
(2010) 08 JH CK 0067
In the Jharkhand High Court

Asin Ram and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2010) 08 JH CK 0067

Hon'ble Judges : Dilip kumar sinha, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—Both the criminal appeals are taken up together arising out of common judgment and sentence recorded in S.T. No. 66/98 by the 3rd Additional Judicial Commissioner, Ranchi, arising out of Chanhoo P.S. Case No. 27/97, corresponding to G.R. No. 1671/97.

2. It is relevant to mention that the appellants Asin Ram, Sohan Ram and Vinod Ram of Cr. Appeal (D.B.) No. 17 of 2001 were convicted under Sections 148 and 325 of the Indian Penal Code, accordingly sentenced to undergo rigorous imprisonment for two years and three years respectively. The appellants Krishna Ram and Mohan Ram of Cr. Appeal D.B.) No. 47 of 2001 were sentenced to undergo rigorous imprisonment for two years and three years respectively for conviction of each of them under Sections 148/325 of the Indian Penal Code. Each of them were further convicted under Sections 302/34, Indian Penal Code and awarded rigorous imprisonment for life.

3. Prosecution story in short, as it stands narrated in the Fardbeyan of the informant P.W.-1 Udit Ram on 16.7.1997 at about 7:00 a.m. before the police at the Government Hospital, Chanhoo that on the previous day i.e. on 15.7.1997 (Tuesday) at about 8:00 p.m. while he was having interaction with his father Laxaman Ram (since deceased), uncle Sukra Ram, mother Sampati Devi and grandfather Raghu Ram on the domestic issues, in the meantime, all the

appellants including one Shanti Devi(acquitted) wife of the appellant Asin Ram appeared at the door of the informant and started abusing calling upon the inmates of the house to come out expressing their anger as to why they had been calling Shanti Devi as witch. The inmates including the informant objected the filthy language being used by the accused persons, whereupon, it was alleged that the appellant Asin Ram commanded the other accused persons to eliminate them all. Pursuant to that the appellant Krishna Ram, who was having sword in his hand inflicted blow causing head injury to the mother of the informant Sampati Devi. Informant was assaulted by the appellants Sohan Ram and Vinod Ram with sticks. Consequent to sustaining injuries on his head and near his right eye, he fell down with his mother near a mango tree. It was further alleged that the appellants then started assaulting his grandfather Raghu Ram whereupon the father of the informant Laxaman Ram (since deceased) came forward to rescue the victims but on the command of the appellant Asin Ram, the other accused chased Laxaman Ram with the intention to assault him. His father Laxaman Ram tried to escape from the place of occurrence and started running but having been chased by the appellants Krishna Ram and Mohan Ram, followed by the uncle of the informant Sukra Ram, Laxaman Ram was caught hold by the appellants Krishna Ram and Mohan Ram on the Bijupara-Khelari road at a distance of about 1/2 Km. from Barhaiya and both the appellants with the help of Nepala (dagger) and sword committed murder of his father. No sooner did the witnesses arrive at the scene, both the appellants escaped. His father Laxaman Ram was found dead on the flank of the road sustaining injuries. The dead body was taken care of in the night by the witnesses and the occurrence was communicated to the police in the morning. On the basis of the Fardbeyan of the informant Udit Ram, Chanho P.S. Case No. 27/97 was registered for the alleged offence under Sections 147/148/149/323/307/302 of the Indian Penal Code against all the six named accused persons including one Shanti Devi. The Investigating Officer submitted charge-sheet against all the six named accused under the alleged offence. After commitment, charge was framed against the appellants Krishna Ram and Mohan Ram under Sections 302/34 of the Indian Penal Code. Besides, charges against all the six named accused Krishna Ram, Mohan Ram, Asin Ram, Sohan Ram, Vinod Ram, and Shanti Devi were framed under Sections 148/149/324/325/307 of the Indian Penal Code, to which they pleaded not guilty and claimed trial. After examination of nine witnesses produced on behalf of the prosecution, the accused-appellants including Shanti Devi were examined u/s 313 of the Code of Criminal Procedure who were confronted with the incriminating materials collected in course of trial, to which they denied their guilt and expressed desire to adduce evidence in their defence.

