
(2015) 02 JH CK 0027

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 879 of 2002

Bishwa Nath Mandal and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2015) 2 AJR 607

Hon'ble Judges : Virender Singh, C.J.;Aparesh Kumar Singh, J.

Bench : Division Bench

Advocate : B.M. Tripathi, Senior Advocate and Shree Niwas Roy, for the Appellant; Hardeo Prasad Singh, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Virender Singh, C.J.—Since two of the appellants, namely, Arun Mandal and Rati Lal Mandal are in custody since March 2000, priority has been given to the instant appeal for its final consideration. It also needs to be mentioned here that one of the appellant Sheo Prasad Mandal died during the pendency of the instant appeal, which fact is confirmed by learned State Counsel. The instant appeal, thus, abates qua him and survives qua remaining six appellants only. But for aforesaid two appellants, all are on bail.

2. In all, seven persons, namely, Bishwa Nath Mandal, Rasraj Mandal, Pawan Chandra Mandal, Sheo Prasad Mandal, Arun Mandal, Rati Lal Mandal and Sumitra Devi (hereinafter to be referred to as accused only) faced trial for the charge of Sections 147, 148, 324/149, 342, 307/149 and 302/149 for allegedly killing one Amit Kumar Mandal @ Amrit Kumar Mandal (to be referred to as deceased) on 21st of March, 2000 at 12.30 Hrs. They stand convicted and sentenced for the said offences as under:--

"Each of them have been sentenced to undergo imprisonment for life U/s. 302 I.P.C.; R.I. for a period of two years U/s. 147 I.P.C.; R.I. for three years U/s. 148

I.P.C.; R.I. for three years U/s. 326 I.P.C.; R.I. for ten years U/s. 307 I.P.C. All the sentences, however, have been ordered to run concurrently. They have not been sentenced separately for the conviction recorded under Section 342 I.P.C."

3. The case of the prosecution, as one finds from the initial statement (fardbayan) recorded on 21st of March, 2000 at 15.00 Hrs. at the instance of P.W. Nandi Kumar Mandal, the first informant and real brother of the deceased is that he, on 21.03.2000, at about 12.00 Hrs. after hearing noise outside his house came out and saw that accused Rati Lal Mandal holding farsa, Pawan Chandra Mandal holding lathi, Arun Mandal holding farsa, Sheo Prasad Mandal, Bishwa Nath Mandal and Ras Raj Mandal holding lathis in their hands had surrounded his brother Amit Kumar Mandal (deceased) and were abusing him. At that accused Sumitra Devi wife of accused Rati Lal Mandal had caught hold of the deceased. When he went to save his brother, accused Rati Lal Mandal assaulted him with farsa, as such his right hand got injured and then Pawan Chandra Mandal assaulted him with lathi, consequently he fell down. It is, thereafter, all the accused persons, namely, Rati Lal Mandal, Pawan Chandra Mandal, Sheo Prasad Mandal, Bishwa Nath Mandal, Ras Raj Mandal, Arun Mandal assaulted the deceased. In the meantime villagers and members of his family had also assembled there. Deceased died at the spot. The motive for the occurrence, projected by the first informant, is that the deceased was resisting the marriage of the daughter of accused Pawan Chandra Mandal with his own Gotia (same relation) in the village.

4. On the aforesaid allegations, formal FIR No. 29/2000 dated 21.03.2000 came to be registered in P.S. Bangaria and the investigation started by PW Ashok Kumar Singh, which, ultimately, culminated into filing of the challan against aforesaid seven accused, who accordingly, charged and, ultimately, convicted and sentenced as stated hereinabove.

5. The prosecution, in support of its case, examined the following witnesses: -

"P.W. 1 Narendra Nath Mandal He is son of Nandi Kumar Mandal, the first informant (P.W.5) and stated that on the date of occurrence, he, on hearing the noise, came out of the house along with his father and mother and saw that in front of their house, all the male accused had surrounded the deceased and Sumitra Devi had caught hold of the deceased from his back. He then states that his father had gone to save the deceased when he was assaulted by accused Rati Lal Mandal and Pawan Mandal. He further states that when he tried to save his father, accused Sheo Prasad Mandal gave him an injury with stone, consequently he fell down. He then gave a photographic version as to how the deceased was assaulted in a Gali by all the male accused persons and thereafter the deceased was dragged in the house of accused Pawan Mandal, which he could see from his rooftop.

