
(2015) 03 JH CK 0039

In the Jharkhand High Court

Case No : Criminal (Jail) Appeal (DB) No. 1830 of 2004

Baburam Soren and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 3 AJR 407

Hon'ble Judges : Ravi Nath Verma, J.; Rakesh Ranjan Prasad, J.

Bench : Division Bench

Advocate : Rajesh Kumar, Amit Kumar and Manindra Kumar Sinha, for the Appellant; Pankaj Kumar, Addl P.P., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

1. This appeal is directed against the judgment of conviction and order of sentence dated 17.12.2003 passed by the 1st Additional Sessions Judge, Pakur, in Sessions Trial No. 10 of 2002 whereby and whereunder the appellants having been found guilty for committing murder of Sanatan Marandi were convicted for the offence punishable under sections 302/34 IPC and were sentenced to undergo rigorous imprisonment for life and to pay fine of rupees five thousand with a default clause.

2. The case of the prosecution is that on 20.6.2001 Sanatan Marandi (deceased), the husband of Ful Tudu (PW 3) had gone to plough the field along with his labourer Gard Tudu (PW 1). While they were ploughing the field, all these four appellants variously armed came over there. Baburam Soren was having an arrow with him, Rajmashi was having a sickle with him whereas others were having lathi with them. As soon as they came at the field which was being ploughed by the deceased and Gard Tudu (PW 1), Baburam Soren shot an arrow hitting over the arm as well the back of the deceased, as a result of which he fell down in the field lying adjacent to the field which was being ploughed by the deceased. When the deceased fell down, Rajmanshi inflicted injuries over the

face and head of the deceased while the other appellant Hopna Soren and Baran Tudu (not sent up for trial) assaulted the deceased with lathi. On seeing this, Gard Tudu ran back to the house of the informant and informed the informant (the wife of the deceased) Ful Tudu (PW 3) who came rushing to the place of occurrence and found the appellants assaulting the deceased. The deceased died on account of receiving injuries.

Meanwhile, PW 1 Ajay Kumar Tiwari who, at the relevant time, was posted as officer in charge of Litipara P.S. received an information that someone has been killed in village Binjha. He proceeded for the place of occurrence. On reaching there, he recorded fardbeyan (Ext. 3) of the informant (PW 3) on the basis of which formal FIR (Ext. 2) was drawn. The investigating officer held inquest on the dead body of the deceased and prepared an inquest report (Ext. 4). Thereupon, the dead body was sent for post mortem examination which was conducted by Dr. Lalit Kumar Bhagat (PW 9). On holding autopsy, the doctor did find the following injuries:

- (I) one incised wound on mid parietal region 2"x 1" x 1";
- (II) arrow piercing at left forearm;
- (III) one incised wound on right ear 4" x 1";
- (IV) one lacerated wound on right fore-arm at lower part near right wrist joint causing damage of skin, muscles, arteries, veins and tendons;
- (V) one incised wound at left shoulder joint leading to fracture of shoulder bone;
- (VI) arrow on left side of middle back.

The doctor issued post mortem examination report (Ext. 5) with an opinion that the death of the deceased was caused due to shock and haemorrhage on account of the injuries found on vital organs which were caused by sharp cutting weapon and hard blunt substance.

3. After completion of the investigation, charge sheet was submitted upon which cognizance of the offence was taken and when the case was committed to the court of sessions, the appellants were put on trial during which the prosecution examined as many as 10 witnesses. Of them PWs. 3, 4, 8 and 10 have been declared hostile, whereas PW 2 Ramesh Murmu is a witness to the inquest. PW 6 Shibu Turi is a hearsay witness. PW 5 Chhabilal Marandi is a witness who had seen the injuries on the person of the deceased. PW 1 Gard Tudu is the only eye-witness who supported the case of the prosecution as has been made out in the fardbeyan.

4. The trial court having found the testimony of Gard Tudu (PW 1) trustworthy getting corroboration from the medical evidence, recorded the order of conviction and sentence which is under challenge.