4. That apart, the prosecution proved the post-mortem report of the deceased Ext.5; injury reports of the injured witnesses Exts. 6, 6/1, and 6/2; Fardbeyan Ext.1/1; Seizure list Exts.3 and 4/2; formal F.I.R. Ext.7; requisition of injury reports of the witnesses Exts. 8, 8/1, and 8/2. The defence produced and examined three witnesses and proved the death certificate of Laxaman Ram

Ext.A; copy of the petition of Sampati Devi Ext.B; order sheet Ext.C and signatures of the four witnesses on the order sheet being Exts. B/1, B/2, B/3, and B/4.

5. Autopsy on the dead body of Laxaman Ram was held by P.W.-7 Dr. Niranjan Minz on 16.7.1997 at 12:30 hours who found the following injuries:

I. 6 ? 2cm ? scalp deep on left frontal region of head.

II. 5 ? 1cm ? bone deep on right eyebrow. Lateral side with complete fracture of underline bone.

III. 2 ? 1cm ? bone deep right eyebrow mid side with fracture of underline bone.

IV. 3 ? 2cm ? bone deep on bridge of nose. The underline bone are broken upto pieces.

V. 7 ? 2cm into bone deep left cheek preminance with fracture of underline bone.

VI. 5 ? 2cm ? bone deep left side of chin with complete fracture of underline mandible bone.

VII. 3 ? 2 cm ? bone deep right side of chin with complete fracture of underline mandible bone.

Abrasion:

1. 3cm x 2 cm right elbow back.

2. 4cm x 2cm right lumbar region back.

6. In the opinion of the Doctor, all the injuries were ante mortem in nature caused by hard and blunt substance. Inquest report Ext.2/2 indicated that the deceased had sustained injuries on its face appeared to be caused by some sharp edged weapon and it was observed by the trial Judge that the nature of injuries mentioned in Ext.5 (post mortem report) and Ext.2/2 (inquest report) suggested that some sharp cutting weapons were used in inflicting injuries on the person of the deceased. Defence case was consistent that the father of the informant Laxaman Ram died in a road accident and certain documents were proved which shall be discussed at the later stage.

7. P.W.-1 Udit Ram, who is the informant of the case, was consistent that at the relevant time the appellant Krishna Ram was armed with sword, the appellant Mohan Ram was having Nepala (dagger), other appellants Asin Ram, Sohan Ram and Vinod Ram were holding sticks, who suddenly appeared at his door and started uttering abusive language which was opposed by the witnesses. Informant further testified that his mother was attacked by the appellants Krishna Ram and Mohan Ram with sword and Nepala (dagger), whereas the appellants Sohan Ram and Vinod Ram assaulted him with sticks. He substantiated his earlier statement by testifying that his father Laxaman Ram when came to rescue the victims, Krishna Ram and Mohan Ram chased him up to

about half a Km., caught hold him and committed murder on Barhaiya-Khelari road. P.W.-2 Gandur Ram, i.e. the brother of the informant was consistent in his evidence that when he came out from his house on hearing alarm, witnessed all the accused assaulting his brother Udit Ram, grandfather Raghu Ram and his mother Sampati Devi. He further narrated that Krishna Ram was holding sword and Mohan Ram was having Nepala (dagger) in his hand, whereas the other accused were holding sticks. He testified that the accused Krishna Ram, Mohan Ram, Asin Ram, Sohan Ram and Vinod Ram chased his father up to a long distance and assaulted him on the road causing his death. P.W.-3 Gopal Ram, P.W.-4 Raghu Ram, P.W.-5 Sampati Devi and P.W.-6 Sukhari Ram claimed to be the eye witnesses, who were present at the scene at the relevant time of occurrence and corroborated the testimony of P.W.-1 and P.W.-2 in their substantive evidence. The witnesses were consistent about the presence of all the six accused at the first place of occurrence, situated opposite their house and it were only the appellants who chased the deceased. The witnesses were further consistent that in the same transaction of assault by the accused the informant P.W.-1, his mother Sampati Devi and his grandfather P.W.-4 Raghu Ram sustained injuries at the place of occurrence and their injuries were examined at the Chanho Government Hospital. Injuries sustained by P.W.-1 Udit Ram, P.W.-4 Raghu Ram and P.W.-5 Sampati Devi were proved and marked Exts. 6/1, 6, and 6/2 respectively. It was observed by the trial Court that all the accused persons except Shanti Devi applied the force and caused rioting after forming an unlawful assembly and the occurrence was given effect to in prosecution of their common object having been armed with deadly weapon like sword and Nepala (a sharp cutting heavy weapon like Khukri).

