
(2018) 02 JH CK 0021
In the Jharkhand High Court
Case No : 934 of 2005

Bandhu Munda & Ors

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 15-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 304](#), [Sec](#)

Citation : (2018) 02 JH CK 0021

Hon'ble Judges : H. C. Mishra, B.B.Mangalmurti

Bench : Division Bench

Advocate : Rajesh Kumar, Jaishankar Tewari, Vijay Kumar Gupta

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellants and the learned counsel for the State.
2. The appellants are aggrieved by the Judgement of conviction dated 27.06.2005 and order of sentence dated 29.06.2005 passed by the learned Additional Sessions Judge, F.T.C., Lohardaga, in S.T No. 600 of 1997, whereby, the appellants have been found guilty and convicted for the offence under Sections 302 / 34 of the Indian Penal Code. Upon hearing on the point of sentence, the appellants have been sentenced to undergo rigorous imprisonment for life for the said offence.
3. The prosecution case was instituted on the basis of the fardbeyan of Somri Devi (Mundain) @ Phool Kumari, who is the wife of the deceased Niru Munda, recorded at the village lane near her village, on 10.09.1996 at 11:00 A.M. in the morning, wherein she has stated that on the previous

day at about 4:00 P.M., there was a quarrel between her son Surja Munda and Akhilesh Munda, the son of the accused Bandhu Munda, while they were playing. For that quarrel Bandhu Munda was abusing the informant and her husband in filthy languages in the evening, threatening to kill them. At about 8:00 P.M. in the night, the accused persons, viz., Bandhu Munda, Lachhan Munda and Makund Munda, came at her house in drunken state, armed with lathi, and they started dragging away the husband of the informant assaulting him by lathi. The informant pleaded to leave her husband, whereupon Bandu Munda assaulted her on her head and shoulder. Her son, Surja Munda and daughter Surajmani Kumari were also with her and they also pleaded to spare their father, but the accused persons dragged her husband to their door and they tied her husband with a pole and all the three accused persons started assaulting him by lathi. She informed the villagers at about 8:00 P.M. in the night, but no one came to their rescue, and again the informant pleaded the accused persons to spare her husband, whereupon they left her husband and went away. She untied her husband from the pole and with the help of her children, she was bringing her husband to their house, but on the village lane, he fell down. The informant and her children could not lift her husband to bring him to the house. She remained there with her husband, and at about 10:00- 11:00 P.M. in the night, her husband asked for water, whereupon she gave him water and thereafter he died. She was sitting by the side of her husband's dead body for the whole night, and in the morning, the Chowkidar was informed, who saw the dead body and went to the Police Station for informing the police. Claiming that all the three accused persons had assaulted her husband to death, she gave her fardbeyan, on the basis of which, Kuru P.S Case No. 73 of 1996, corresponding to G.R No.332 of 1996, was instituted for the offence under Sections 304 of the Indian Penal Code, against the named accused persons and investigation was taken up. After investigation, the police submitted the charge-sheet in the case.

4. After commitment of the case to the Court of Session, charge was framed against all the three accused persons for the offence under Sections 302 / 34 of the Indian Penal Code, and upon the accused persons" pleading not guilty and claiming to be tried, they were put to trial. In course of

trial, nine witnesses were examined by the prosecution, including the I.O., and the Doctor who had conducted the post-mortem examination on the

dead body of the deceased, out of whom, P.W.-3, Khudi Tana Bhagat had turned hostile, and he had named other persons to have assaulted the

deceased. He has not named the accused persons in his evidence.

5. The evidence of P.W.-6 Dr. B.K. Pandey, who had conducted the post-mortem examination on the dead body of the deceased, is very

important for adjudication of the case. He had conducted the post-mortem examination on the dead body of the deceased on 10.9.1996, and had

found the following injuries on the dead body:-

External injuries

(I) Bruise on left shoulder 3"x2"

(ii) Abrasion on the left arm 3" below the shoulder joint ? 4"x1/2"x skin deep.

(iii) Abrasion on left elbow on the lateral aspect size 3"x1/2"x skin deep.

(iv) Bruise on left arm 2" above the elbow joint size 6"x1/2".

