused persons. He has further stated that the accused persons took Markas Munda towards Tongri and thereafter Markas Munda was

assaulted on his head with a big stone and he and P.W. 1 fled away from the place of occurrence and reached their respective homes. He has stated

that on the next date, the father of Markas Munda was informed. In cross-examination, this witness has stated that it was total darkness at the time of

returning home from Kisko Block. He has admitted that there is no electricity in his village. He has further stated that while entering his village, his

house is situated before the house of P.W. 1. He has further stated that the incident was never disclosed by them to the villagers. He has also

deposed that he had not seen any person in the place of occurrence.

7. P.W. 3 â?" Ram Nath Munda has stated that on the date of occurrence, he was in the house and on next date, Sohrai Munda informed on phone

that his elder brother has been done to death. He has also stated that on hearing such information, he had gone to village Panchpadwa and had seen

the dead body of his brother. Sohrai had disclosed to him about the accused persons committing the murder of his brother. He has also stated that the

reason for the occurrence is that Devas had told him that it was on account of his

uncle Hadu Munda that his brother Mansukh Munda was sick.

8. P.W. 4 â?" Dr. Pranav Kumar was posted as a Medical Officer on 07.02.2013 in the Department of Leprosy where he conducted autopsy on the

dead body of Markas Munda. This witness has found the following injuries:

External Injuries:

(i) Lacerated wound on left side of forehead size 2 inch x 1 inch x up to bone deep.

(ii) Fracture of left mandible.

(iii) Extraction of upper four teeth.

(iv) Blood stain on nose and ear.

Internal Injuries:

A. Head and Neck: Brain matter lacerated and pale on section.

B. Thoracic cavity: Lungs intact and pale on section heart Intact right chamber full and left chamber empty.

C. Abdominal cavity: Liver, spleen and kidneys were intact and pale on cut section, Stomach contains semi digested food particle and gas large

intestine contains faecal matter.

All above injuries were ante-mortem in nature and time elapsed since death 6 to 36 hours.

The cause of death according to this witness was due to Haemorrhage and shock caused by hard and blunt substance. This witness has proved the

post-mortem report which has been marked as Exhibit 1.

9. P.W. 5 â?" Dedo Munda is a hearsay witness.

10. P.W. 6 â?" Jairam Munda is the informant who has stated that on the date of occurrence, he was at his home and his son Markas Munda had

gone to his in-lawsâ?? place at village Panchpadwa. He has also stated that his son had gone to call the brother of the informant namely, Hadu

Munda. He has also stated that his son was assaulted and done to death by the accused persons. The reasons for the occurrence according to this

witness was that he and his brother were not on good terms. In cross-examination, it has been stated that there was no enmity with the accused Bora

Munda, Jama Munda and Birsa Munda and they were on friendly terms with him.

11. P.W. 7 â?" Supa Kongari has deposed that on 06.02.2013 he was posted as

Sub-Inspector on Jobang Police Station. He has recorded the Fard

Beyan of Jairam Munda which has been proved and marked as Exhibit 2. The formal FIR is in his hand-writing and signature which has been marked

as Exhibit 3. He has further stated that after taking over investigation, he had recorded the re-statement of the informant and had thereafter taken the

statement of Baura Munda, Sohrai Munda, Dedo Munda and Ram Nath Munda. This witness has inspected the place of occurrence which is at

village Panchpadwa Tongri, which is an isolated place surrounded by jungle and bushes. On 17.02.2013 he had obtained the post-mortem report and

on direction of his superior officials he had submitted charge sheet. In cross-examination, this witness has stated that he had not seized any article

during investigation. He has also stated that the house of Bauda Munda is at a distance of half km. from the place of occurrence. On a court question,

he has stated that inquest report has been misplaced and he also could not recover the big stone which was used in the commission of the murder.

12. It has been stated by the learned counsel for the appellants that the prosecution has miserably failed to prove its case beyond all reasonable doubt.