8. Learned Counsel appearing for and on behalf of the appellants at the outset, took the defence that the father of the informant Laxaman Ram had died in a road accident and not on account of homicidal death and for that the widow of the deceased P.W.-5 Sampati Devi had applied and received compensation amount of Rs. 10,000/- from the Block Office under National Social Welfare Scheme. The death certificate of the deceased was proved and marked Ext.A; application of P.W.-5 Sampati Devi filed before the B.D.O. was marked Ext.B; certified copy of the order-sheet of case No. 17/97-98 recorded by the Circle Officer was marked Ext. C. It was observed by the Circle Officer in the order sheet that since the husband of the applicant died due to injuries caused by blunt edged weapon on Khelari-Bijupara road, she was entitled for such grant.

9. Reference may be made to the statement of the Investigating Officer P.W.-9 Awadesh Singh who deposed that on 16.7.1997 while he was posted as Sub Inspector of Police at Chanho police station, he recorded the statement of the informant Udit Ram at Government Hospital, Chanho at about 7:00 a.m. Ext.1/1. He proved his signature thereon Ext.1/2, endorsement in his pen and signature Ext.2. The F.I.R. was drawn on the basis of the Fardbeyan of the informant in his pen and signature which was proved and marked Ext.7. A case was instituted against the accused persons under Sections 147/148/149/302/307/324/325 of

the Indian Penal Code. He prepared requisition slips for the examination of the injuries of the injured Raghu Ram, Sampati Devi and the informant Udit Ram, which were marked Exts. 6, 6/1 and 6/2. He testified that he visited the place of occurrence in presence of the informant Udit Ram and described in his objective finding that the place of occurrence was a pitched road between Bijupara to Khelari with 6 ft. wide flanks on both sides of road and the dead body of Laxaman Ram was found on the western flank of the road lying from its dorsal side with the limbs stretched, injuries on the body and pool of blood near the head of the corpse. A Nepala (dagger) was also found near the dead body which was blood stained. Nepala was seized with the blood stained earth, in presence of the witnesses. Inquest report of the corpse of Laxaman Ram was also prepared by him which was marked Ext.2/2. The Investigating Officer then visited another place of occurrence situated opposite the house of the informant Udit Ram at a distance of about 50 ft. towards east where he spotted blood stains on the earth. He collected blood stained earth there in presence of the witnesses and prepared seizure list Ext.3/1. The witness Investigating Officer admitted a counter case instituted by the accused Krishna Ram which was recorded by him at the Chango Government Hospital itself but fairly conceded having not made reference to the counter case in the case diary of the instant case. The Investigating Officer expressed ignorance as to whether the accused Krishna Ram sustained injuries alleged to be caused by an axe as described in the counter case or as to whether the mother of Krishna Ram also sustained injuries in the same transaction. He admitted having not sent the blood stained earth which were seized in this case to the Forensic Science Laboratory and further admitted having not tried to find out the contents of the application that was filed by the widow of the deceased Sampati Devi at the Chango Block for compensation on the death of her husband in a motor accident on 16.7.1997 and that accordingly, she received compensation, yet, he denied the suggestion that Laxaman Ram died in a motor accident.

10. Learned Counsel Mr. A.K. Sahani reiterated that the occurrence did not take place in the manner presented by the prosecution. The counter case that has been lodged by the appellants was not denied by the Investigating Officer to which both the cases should have been decided by the same and similar court. P.W.-7 Dr. Niranjan Minz, who held autopsy on the body of Laxaman Ram was not definite in his opinion expressed in his evidence that the injuries found on the person of the deceased Laxaman Ram were caused by Nepala (a heavy sharp cutting weapon) or by a sword but he was definite that the injuries were caused by hard and blunt substance. As a matter of fact, Laxaman Ram succumbed his injuries in the motor accident, which took place in the night of 16.7.1997 at Bijupara-Khelari road and that his widow Sampati Devi had received compensation on the death of her husband.