P.W.2 Patal Mandal His statement is to the effect that after hearing the noise, he came outside the house and saw that P.W. Nandi Mandal was coming towards him and accused were chasing him. He then describes as to what was in the

hand of all the male accused persons. He, in fact, gave shelter to the PW Nandi Mandal and had gone to the police station along with him for lodging the report.

P.W.3 Dr. Ratneshwar Prasad Verma He has examined P.W. Nandi Kumar Mandal and found five injuries on his person, out of which two are sharp cut wounds.

He also conducted autopsy on the dead body of the deceased Amit Kumar Mandal and found as many as 16 injuries out of which 15 are cut wounds and one abrasion over right shoulder.

Cause of death, as opined, is Cardiac Respiratory Failure due to severe head injury haemorrhage shock and multiple traumas. Time lapsed between death and postmortem is opined as 36 hours.

P.W. 4 Shanti Devi She is wife of PW Nandi Kumar Mandal. She has supported the line of her son, except that she has also attributed active role to accused Sumitra Devi of assaulting the deceased with stone.

P.W.5 Nandi Kumar Mandal He is the first informant and when stood into the witness box, stated that when he heard noise, he along with his wife and son Narendra Nath Mandal came out of their house and saw that all the male accused persons armed with different weapons (as described by other eye witnesses) had surrounded the deceased and that accused Sumitra Devi was holding the deceased from back. He further stated that when he went to save his brother, he was assaulted by accused Rati Lal Mandal and accused Pawan Mandal and when his son tried to intervene, Sheo Prasad Mandal also assaulted him with stone. He then stated that certain villagers had reached there and tried to save the deceased, but, after seeing the weapons in the hands of the accused, they did not come forward. He further stated that all the 7 accused persons dragged the deceased in a Gali and at that time accused Pawan Kumar Mandal gave injury on the person of the deceased with a Lathi, consequently, he fell down and then Rasraj Mandal gave a farsa blow on his head; Arun Mandal gave a farsa blow on his face and thereafter all gave farsa and lathi blows to the deceased. He further stated that in fact, accused Rasraj Mandal had brought farsa from the house of Pawan Mandal and then gave injury on the person of the deceased. He also stated that accused Sumitra Devi caused injury on the person of the deceased with stone. He does not whisper a word about the dragging of the deceased in the house of Pawan Mandal. He, however, states that the accused wanted to attack his family members and chased them, but, his wife and son entered their house and he rescued himself by entering into the house of P.W. Patal Mandal and thereafter, he went to the Police Station to lodge the report.

P.W.6 Md. Qayum Hussain Ansari He is witness to the inquest report and stated that the dead body was found in the house of accused Pawan Mandal.

P.W.7 Mansoor Alam He is also witness to the inquest report and was present when blood stained soil was taken into possession.

P.W. 8 Ashok Kumar Singh He is the investigation officer of the case. He proved

the formal F.I.R. and thereafter the investigation conducted by him.

P.W.9 Ram Pravesh Choudhary He is also the investigation officer of the present case.

P.W.10 Arun Chandra Sen, Advocate He proved the bail application filed by all the accused except Sumitra Devi. He also proved certain other applications moved by the accused at different stages. His evidence is of no relevance at all."

6. In their defence, the accused had produced Gurupad Mandal (DW 1), who stated that quarrel had taken place between Amit Mandal and his brother Nandi Mandal and that Nandi Mandal and his son had killed Amit Mandal and dead body was dragged in the house of Arun Mandal.

Jhingri Devi (D.W.2) is the wife of the deceased and stated that she saw PWs Nandi Mandal and Narendra Nath Mandal were chasing her husband and when the deceased entered into the house of Arun Mandal, he was killed by Nandi Mandal and Narendra Nath Mandal and after the death of her husband, Nandi Mandal had taken the possession of the property.

