
(2009) 02 JH CK 0117

In the Jharkhand High Court

Case No : Criminal Appeal (D.B) No"s. 324 and 349 of 2000

Binod Rajak, Thomas Hansda and Sangram Murmu

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 323, 34

Citation : (2009) 57 BLJR 2124

Hon'ble Judges : R.R. Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : P.A.S. Pati, Amicus Curiae, for the Appellant; A.P.P, for the Respondent

Judgement

1. Since both the appeals arise out of the common judgment it were heard together and are being disposed of by this common judgment.

2. All the three appellants were put on trial for the charges u/s 302/34 and 307/34 of the Indian Penal Code for committing murder of Sanjhhali Marandi in furtherance of their common intention and also for making an attempt to commit murder of Raska Marandi and his wife Randhin Hembrom and grand daughter Marangmai Soren. The trial court having found all the three appellants guilty sentenced each of them to undergo rigorous imprisonment for life u/s 302/34 of the Indian Penal Code and also to pay a fine of Rs. 250/- and in default of payment to undergo rigorous imprisonment for one year. Further they were sentenced to undergo rigorous imprisonment for five years u/s 307/34 of the Indian Penal Code and to pay a fine of Rs. 100/- and in default of payment to undergo rigorous imprisonment for six months.

3. The case of the prosecution is that the informant Raska Marandi (P.W.5) while was sleeping in his house along with his wife Randhin Hembrom (P.W.1) and daughters Manjhali Marandi, Sanjhall Marandi (deceased) and grand-daughter Marangmai Soren (P.W.2), woke up at about 1 A.M. in the night after hearing

some sound coming from the cow-shed. When he went there, he did not find calves over there and hence he got perturbed. Meanwhile, the appellants came over there having lathis with them and of them the Binod Rajak was also having knife with him. They started assaulting him and upon it he fled away from there by raising alarm. They also assaulted his wife and the daughters with lathi and one of his daughter, Sanjhali Marandi was inflicted with chhura injuries, as a result of which she died. Thereafter in the morning on 2.11.1994 at about 10 A.M. the informant Raska Marandi gave his Fardbeyan (Ext.7) at Jirwabari out post of Borio (Jirwabari) Police Station, upon which a case was instituted u/s 302/34 of the Indian Penal Code against all the appellants and the matter was taken up for investigation. In course of investigation, Investigating Officer held inquest on the dead body of the deceased and then sent it for post mortem examination which was done by Dr. N.K. Prasad (P.W.3), who found the following injuries:

- (i) Incised wound 2" x 1/2" x 1/4" on the front of the head on the left side.
- (ii) Incised wound 2" x 1/2 "x 1/4" on the left side of forehead 1" lateral to the injury No. (i).
- (iii) Incised wound 2" x 1/2" x 1/4" on the left side of head just lateral to the Injury No. (ii).
- (iv) Incised wound 2" x 1/2" x deep upto abdominal cavity on the right side of abdomen below last rib.
- (v) Swelling of face.

4. On dissection injury No. (iv) was traced out upto liver which was found punctured. Accordingly, Doctor issued post mortem examination Report (Ext.1) with an opinion that death was caused by shock and haemorrhage due to penetrating injury of the liver.

5. In course of investigation Randhin Marandi and Maranmai Soren were examined by Dr. M.A. Mallick (P.W.4) and found the following injuries on the person of Maranmai Soren (P.W.2):

- (i) Lacerated wound 1/2" x 1/3" x 1/4" on the right arm in the middle on lateral aspect.
- (ii) Pain and tenderness all over the body.

6. As per injury report (Ext.2) injuries were simple in nature.

7. In case of Randhin Hembrom, the following injuries were found:

- (i) Three incised wound 4" x 1/2" x 1/3", 5" x 3/4" x 1/2 "and 3" x 1/2" x 1/3" on the posterior part of the skull forming a conical shape.
- (ii) Swelling of whole face.

(iii) Redness of both the eyes.

(iv) Pain and tenderness all over body.

8. According to opinion of Doctor, injury Nos. (ii), (iii) and (iv) were caused by lathi whereas injury No. (i) was caused by sharp cutting weapon. However, all the injuries were found simple in nature. The injury report was proved as Ext.3. Dr. also issued supplementary injury report with respect to same injured Randhin Hembrom as Ext.4.

