

(2006) 03 JH CK 0107

In the Jharkhand High Court

Case No : Criminal Appeal No. 240 of 1990 (P)

Asani Roy and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 29-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (2006) 3 JCR 114

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Advocate : A.K. Yadav, Amicus Curiae, for the Appellant; R.K. Mukhopadhaya, APP, for the Respondent

Judgement

1. The appellants 1 to 4 were arrayed as A-2, A-4, A-1 and A-3, in that order, before the trial Judge to face a charge of murder and also a charge u/s 323, IPC on the allegation that they in furtherance of common intention of one another beat the deceased Beta Lal Tudu @ Chhotu Lal Tudu and further that they also caused simple injuries to PW 6 Charan Tudu and PW 8 Darbari Tudu. The trial Judge, finding the appellants guilty as charged while sentencing each of them to two months' rigorous imprisonment u/s 323, IPC, directed them to undergo imprisonment for life u/s 302 read with Section 34, IPC. The above appeal is against the said conviction and sentence.

2. In the Judgment, the appellants will be referred as A-1 to A-4 in the same order as they were arrayed before the Sessions Judge. Asani Rai and Gundu Roy, A-2 and A-3 are the brothers, Badri Roy A-4 is the uncle of A-2 and A-3 and Shibu Roy A-1 is the cousin of A-2 and A-3.

3. On 1.5.1998, the deceased Beta Lal Tudu accompanied by Suresh Murmu, PW 14, went to the house of the father of A-2, Parmeshwar Rai, to attend a Barat where A-2 Asani Rai and A-3 Gundu Rai were also present. They requested the deceased and Suresh Murmu PW 14 to sit down to take their meals. At that time,

all the accused questioned the deceased and PW 14 as to why they are taking meals in the house of Parmeshwar Rai (father of A-2), to which the deceased Beta Lal Tudu asked them as to why they were asked to take seat if they do not want to feed them. Thereupon all the accused started beating the deceased and he ran to a distance and fell down in the field of Shyam Lal Tudu. PW 6 Charan Tudu and PW 8 Darbari Tudu intervened and they also suffered injuries. On hearing the cries of the deceased and the witnesses, PW 4 Rabindra Tudu, PW 9 Chotelal Tudu and PW 7 Micke Tudu and other villagers arrived at the spot. The accused went away from the scene. The deceased suffered injuries and was bleeding through nose. The deceased and other witnesses, PW 6 and PW 8, were placed on a bullock cart and taken to Ramgarh State Dispensary where PW 10, Dr. Binod Kumar Choudhary, examined PW 6 and he found a lacerated wound 1-1/2" x 1/2" x 1/2" on the occipital region. The doctor also noticed tenderness and restricted movement of his shoulder. Tenderness was also found in the left axilla. The doctor sent Ext. 9, the O.D. Slip, to the police station. Ext. 2 is the injury report prepared by the said doctor for PW 6. The doctor also examined PW 8 at 11.30 a.m. and found three lacerated wounds of different sizes on the forehead, left parietal bone and left leg. Swelling on left elbow joint was also noticed. He was advised to take x-ray and was referred to Dumka Sadar Hospital for better treatment. Ext. 2/1 is the injury report prepared by the said doctor for PW 8.

4. In the meantime, on receipt of the O.D. Slip, the Police Officer, PW 15, went to the hospital and recorded Ext. 4, the fardbeyan, given by PW 8, Darbari Tudu, on the basis of which a crime was registered through a formal FIR, Ext. 5.

5. The Officer, PW 15, took up the investigation in the crime, went to the scene of occurrence and after conducting inquest over the dead body, during which witnesses were examined, he issued requisition to the Medical Officer, requesting him to conduct autopsy on the dead body after sending it to the hospital.

