

(2006) 09 JH CK 0077
In the Jharkhand High Court

Ayub Ansari and Madhav Oraon

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 07-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162
Penal Code, 1860 (IPC) — Section 302, 34, 341

Citation : (2007) 1 JCR 75

Hon'ble Judges : Dhananjay Prasad Singh, J; Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The appellants were tried and convicted for the offence under Sections 302/34 and 341/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life u/s 302/34, IPC and simple imprisonment for a period of one month u/s 341/34, IPC. Feeling aggrieved the appellants have preferred this appeal.

2. The case was registered on the basis of the fardbeyan (Ext. 3) of the informant Somra Oraon (PW 1) recorded by the ASI Tej Narain Singh (PW 7) of Chanhoo Police Station on 14.6.1996 at 8.30 a.m at Mahuatand within Chanhoo Police Station.

The facts of the case, stated briefly, is that on 14.6.1996 at about 6.45 a.m. the deceased Rahman Ansari and his companion Somra Oraon (PW 1) were going towards Bijupara Bus Stand. When they reached at a place called Mahuatand. they were intercepted by these appellants along with one Ibrahim Ansari (co-accused). The informant PW 1 and his companion, namely, the deceased Rahman Ansari got down from their bicycle. The appellant Madhav Oraon brandished a pistol and pointing it towards Somra Oraon, threatened to kill him and chased him away. Somra Oraon (PW 1) ran away for his life, but after halting at some distance, he turned back and saw that his friend Ramhan Ansari was being assaulted with knives by both these appellants and also by Ibrahim Ansari.

Seeing the incident, he ran to the nearby village Deshwali and informed the villagers and returned to the place of the occurrence along with the villagers. By then, the assailants had retreated. The informant (PW 1) and the villagers who had arrived at the place of the occurrence found the deceased in a seriously injured condition, with a dagger sticking in his neck through and through. The injured was unable to speak. By that time, the police officer namely T.N. Singh (PW 7) had also arrived. The injured was conscious enough and by gestures, he asked for a piece of paper on which he wrote down three names, including the names of these two appellants. Though the injured was taken to the hospital for the treatment of his injuries, he could not survive and he succumbed to his injuries. His dead body was thereafter forwarded for post mortem examination. Autopsy on the dead body of the deceased was conducted at the hospital by Dr. Saroj Kumar (PW 11). The motive for assault is alleged to be previous enmity on account of land dispute.

3. At the trial, the prosecution had adduced evidence of as many as 11 witnesses, including the informant (PW 1), investigating officer (PW 7) and the doctor (PW 11) who had conducted post mortem examination on the dead body of the deceased. The list of witnesses also includes certain witnesses who claim to be the eyewitnesses to the occurrence. These include witnesses Samiban Khatoon (PW 2), Sahijan Ansari (PW 3), Sk. Siraj Mian (PW 4) and Abdul Majid (PW 8) and Murtaza Ansari (PW 10).

The appellants had pleaded not guilty to the charge and pleaded innocence and of their false implication in the case.

4. Four witnesses were examined on behalf of the defence to prove that the appellants were falsely implicated in this case on account of previous land dispute.

5. It appears from the impugned judgment that on consideration of the materials on record, the trial Court had placed reliance on the testimony of the informant (PW 1) and that of the above named witnesses who claimed to be the eye-witnesses to the occurrence and finding support from the evidence of the doctor (PW 11) and that of the police officer (PW 7) who had prepared the inquest report and recorded the fardbeyan of the informant, had recorded its finding of guilt against both the appellants for the offence punishable u/s 302 of the Indian Penal Code.

It also appears from the impugned judgment that the third accused Ibrahim Ansari who had also faced the trial along with these appellants, had absconded on and from the date when the case was posted for pronouncement of judgment and as such, his case was separated from the case of these appellants whereafter the impugned judgment was pronounced by the trial Court.

6. Both these appellants have assailed the judgment of their conviction and sentence on common grounds, stating inter alia, that the learned trial Court has committed a serious error in failing to appreciate the evidence on record in