9. The injured Raska Marandi (P.W.5) was examined by Dr. N.K. Verma (P.W.11), who found a scratch of 4" x 2" just below elbow which was found to be simple caused by hard and blunt substance. The said injury report has been proved as Ext.5.

10. After completion of investigation, police submitted charge sheet, upon which cognizance of the offence was taken and in due course, when the case was committed to the court of sessions, charges were framed to which accused pleaded not guilty and claimed to be tried.

11. In course of trial, the prosecution in order to prove the charges examined together 12 witnesses. Of them, Randhin Marandi, mother of the deceased, Marangmai Soren, granddaughter of P.W.1 and also Raska Marandi, father of the deceased all injured were examined as P.Ws.1, 2 and 5 respectively. All of them have supported the case of the prosecution whereas P.W.6, P.W.7 and P.W.8 have been declared hostile. One of the witnesses, P.W.9 came forward to depose that when he reached to the place of occurrence, it was disclosed by the deceased to him that all the three accused persons had assaulted her.

12. After prosecution case was closed the appellants were questioned u/s 313 of the Code of Criminal Procedure about the incriminating circumstances appearing against them, to which they denied.

13. The trial court having found all the appellants guilty for the charges levelled against them passed the order of conviction and sentenced as aforesaid.

14. Being aggrieved with the judgment of conviction and order of sentence the appellants have preferred these appeals.

15. Mr. P.A.S. Pati, learned Counsel appointed as amicus curiae submits that, in fact, no such occurrence as has been claimed by the witnesses has occurred, rather the deceased was done to death in course of commission of dacoity by unknown persons which would be evident from the testimonies of P.Ws. 6, 7 and 8, who have testified that P.W.5 came running to them and told that some dacoits have entered into his house but still the appellants were made accused as admittedly one of the appellants was inimical to the informant.

16. Learned Counsel further submits that on account of non-examination of Investigating Officer, the case of the appellants got prejudiced and that there has been delay in transmitting copy of the first information report to the court which,

in the facts and circumstances, is fatal to the case of the prosecution.

17. In this respect learned Counsel has referred to a decision rendered in a case of Rajeevan and Another Vs. State of Kerala, .

18. In these backgrounds it was submitted that the prosecution has failed to prove the charges beyond all reasonable doubt and hence all the appellants deserve to be acquitted.

19. Heard learned Counsel appearing for the State.

20. Having heard learned Counsel appearing for the parties and on perusal of the record, we do find that it is a case of the prosecution that while the informant along with his wife Randhin Hembrom (P.W.1), daughters Manjhali Marandi, Sanjhali Marandi (deceased) and grand-daughter Marangmai Soren (P.W.2) were sleeping, these appellants entered into the house and committed murder of one of the daughters, namely, Sanjhali Marandi and the appellants also assaulted the informant (P.W.5), his wife Randhin Hembrom (P.W.1) and grand-daughter Marangmai Soren (P.W.2) who received injuries. According to P.W.1, when the appellants entered into the house, appellant Binod Rajak inflicted knife injury over the forehead and on the belly of the deceased. The testimony of this witness regarding deceased being inflicted with injury by the appellant Binod Rajak over her belly and also on the forehead gets corroboration from the testimonies of P.Ws 2 and 5. Further it appears that P.Ws. 1 and 2 have also testified that apart from Binod Rajak, these two appellants also assaulted the deceased with lathi but from the medical evidence, it does appear that the deceased had sustained four incised injuries and according to Doctor (P.W.3) penetrating injury found on the abdomen proved to be fatal. However, at the same time the medical evidence does suggest that none of the injury sustained by deceased was caused by hard and blunt substance. Thus, testimony of all the witnesses that it was Binod Rajak, who inflicted chhura injuries on the belly as well as on the forehead gets corroboration from the medical evidence whereas accusation levelled against the appellants, namely, Thomas Hansda and Sangram Murmu does not get corroboration from the medical evidence. Moreover, P.W.5 has never testified that aforesaid two appellants did assault the deceased in any manner.

21. Before proceeding further in the matter, it would be pertinent to note here that occurrence, according to prosecution case, took place in the night and in that event, argument was also advanced that since it was dark night and there was no source of light, it was not possible for the witnesses to identify the culprits, though the witnesses in course of evidence have claimed to have identified the culprits in the light of Debris and Lantern but those testimonies cannot be accepted as it was never the case of the prosecution from the beginning that the appellants were identified in the light of Debris and Lantern. We are not persuaded with the submission advanced hereinabove for the reason that normally it is not expected that the persons would be sleeping without

having any Debris and Lantern burning in the night. Moreover, as per the testimony of P.W.5, when he woke up after hearing some sound, he did not find calves tied in the cow-shed which fact itself suggests that there must be some source of light under which he could notice that calves are not there.