6. On receipt of the requisition, PW 13 Dr. Bimal Kumar, conducted autopsy on "the dead body of Beta Lal Tudu and found one lacerated wound measuring 2-1/2" x 1/2" which was found to be bone deep on the left side of forehead and another lacerated wound measuring 1-1/2" x 1/2" which was also found to be bone deep on the left parietal region of the skull. On dissection of skull, the doctor found laceration of membrane and brain substance and fracture of left parietal and frontal bone. The doctor further noticed blood clots inside cranium. 3rd and 4th ribs were also found fractured. The doctor issued Ext. 3, the post-mortem certificate, with his opinion that the deceased would have died on account of shock and heamorrhage as a result of the injuries and that they are sufficient to cause death in ordinary course of nature.

7. After completion of the investigation, the final report was filed against the appellants accused. When they were questioned u/s 313, Cr PC they denied all the incriminating circumstances. No witness was examined on their side.

8. It is not in dispute that Beta Lal Tudu died on account of the injuries suffered by him and that those injuries are homicidal in nature. Dr. Bimal Kumar, PW 13, who conducted autopsy and who issued Ext. 3, also gave evidence and stated that the deceased died on account of the injuries suffered by him. We, therefore, accept the evidence of the doctor and hold that Beta Lal Tudu died on account of homicidal violence.

9. The prosecution before the trial Court examined four persons as witness to the occurrence and they are PWs 5, 6, 8 and 14. Their evidence discloses that on the date of incident, namely, 1.5.1988, the deceased accompanied by PW 14 Suresh Murmu went to the house of the father of A-2 to attend a barat and at that time, the deceased was asked to sit and take food by the father of A-2 and when the deceased and Suresh Murmu PW 14 sat to take food, the accused appellants objected as a result of which the deceased questioned them as to why they asked them to sit to take meals if they are not willing to feed them, during which appellants using lathi beat the deceased and went away. When PW 6 and PW 8 intervened, they were also beaten. On going through the evidence of the witnesses, we find no infirmity in their evidence and in fact PW 5 and PW 14 are independent witnesses and they had no intention to give false evidence. It is also to be remembered at this stage that there was no animosity between the accused and the deceased party and therefore, there was no reason for any of the witnesses to give false evidence for the purpose of implicating the son of Parmeshwar Rai and his relatives, namely A-1 to A-4. Their evidence is also supported by the medical evidence as two of the witnesses, PWs 6 and 8, have suffered injuries during the course of same transaction. It is not the case of the defence that PWs 6 and 8 suffered injuries at different place and at different point of time as we have already stated that the doctor, PW 10, on examination of the two witnesses, found injuries on their persons, for which two injury reports, Exts. 2 and 2/1, were issued and the complaint had to be laid at the hospital by PW 8 to the Police Officer, PW 15, who reached there. On consideration of the above evidence, we accept their evidence and hold that the appellants attacked the deceased as well as PWs 6 and 8 and caused injuries on them leading to the death of Beta Tudu and simple injuries to PWs 6 and 8.

10. The question that is to be decided by us is the nature of offence committed by the appellants. It is the very case of the prosecution that there was no motive between the accused and the deceased party and in fact, on the date of incident, the deceased accompanied by PW 14 went to the house of Parmeshwar Rai, who is the father of A-2, to attend a barat and when they sat down to take meals at the request of Parmeshwar Rai, the accused appellants objected leading to a quarrel and the occurrence.

11. In view of the above, we are of the view that the appellants have attacked the deceased not with any premeditation but upon a sudden quarrel in the heat of passion. It cannot also be said that they acted in a cruel and unusual manner. We, on the facts and circumstances of the case, hold that the appellants

had no intention to cause death of the deceased and therefore, their conviction u/s 302 read with Section 34, IPC is to be set aside and accordingly the conviction and sentence imposed upon the appellants u/s 302 read with Section 34, IPC are set aside and instead the appellants are found guilty u/s 304, Part II, IPC read with Section 34, IPC and are sentenced to undergo imprisonment for five years. The conviction of the appellants u/s 323, IPC for causing injury to PWs 6 and 8 and consequent sentences are confirmed with a direction that sentences of imprisonment will run concurrently. It is reported that the appellants are on bail. Their bail bonds stand cancelled. The Sessions Judge is directed to take steps to commit the appellants to prison for serving the remaining part of the sentence.

With the above modification in conviction and sentence, this appeal is disposed of.