(v) Bruise on right elbow size 3"x1".

(vi) Abrasion on the right forearm

(vii) Bruise on the abdomen just below the umbilicus size 2"x1/2". On Dissection

(I) Heart- Both Chambers empty, Lungs, Liver, Kidneys and spleen - pale in colour.

(ii) Stomach- Contained meat and rice.

Intestine - contained gas.

This witness has stated that the cause of death in his opinion was shock and hemorrhage due to subcutaneous bleeding. The weapon used was

hard and blunt substance, may be lathi-danda. He has identified the post-mortem report to be in his pen and signature, which was marked Exhibit-

2. In his cross examination, he has stated that it was the cumulative effect of all the external injuries which proved fatal, but none of the external

injury was vital independently, rather the injuries were only simple in nature. He has also stated that no internal injury could be found on the

deceased on dissection, and he had not mentioned about clotting of the blood on the abrasions or bruises.

6. P.W.-7 Somri Devi @ Phul Kumari (Mundain) is the informant and the wife of the deceased. She is also the eyewitness to the occurrence.

Though this witness has supported the prosecution case in her examination-in-chief, stating that followed by the quarrel between the two children,

the accused persons had dragged away her husband, assaulting him by lathi, and all the accused persons were assaulting her husband, but in her

evidence, she has also stated that she had seen only the accused Bandhu Munda, assaulting the deceased. She has also stated that the accused

persons had also assaulted her causing bleeding injury on her head, and thereafter they dragged her husband, tying him by rope up to their house,

and thereafter, they entered their house. She has not stated in her evidence that her husband was tied to a pole and assaulted by the accused

persons. She has also stated that when her husband asked for water, she gave him water from a ditch, and thereafter her husband died. She has

stated that her statement was recorded by the police whereupon she had put her thumb impression. In her cross-examination, however, this

witness has stated that there was movement of the extremists in her village and the extremists had come to her house and they had taken her

husband away on the date of occurrence. She has also stated that her husband was killed by the extremists and the accused persons had not

assaulted him. She has stated that she could not identify any extremist who had assaulted her husband, and she has denied the suggestion to have

named the accused persons in her statement before the police. To the Court's question, he has stated that due to fear of Chowkidar, she had

named the accused persons in her examination-in-chief, and has specifically stated that the offence had not been committed by the accused

persons facing the trial.

7. P.W.-4 Surajmani and P.W.-5 Surja Munda are the daughter and son respectively, of the deceased, and they have supported the prosecution

case as stated in the fardbeyan, stating that the accused persons had assaulted their father, causing his death.

8. P.W.-1 Balku Munda and P.W.-2 Dila Munda are only the witnesses to the inquest report of the dead body, and they have identified their

signatures thereon, which were marked Exhibits-1 & 1/1. They have not stated anything about the occurrence.

9. P.W.-8 Shailendra Nath Singh is the I.O. of the case. He had recorded the fardbeyan of the informant. He has proved the fardbeyan to be in his

pen and signature, which was marked Exhibit-3, the endorsement on the fardbeyan which was marked Exhibit-3/1, the formal F.I.R., which was

marked Exhibit -4 and the inquest report of the dead body of the deceased, which was marked Exhibit-5. He has stated about the investigation

made by him and has also stated that at the place of occurrence he had found the pole on which there was mark of tying. His evidence shows that

at the place of occurrence, the marks of violence were also found. In his cross-examination, he has stated that he had not seized the said pole.

10. P.W.-9 Anil Kumar is the Police Officer, who had only submitted the charge-sheet in the case.

11. The statements of the accused persons were recorded under Section 313 of the Cr.P.C., wherein they have denied the evidence against them.

The defence has also examined one witness, who is D.W.-1 Kaila Munda, and he has deposed to the effect that the deceased was killed by

unknown extremists.