22. In that view of the matter, even if P.Ws 2 and 5 did not state about that fact before the police it is mere an omission which has got no adverse effect upon the prosecution case. Moreover, P.W.1 has categorically deposed that she saw the accused persons in the light of Debris and Lantern and it has been never suggested to her by the defence that such claim had not been put forward before the Investigating Office Thus, her testimony in this regard remain intact. Further, we do find that Investigating Officer has not been examined in this case but nothing significant was pointed out by the defence to show as to how the prejudice has been caused to the case of the defence on account of non-examination of the Investigating Officer, though it was submitted that on account of non-examination of the Investigating Officer, place of occurrence cannot be said to have been established. It is hard to accept this substance as dead body was found on the same place where the deceased is said to have been done to death which would be evident not from the testimonies of eye witnesses only such as P.Ws. 1, 2 and 5, rather all other witnesses such as, P.Ws. 6, 7, 8 and 10 have also found the dead body at the same place.

23. Submission was also advanced that occurrence did not take place in the manner as has been claimed, rather deceased was done to death by unknown persons during commission of the dacoity. This submission seems to have been made by the defence on the basis of testimonies of P.Ws.6, 7 and 8 who have turned hostile wherein they have testified that P.W.5 raised an alarm that dacoits have entered into his house. It be stated that it is the case of the prosecution that when P.W.5 woke up on hearing some sound, he did find calves missing from the cow-shed and then he was assaulted by the accused persons whereupon he ran away and under this situation, if P.W.5 raised an alarm that the dacoits have entered into his house, that was quite natural particularly when he noticed that calves are missing from the cow-shed. Moreover, it is the case of the prosecution from very beginning that one of the appellants Binod Rajak was inimical to them and hence, he and other by entering into the house committed murder of the deceased.

24. Regard being had to the facts and circumstances as stated above witnesses appear to be trust worthy and in this event delayed transmission of copy of the first information report to the concerned Magistrate never appears to be fatal to the prosecution case. In this respect a case of Rabindra Mahto and Another Vs. State of Jharkhand, be referred to.

25. Thus, we do find that prosecution has been able to substantiate the charge beyond all reasonable doubt that appellant Binod Rajak committed murder of the deceased whereas the prosecution has failed to prove, as has been discussed above, that the appellants Thomas Hansda and Sangram Murmu committed

murder of the deceased in further of their common intention. Accordingly, the appellants, namely, Thomas Hansda and Sangram Murmu are hereby acquitted of the charges u/s 302/34 of the Indian Penal Code whereas the appellant Binod Rajak in view of the evidence that it was he, who caused fatal injury to the deceased, is convicted for the offence u/s 302 of the Indian Penal Code simplicitor instead of 302/34 of the Indian Penal Code. Accordingly, conviction of the appellant Binod Rajak is altered from Section 302/34 to Section 302 of the Indian Penal Code. Further we do find that Randhin Hembrom (P.W.1) and Raska Marandi (P.W.5) have testified that all the appellants had assaulted them whereas according to P.W.2 she was assaulted by Binod Rajak but the injuries which they sustained are simple in nature and that apart the circumstances do suggest that the accused persons had had no intention to commit murder and under these circumstances, order of conviction and sentence passed u/s 307/34 of the Indian Penal Code against all the appellants is hereby altered to u/s 323 of the Indian penal Code and, accordingly, they are convicted.

26. In the result, the order of sentence passed against the appellant Binod Rajak for committing murder of the deceased is hereby affirmed whereas the order of conviction and sentence passed against the appellants, Thomas Hansda and Sangram Murmu u/s 302/34 is hereby set aside. At the same time for the reasons mentioned above, the judgment of conviction passed by the trial court against all the appellants u/s 307/34 of the Indian Penal Code is hereby altered to Section 323 of the Indian Penal Code. Accordingly, all the three appellants are sentenced for the period already undergone by them in custody for the offence u/s 323 of the Indian Penal Code. Thus, with the aforesaid alteration in conviction and modification in sentence, both the appeals are allowed in part.