5. Learned counsel appearing for the appellants submits that PW 1 has claimed

to have been there with the deceased at the time of ploughing field which does not appear to be correct, as had he been there with the deceased, he would have certainly been assaulted by the accused persons, but it is never the case that he had also been assaulted and hence his testimony cannot be relied upon. It was further submitted that it is the case of the prosecution that the deceased as well as PW 1 had ploughed the field for more than two hours, but the investigating officer did not find the field being ploughed and thereby the genesis of the occurrence has never been proved by the prosecution. In such event, when the genesis of the occurrence being not proved, recording of the guilt of the appellants is certainly bad. Hence, the judgment of conviction and order of sentence is to be set aside.

6. As against this, learned counsel for the State submits that the creditworthiness of PW 1 has not been shaken and thereby the trial court has rightly placed its reliance on the testimony of PW 1. Further more, the testimony of PW 1 gets corroboration from the medical evidence and thereby the trial court is absolutely justified in recording the order of conviction and sentence against the appellants.

7. Having heard learned counsel for the parties and on perusal of the record, we do find that it is the case of the prosecution as has been testified by PW 1 Gard Tudu, that while the deceased was ploughing the field with him, all the appellants variously armed, came over there and then appellant Baburam Soren shot an arrow causing injuries over the arm and the back of the deceased. After receiving arrow injuries, when the deceased fell down, appellant Rajmashi Soren inflicted injuries with a sickle over the head and face of the deceased and then the appellant Hopna Soren assaulted him with lathi over his head whereas appellant Rasaka Soren assaulted him with lathi on the back of the deceased, as a result of which the deceased died.

8. Nothing has been elicited by the defence so as to doubt be created over the presence of PW 1 at the place of occurrence. Though submission has been advanced on behalf of the appellants that he being an eye witness would not have been spared by the appellant from being assaulted but he left the place of occurrence without having any scratch on his person and as such, his presence over the place of occurrence is doubtful. The submission advanced in this regard is not acceptable for the reason that PW 1 after seeing the occurrence became fearful and fled from there and as such he could not be assaulted by the appellants. Moreover, the testimony of PW 1 gets corroboration from the medical evidence as the doctor at the time of post mortem examination did find two arrows intact with the injuries caused over the arm and at the back of the deceased. Further, the doctor did notice one incised wound over the face and head of the deceased and thereby the testimony of PW 1 can be said to have been corroborated by the medical evidence. Not only that, the testimony of PW 1 gets corroboration from the objective finding of the investigating officer who did find the dead body lying in a field adjacent to the field which was being ploughed

by the deceased as well as PW 1 and this finding is in consonance with the testimony of PW 1, who has testified that the deceased after being assaulted ran and fell down in the field adjacent to the field where the deceased was assaulted.

9. Still the question does arise as to whether all the appellants were responsible for causing murder of the deceased?

10. We have already noted that PW 1 has testified that it was appellant Baburam Soren who had shot two arrows, - one by one, each hitting over the arm and over the back of the deceased, - as a result of which the deceased fell down and then appellant Rajmashi Soren inflicted injuries over the face of the deceased as a result of which he died. Thus, it is evident that it was the appellant Baburam Soren who, by causing injuries through the arrows, made the deceased fall on the ground and thereby he could be said to have facilitated the other appellant Rajmashi Soren to commit murder of the deceased. Therefore, there appears to be no doubt that both these appellants, Baburam Soren and Rajmashi Soren, were sharing common intention to commit murder of the deceased.

11. So far as appellant Rasaka Soren and Hopna Soren are concerned, though they have been alleged by PW 1 to have assaulted the deceased over his back and head by lathi, but the corresponding injuries have not been found in the nature of laceration, either over the back or the head, and thereby it can be said that though these two persons were there along with the accused persons, but on account of absence of any overt act on their part, they cannot be said to have been sharing common intention. Accordingly, the trial court committed illegality in recoding the judgment and order of conviction and sentence against these two appellants Hopna Soren and Rasaka Soren. Hence, the judgment and order of conviction and sentence passed by the trial court against the appellants (Rasaka Soren and Hopna Soren) is set aside. Consequently, they are acquitted of the charge and are discharged from the liabilities of the bail bonds.

But so far as appellants Baburam Soren and Rajmashi Soren are concerned, in the facts and circumstances of the case, as stated above, they have rightly been convicted by the trial court and thereby the judgment and order of conviction and sentence, so far as it relates to these two appellants (Baburam Soren and Rajmashi Soren) is hereby affirmed. Accordingly, this appeal is dismissed so far as these two appellants are concerned.

Thus, the appeal is allowed, but in part.