12. Learned counsel for the appellants has submitted that the impugned Judgment of conviction and Order of sentence passed by the Trial Court

below, cannot be sustained in the eyes of law, inasmuch as, the informant who is the most important witness in the case, though has supported the

case in her examination-in-chief, but in her cross-examination she has completely changed her version and stated that her deceased husband was

assaulted and killed by the unknown extremists and she has specifically stated that the accused persons facing the trial were not involved in the

offence, rather she had named them due to fear of Chowkidar. It is also submitted by the learned counsel that the post-mortem report shows that

none of the injuries on the deceased, either external or internal, were such, so as to cause the death of the deceased. Learned counsel accordingly,

submitted that the prosecution has failed to bring home the charge against the accused persons beyond all reasonable doubts, and it is a fit case in

which the appellants ought to have been acquitted after trial.

13. Learned counsel for the State has opposed the prayer and has submitted that the two witnesses, namely, P.W.-4 Surajmani and P.W.-5 Surja

Munda, who are the children of the deceased, have fully supported the

prosecution case and there is nothing in their cross-examination to discredit their testimony. It is submitted by the learned counsel for the state that the evidence of these two witnesses are also supported by the medical evidence of P.W.-6 Dr. B.K. Pandey and the post-mortem report proved by him as Exhibit-2. It is pointed out by the learned counsel for the State that there was some time gap between the examination-in-chief and the cross-examination of the informant P.W.-7 Somri Devi, during which, it appears that she had been gained over and accordingly, it is a fit case, in which, her evidence in the examination-in-chief only be looked into, in the interest of justice. It is submitted that on the basis of the evidence on record, the prosecution has been able to bring home the charge against the accused persons beyond all reasonable doubts.

14. Having heard learned counsels for both the sides and upon going through the record, we find that the evidence of P.W.-7 Somri Devi, the informant of the case, is itself fatal to the prosecution. She has completely broken down in her cross-examination for whatever reason, and she has stated that her husband was killed by the extremists and not by the accused persons, facing the trial. She has also stated that she had named the accused persons in her examination-in-chief, due to fear of the Chowkidar. The fact remains that if the informant has not supported the prosecution case in her cross-examination, the benefit thereof has to go to the accused persons.

15. Even otherwise, the evidence of P.W.-6 Dr. B.K. Pandey, who had conducted the post-mortem examination on the dead body of the deceased, shows that there were only abrasions and bruises on the dead body, and none of them were on any vital part of the body. Even on dissection, there was no abnormality in the internal viscera of the deceased and it is apparent that there was absolutely no internal injury on the dead body of the deceased. Though this witness has stated that the death was due to hemorrhage caused by subcutaneous bleeding, but there is nothing in his evidence to show that there was any such subcutaneous bleeding, so as to cause the death of the deceased. He has specifically admitted that there was no blood clots on the abrasions or bruises. Though this witness has stated that the death was caused due to cumulative effect of the injuries, but looking into the nature of the injuries, which were only

simple in nature, and only on non-vital parts of the body, we are of the considered view that none of the injuries, either singularly, or collectively, were sufficient to cause the death in the ordinary course of nature. Rather, we find that in her examination-in-chief itself, the informant P.W.-7 Somri Devi has stated that she had given water from the ditch to her husband, and thereafter he died. If she had given the water to her husband from the ditch, the possibility of the water being contaminated and causing the death of the deceased, cannot be ruled out. The cumulative effect of the evidence on record is that the prosecution has failed to bring home the charge against the accused persons beyond all reasonable doubts, and it is a fit case in which the appellants ought to have been acquitted, finding them not guilty. As such, the impugned Judgment of conviction and Order of sentence, cannot be sustained in the eyes of law.

16. For the foregoing reasons, the impugned Judgment of conviction dated 27.06.2005 and Order of sentence dated 29.06.2005, passed by the

learned Additional Sessions Judge, F.T.C., Lohardaga, in S.T No. 600 of 1997, convicting and sentencing the appellants for the offence under

Sections 302 / 34 of the Indian Penal Code, are hereby, set aside. Consequently, all the three appellants, namely, Bandhu Munda, Lachhan

Munda and Makund Munda, are found not guilty and they are acquitted of the charge. The appellants Bandhu Munda and Lachhan Munda are in

custody, undergoing the sentence. They are directed to be released and set at liberty forthwith, if their detention is not required in any other case.

The appellant Makund Munda is on bail, and he is discharged from the liabilities of his bail bond.

17. This appeal is accordingly, allowed. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this

Judgment.