11. We have carefully gone through the documents produced and adduced on behalf of the defence. Ext. A is the death certificate of Laxaman Ram son of Raghu Ram, which indicates that he died on 16.7.1997. It was issued by the

competent authority and his death was registered on 31.7.1997. Ext. B is the application for grant under National Scheme, which was filed by Sampati Devi before the B.D.O., duly recommended by the former Mukhia of the village Gram Panchayat and attested by the Village Choukidar. Ext. C is the order sheet recorded by the Circle Officer, Chanhoo, who allowed a sum of Rs. 10,000/- to be given to Sampati Devi as ex gratia grant on the "murder" of her husband caused by sharp cutting weapon at Khelari-Bijupara road on 16.7.1997. The amount was delivered on 16.9.1997. We find from the order-sheet (Ext. C) that ex gratia grant was given to the widow Sampati Devi on the death of her husband Laxaman Ram under National Family Welfare Scheme and not by way of compensation on the death of her husband in a motor accident. The defence of the appellants therefore, could not be substantiated by the documents produced on their behalf. Ext. D is the certified copy of the F.I.R. of Chanhoo P.S. Case No. 28/97, which was lodged by the appellant Krishna Ram as against Sukra Ram, Gopal Ram, Udit Ram, Gandur Ram, and Raghu Ram, registered under Sections 147/148/323/324 of the Indian Penal Code but the defence failed to bring otherwise fact on the record that the occurrence did not take place in the manner presented in the instant case by the prosecution.

12. The post mortem report (Ext.5) indicated that Laxaman Ram sustained injuries of different dimensions mostly on the face and head, ante mortem in nature, but none of the injuries on the head was crushed or depressed so as to draw a conclusion that it were possible by his coming under the wheels of running motor vehicle or the same could be caused by the impact of running motor vehicle. We find that the injured witnesses viz. P.W.-1 Udit Ram, P.W.-5 Sampati Devi and P.W.-4 Raghu Ram had sustained their injuries and they were in the near proximity of the assailants (appellants) and were the natural witnesses. Their injuries were examined by P.W.-8 Dr. Biren Tirkey who issued their injuries reports viz. Ext. 6, 6/1 and 6/2 and that none of the injuries on the person of the injured, in the opinion of the Doctor, was caused by sharp cutting weapon but by hard and blunt object. We find that the appellants were convicted u/s 325 and u/s 148, Indian Penal Code, inference thereby that the appellants were the members of unlawful assembly, two of them were armed with deadly weapons like sword and Nepala and some holding sticks with the common object to assault the witnesses. The charges under Sections 325 and 148 of the Indian Penal Code were found to be properly proved by the prosecution against all the appellants, accordingly all the appellants were convicted under Sections 148 and 325, Indian Penal Code and adequately sentenced which did not call for interference.

13. We find from the materials on the record that while the witnesses P.W.-1 Udit Ram, P.W.-3 Gopal Ram, P.W.-4 Raghu Ram, P.W.-5 Sampati Devi, P.W.-6 Sukhari Ram and Laxaman Ram (deceased) being the members of the same family were talking and having interaction on domestic issues, the appellants with Shanti Devi appeared at the door of the witnesses at about 8:00 p.m. on 15.7.1997 and they started abusing by expressing resentment as to why they were calling

Shanti Devi as Daaine (witch) which resulted into altercation and the appellants assaulted the witnesses with their individual attribution, discussed hereinbefore. As per P.W.-2 Gandur Ram, he appeared at the scene on alarm raised there and found the appellants assaulting his mother, brother and grandfather and amongst them Krishna Ram was having sword in his hand whereas Mohan Ram was holding Nepala (dagger). Others were armed with sticks. In the meantime, when his father came out of the house, it was Asin Ram who commanded to eliminate him, consequently his father (Laxaman Ram) tried to escape by running from that place to which he was chased by all the appellants on the road, overpowered and assaulted by them as a result of which he died. He testified that appellants were followed by him, his brother Udit Ram and uncle P.W.-6 Sukhari Ram who witnessed the deceased being assaulted by all the appellants.