proper perspective and also in placing implicit reliance on the testimony of the informant (PW 1) despite the fact that the said witness is a highly interested witness and that according to his own evidence, he had not seen the entire occurrence. It is further pointed out by the learned Counsel for the appellants that the learned trial Court has similarly erred having failed to take into consideration that none of the witnesses, namely PWs 2, 3, 4, 8 and 10 who claim to be eye-witnesses to the occurrence, had seen the actual assault being made on the deceased, since according to their own admitted case, these witnesses had arrived at the place of occurrence only to find that the deceased was lying injured on the ground, while the assailants had already decamped from the place of the occurrence. Referring to purported contradictions and inconsistencies in the evidence of the witnesses, the learned Counsel refers to the evidence of Mustafa Ansari (PW 6), who, besides being a witness to the inquest of the dead body of the deceased, had also stated that he along with other co-villagers, had arrived at the place of occurrence on being informed about the occurrence, and by the time he had arrived, he found his father (the deceased) already dead. Learned Counsel points out that PW 6 thus contradicts the evidence of his own mother Somiban Khatoon (PW 2) and that of his brother Murtaza Ansari (PW 10) who have claimed that the deceased was alive at the time they reached the place of occurrence. Learned Counsel for the appellants raises another ground that the fardbeyan of the informant should not have been accepted in evidence as the same is hit under the provisions of Section 162 of the Code of Criminal Procedure. Learned Counsel explains that the informant (PW 1) has acknowledged in his evidence that the police had arrived at the place of the occurrence, although he had not visited the police station to lodge information about the occurrence and this implies, therefore, that the police had received prior information at the police station regarding the occurrence which had prompted the police officer to visit the place of the occurrence and this information, which ought to have been treated as the FIR, has been suppressed by the prosecution and in the absence of any explanation offered by the prosecution for the suppression, there is reason to believe that the said FIR did not mention the names of these appellants as the assailants of the deceased. It is further submitted that the learned Court below has erred in failing to consider that admittedly, there was previous enmity between the informant (PW 1) and the appellant Madhav Oraon on account of land dispute and therefore, there was a definite possibility of the appellants being falsely implicated in the case.

7. Learned Counsel for the State, on the other hand, has offered his submissions to controvert each of the grounds advanced on behalf of the appellants. It has been contended by the learned Counsel for the State that the evidence of the informant (PW 1) is in itself sufficient to hold these appellants guilty of murder of the deceased even without support from any other witness. Yet, the evidence of PWs 2, 3, 4, 6 and 10 read with the evidence of PW 7 offer adequate and overwhelming support to the evidence of the PW 1, and the evidence of these witnesses taken together and read together with the evidence of the doctor (PW

11), amply proves the fact that these appellants along with their associate Ibrahim Ansari had committed the murder of the deceased.

8. After hearing the rival contentions on behalf of the appellants and the State and on going through the materials on the record, it appears that certain facts including homicidal death of the deceased and the place of occurrence have been admitted by the defence. No dispute has been raised by the defence in respect of the fact that the deceased Rahman Ansari had suffered homicidal death. This fact is confirmed by the evidence of the doctor (PW 11) who, on conducting the autopsy, had found the following ante mortem injuries on the dead body of the deceased:

- (a) 6 cm long x soft tissue deep on back of right hand,
- (b) 3 cm x soft tissue back of right ring finger,
- (c) 1/2 cm x soft tissue back of index finger,
- (d) 8 cm x soft tissue back of right middle finger and back of adjoining hand,
- (e) 2 cm x soft tissue on left side of fore-head,
- (f) 5 cm x bone deep on left parietal region of head with chipping of outer table of underlying bone,
- (g) 4 cm x scalp deep on left occipital region of head.
- (h) 15 cm x soft tissue on left lateral neck upper part and adjoining left cheek.
- (i) 6 cm x soft tissue on left fronto lateral neck,
- (j) 9 cm K soft tissue on right fronto lateral neck,
- (k) 7 cm x soft tissue and 6 cm x soft (issue on left scapular region.

II Internal:

(a) There was contusion of front parietal lobes of brain and presence of subdural blood and blood clot over both sides of brain. There was cut injury in posterior part trachea and anterior part of oesophagus.

According to the doctor, PW 11, the injuries over neck was caused by sharp cut weapon like "chhura" or dagger and the death was due to the injuries noted above. In cross-examination in para 3, he has said that there was no grievous injury in the right hand.

The injury on the neck of the deceased had resulted in the death of the deceased, which was caused by a sharp cutting weapon.

From the evidence of PW 1 as also that of PWs 2 to 8 and 10, it appears that the deceased was found in a seriously injured condition with a dagger stuck in his neck piercing through and through. It also appears from the evidence of these witnesses that though having sustained multiple injuries on his person, the

deceased had not suffered instant death. Rather, he was alive and conscious. The evidence of the police officer (PW 7), who having reached the place of occurrence within less than 1-1/2 hours of the occurrence had recorded the fardbeyan of the informant, besides confirming the fact that the deceased was alive, also confirms that the deceased had asked for a piece of paper, which PW 7 himself had offered and on which the deceased had scribbled the names of three persons suggesting them to be his assailants.

9. Learned Counsel for the appellants has tried to emphasize that the evidence of none of the witnesses, namely PWs 1, 2, 3, 4, 8 and 10 are reliable firstly, because none of these witnesses had seen the occurrence and secondly, because these witnesses in their respective depositions have made contradictory statements regarding the manner of the occurrence. Learned Counsel has also strenuously argued that considering the type and the nature of the injuries allegedly sustained by the deceased, he could not have survived for more than 1-1/2 hours and, therefore, claim of the prosecution that the deceased had scribbled the names of his assailants on a piece of paper cannot be believed.