Learned counsel submits that save and except P.W. 1 and 2, there are no eye-witnesses to the occurrence and the evidence of P.W. 1 and P.W. 2

suffers from major discrepancies, which itself makes the identification of the appellants as the perpetrators of the offence doubtful. Learned counsel

submits that the P.W. 1 and P.W. 2 had stated that it was a dark night and there is no electricity in the village and as such it would have been

absolutely impossible to have identified the assailants. Learned counsel further while referring to the evidence of P.W. 1 submits that the conduct of

P.W. 1 is improbable and unbelievable if his version is taken to be true to the effect that he claims to have seen the accused persons committing the

murder of his son-in-law, but neither had he tried to save him nor did he inform this matter to any of the villagers immediately. Learned counsel also

submits that as per P.W. 2, the incident is said to have taken place near the house of P.W. 1, but the I.O. has disclosed that the distance between the

place of occurrence and the house of P.W. 1 is about half a km. He further submits that nothing has been stated as to whether P.W. 1 and P.W. 2

had followed them which further nullifies the story created by P.W. 1 and P.W. 2 to implicate the appellants. Learned counsel submits that as per

P.W. 1, both the sides were on inimical terms and hence the false implication of the appellant cannot be ruled out. On such parameters, learned

counsel for the appellants has stated that the present appeal be allowed.

13. Mr. Shekhar Sinha, learned P.P. for the State on the other hand while relying on the evidence of P.W. 1 and P.W. 2 has stated that they are the

eye-witnesses of the occurrence and their evidence is cogent, convincing and believable, and therefore, conviction of the appellants under Section

302/34 and 201/34 of I.P.C. has rightly been done. He therefore, prays that the present appeal be dismissed.

14. We have heard the rival submissions and have also gone through the Lower Court Records.

15. The prosecution has tried to build an edifice based on the evidence of P.W. 1 and P.W. 2 who have stated to have seen the occurrence relating to

the son of the informant namely, Markas Munda being subjected to assault by the appellants with stone and tangi. However, the edifice crumbles once

the cross-examination of P.W. 1 and P.W. 2 is taken into consideration. P.W. 1 in very categorical terms has stated in his cross-examination that it

was difficult for the persons to be recognized who were standing at a distance on account of the darkness. He has further admitted that it was a dark

night. According to the evidence of P.W. 1, he out of fear had returned back to his residence which conduct appears to be totally contrary to what

one would expect in such a situation when the son-in-law of the P.W. 1 is being done to death and he neither informs the villagers nor raises any

alarm, but rushes to his house and stays put. On a court question, he has stated that from the place of occurrence, he was at a distance of 150 feet

and considering the darkness which had engulfed the area and the distance from where the incident is said to have been seen by P.W. 1, it totally

nullifies the prosecution case with respect to the identification of the appellants being the assailants.

16. Similarly, the evidence of P.W. 2 is fraught with major discrepancies as he has stated that he had not seen any person in the place of occurrence

and that he had never disclosed the incident to the villagers. This witness has also admitted that there is no electricity in the village. He has also stated

about total darkness when he was returning home from Kisko Block. The identification of the appellants by P.W. 1 also is nullified if the distance

between the place of occurrence and the house of P.W. 1 is taken into consideration as disclosed by P.W. 7, the Investigating Officer which is about a half km and coupled with the darkness, the identification of the appellants by P.W. 2 therefore seems to be an absurd story created by P.W. 2. It is

to be noted herein that P.W. 1 has stated about he being on inimical terms with the appellants and therefore, the false implication of the appellants also

cannot be ruled out. The Investigating Officer has failed to seize the weapon of assault or the stone with which the deceased was purportedly done to

death. The evidence of the other witnesses do not energise the prosecution case and the falsity of the allegations levelled against the appellants lie

threadbare on a dissection of the evidence of the so-called eye-witnesses P.W. 1 and P.W. 2 as has been taken note of earlier. The prosecution

therefore having miserably failed to prove its case beyond all reasonable doubt, the appellants deserves to be acquitted from the charges against them.

In such circumstances, this appeal stands allowed and the impugned judgment and order of conviction and sentence dated 27.07.2015 and 31.07.2015

respectively passed by the learned Sessions Judge, Lohardaga in Sessions Trial No. 44 of 2013 are hereby set aside.

17. Since the appellant no. 1 is on bail, she is discharged from the liability of her bail bonds. As regards appellant nos. 2 to 4 are concerned, they are

directed to be released immediately and forthwith, if not wanted in any other case.

18. This appeal stands allowed.