14. The informant P.W.-1 was specific in his testimony that his father Laxaman Ram was chased by the appellants Mohan Ram with Nepala (dagger) and Krishna Ram with sword on the Barhaiya Khelari Road, who caught hold him and assaulted on his face and head to death. The assailants escaped on his arrival and arrival of P.W.-6 Sukhar Ram. He was cross examined at length but credibility of his testimony could not be shaken.

15. The another witness P.W.-6 Sukhar Ram, who happens to be the full brother of the deceased, testified that on 15.7.1997 at about 8:00 p.m. he was there in the house of his brother Laxaman Ram having interaction on domestic issue with his father Raghu Ram, nephew Udit Ram, sister-in-law Sampati Devi and brother Laxaman Ram. In the meantime, his neighbours Krishna Ram having sword in his hand, Mohan Ram holding Nepala (dagger), Asin Ram, Sohan Ram and Vinod Ram all having sticks in their hands with Shanti Devi arrived there and started abusing. He testified that his sister-in-law Sampati Devi was assaulted by Krishna Ram on her head with sword, whereas other appellants assaulted her with sticks, Udit Ram was assaulted by Sohan Ram and Vinod Ram by sticks. When the assailants started assaulting his father Raghu Ram, his brother Laxaman Ram came forward to rescue his father whereupon Asin Ram commanded the other accused to eliminate him. His brother Laxaman Ram tried to escape by running from the place of occurrence but he was chased by Krishna Ram and Mohan Ram with their respective weapons in hands followed by him and his nephew Udit Ram. This witness was specific that both the appellants Krishna Ram and Mohan Ram caught hold Laxaman Ram on the Khelari-Bijupara pitched road near the house of one Binod Sahu and they assaulted Laxaman Ram to death. No sooner did he along with his nephew Udit Ram appear at the scene, the assailants escaped. He was examined and cross-examined at length but his veracity of the sequence of the occurrence and the complicity of the appellants therein resulted into death of Laxaman Ram could not be discredited. We find that the trial Court mainly relying upon the statement of P.W.-1 Udit Ram and P.W.-6 Sukhari Ram convicted the appellants Krishna Ram and Mohan Ram under Sections 302/34 of the Indian Penal Code with specific allegation of culpable homicide attributed against each of them that such offence was given effect to in

furtherance of common intention. The dead body was found on the flank of the road towards Western side from where the Investigating Officer had recovered a blood stained Nepala lying by the side of the corpse. No crush injury or any other injury on the corpse caused by any motor vehicle or track mark of the tyres of vehicle could be found near the dead body. Almost all the injuries were on the face and according to the P.W.-1 Udit Ram and P.W.-6 Sukhar Ram, the same were caused by the appellants Krishna Ram and Mohan Ram.

16. The defence had produced three witnesses to substantiate that Laxaman Ram died in a motor accident and for that his widow Sampati Devi was compensated under the National Scheme. But we find from the documents brought on the record on their behalf that the widow had not received any compensation towards the death of her husband in a motor accident, rather it was an ex gratia grant on the death of the head of the family under the National Scheme, to which we find the order-sheet (Ext. C) clearly drawn by the Circle Officer of the Chanhoo Block, a competent authority to make such grant who passed the order after due inquiry.

17. In the facts and circumstances, we find that the charges as framed against the appellants were well proved and the trial Court was justified in holding the appellants Krishna Ram and Mohan Ram guilty under Sections 302/34 of the Indian Penal Code. We further find that appellants Asin Ram, Sohan Ram, Vinod Ram along with the appellants Krishna Ram and Mohan Ram have been appropriately held guilty under Sections 325 and 148 of the Indian Penal Code and adequately sentenced. The learned Counsel appearing on behalf of the appellants failed to show any ground so as to call for interference in the judgment of conviction and order of sentence recorded against the appellants of both the appeals. Upholding the judgment of conviction and order of sentence recorded by the 3rd A.J.C. Ranchi in S.T. No. 66/1998 against the appellants, there being no merit, both the appeals are dismissed. Trial Court is directed to take effective steps in accordance with law.