10. On a careful scrutiny of the evidence of the aforesaid witnesses, I find that the informant (PW 1) has claimed that while he along with the deceased was proceeding on a bicycle, they were suddenly intercepted by the appellants and the co-accused Ibrahim Ansari. Appellant Madhav Oraon scared him and chased him away, but after halting at some distance, he turned around and saw these appellants and the co-accused assaulting the deceased with sharp cutting weapons. He ran to the nearby village from where he called persons for help. When the informant along with the villagers, including PWs 2, 3, 4, 8 and 10, arrived at the scene of the occurrence, the assailants had already taken to their heels, but the deceased was found lying in a seriously injured condition. Thus, the PWs 2, 3, 4, 8 and 10 have not claimed to have seen the actual assault inflicted by these appellants on the deceased and it is PW 1 alone who claims to have seen the actual assault on the deceased by these appellants. However, the evidence of PWs 2, 3, 4, 8 and 10 are relevant, inasmuch as they claim to have arrived at the place of the occurrence almost soon after the occurrence and had seen the injured with a dagger sticking in his neck through and through. The contention advanced by the learned Counsel on behalf of the appellants is that the evidence of PW 1 needs to be viewed with suspicion, firstly, because he had admittedly fled away from the scene of the occurrence and his arrival subsequently at the place of the occurrence was long after the assailants had departed and secondly, because the informant (PW 1) was on an inimical terms with the appellant Madhav Oraon on account of land dispute. The above submission of the learned Counsel for the appellants is not persuasive enough. The witness (PW 1) has explained his presence at the time of the occurrence when he along with the deceased were intercepted by the appellants and the co-accused Ibrahim Ansari and has also confirmed that he was threatened and chased away by the appellant Madhav Oraon. Apparently, it was these two appellants along with the co-accused Ibrahim Ansari who were present with the

deceased at the time when PW 1 was chased away. The witness claims to have gone to the nearby village and called for assistance and within a short time, he had arrived at the spot where the deceased was lying. The fact that PW 1 had informed the villagers about the occurrence has been confirmed by the evidence of the PWs 2, 3, 4, 8 and 10 in their respective evidences. PW 1 was subjected to a very lengthy and grueling cross-examination, but the defence has not been able to dislodge the witness from this part of his evidence. The other evidence which lends support to the evidence of PW 1 in respect of his claim that these appellants along with the co-accused Ibrahim Ansari, had inflicted fatal injuries on the deceased is confirmed by Ext. 1 which has been claimed by the witness to be the paper on which the deceased had written down the names of his assailants. Even the defence witnesses, particularly DW 1 (Mehruddin Ansari) and DW 2 (Haidar Ansari) examined on behalf of the defence, confirm that both these witnesses had also arrived at the place of occurrence where they had found he deceased Rahman Ansari in a seriously injured condition, with a dagger sticking in his neck and the witness had found the deceased alive and conscious. PW 7 in his evidence has categorically stated that he had arrived at the place of the occurrence within 1-1/2 hours and had found the deceased in a seriously injured condition with a dagger in his neck, and on being asked by gestures by the injured himself, he had given a piece of paper on which the injured had written down the names of these appellants. PW 7 has identified the paper introduced in evidence and marked Ext. 1. Thus, I find that the evidence of PW 1 finds support on material particulars from the evidence of PWs 2, 3, 4, 7, 8 and 10. There is therefore no reason to disbelieve the testimony of PW 1. His evidence is credible, trustworthy and reliable.

11. As regards the place of the occurrence, PW 1 has described the place of the occurrence to be an open place at Mahuatand. A more detailed description of the place of occurrence tallying with the description given by PW 1, has been given by PW 7 who had commenced investigation of the case after recording the fardbeyan of the informant PW 1. He has explained that it was the place where he had found the deceased Rahman Ansari in injured condition and had also found blood stains on the earth where the deceased was found lying.

12. PW 7 has further stated that on 14.6.1996 (the date of the occurrence) while he was posted as the Officer-in-Charge of the Police station, at about 7.45 a.m. he had received an information by way of rumour that some person was lying in an injured condition at Mahuatand and in order to verify the information, he had proceeded to Mahuatand from the Police Station which is situated at a distance of about 5 kms. It is, therefore, apparent that this witness did not receive any definite and specific information regarding the occurrence. It also explains as to how and under what circumstances, he had reached the place of the occurrence and also indicates that there was no such tangible information received by the police prior to the fardbeyan of the informant.

13. The controversy raised by the learned Counsel for the appellants that the

evidence of PW 6 is contradictory to the evidence of his mother PW 2 and that of his brother PW 10 appears to be misconceived. On scrutiny of the evidence of PW 6, it appears that he was at his house at the time of the occurrence. He heard about the occurrence and came to the place on being informed that his father was murdered. Besides the dead body of his father who was already dead, he found on his arrival that several persons, including the informant Somra Oraon, were present there, meaning thereby that the persons whom the witness had seen present had arrived much before the witness had arrived at the place of the occurrence. I do not find any contradiction in the statement of this witness read with the statements of PWs 2 and 10.

For the reasons aforesaid, I do not find any merit in this appeal. The appeal is, accordingly, dismissed. The judgment and conviction of the appellants by the trial Court is hereby confirmed.

D.P. Singh, J.

14. I agree.