Binod Kumar Singh (D.W.3) and Dakshineshwar Sharma (D.W.4) made an attempt to prove the alibi of accused Rati Lal Mandal, stating that at the time of occurrence, he was somewhere else.

Bhola Nath Tiwari (D.W.5) gives another story that Nandi Mandal and his son Narendra Nath Mandal were dragging the deceased to the house of accused Rati Lal Mandal.

7. Heard Mr. B.M. Tripathi, learned Senior Advocate appearing for all the 7 accused persons and Mr. Hardeo Prasad Singh, learned State Counsel.

8. Mr. Tripathi has also taken us to the material evidence once again.

9. Learned Senior Counsel submitted that presence of PW Narendra Nath Mandal and his mother P.W. Shanti Devi Mandal appears to be doubtful at the time of occurrence for the reason that Nandi Kumar Mandal, the first informant does not whisper a word in his initial report (Fardbayan) that he along with his wife and son had come out of their house on hearing noise and then saw all the accused surrounding the deceased. Learned senior counsel submitted that subsequently, the prosecution agency introduced these witnesses as eye witnesses to the occurrence and this fact is further strengthened when P.W. Narendra Nath Mandal tried to project himself as an injured witness after having received injuries at the hands of accused Sheo Prasad Mandal by a stone, which he was having in his hand, whereas there is no medical evidence available on record in this regard. From this, the learned Senior Counsel wanted to develop that, in fact, only the family members have been brought forward to unfold the prosecution case, whereas other persons from the village had also assembled there and this crude attempt made by the complainant makes the entire prosecution case doubtful from its inception.

10. Learned Senior Counsel then made an attempt to point out certain discrepancies in the statement of all the three PWs. Namely, Narendra Nath Mandal, Shanti Devi and Nandi Kumar Mandal (first informant) with regard to the main occurrence, in which all the accused had allegedly caused injuries on the person of the deceased stating that it is not clear as to whether the deceased was assaulted in Gali first of all and then dragged into the house of accused Pawan Mandal or was first of all dragged into the house of Pawan Mandal and then assaulted there. He submitted that all the three eye witnesses are at variance in this regard benefit of which would go to the accused.

11. Learned Senior Counsel, thus, seeking acquittal of all the accused, has also made an attempt to segregate the case of accused Sumitra Devi from rest of 6 male accused, stating that her involvement, as alleged, at least appears to be doubtful, as it is not believable that when six male accused, armed with different weapons in their hands, had already surrounded the deceased, accused Sumitra Devi would caught hold of the deceased from behind. He submitted that this is an attempt made by the complainant side to implicate wife of accused Rati Lal Mandal. Learned counsel submitted that even otherwise in the first part of the occurrence, when presence of accused Sumitra Devi is there, the deceased is not assaulted by any of the male accused and it is only P.W. Nandi Kumar Mandal, who came forward to rescue the deceased, was assaulted by Rati Lal Mandal and Pawan Mandal and even in the second part of the occurrence also, the major role is attributed to the male accused persons, whereas a feeble attempt has been made to implicate accused Sumitra Devi by allegedly causing injury on the person of the deceased with a stone, which fact is not there in the initial report lodged at the instance of P.W. Nandi Kumar Mandal, who was very specific about attribution of all the male accused persons. Learned counsel submitted that in the present set of circumstances, accused Sumitra Devi's involvement is not free from doubt, therefore, she deserves acquittal of all the charges.

12. Learned Senior Counsel, fairly, conceded that although the police was informed of the occurrence by the accused Pawan Kumar Mandal, giving altogether a different story as to how the deceased had received injuries, but, the said statement of Pawan Kumar Mandal is not proved on file, therefore, he will not be in a position to derive any benefit. He fairly stated that even if Arun Kumar Chandra, Advocate (P.W.10) has got the Fardbayan of Pawan Mandal exhibited as 4/1, it is not formally proved, therefore, the accused cannot derive benefit from the same. Not only that, even otherwise, the case of accused Pawan Kumar Mandal is of total denial, which is contrary to his initial statement. Learned Senior Counsel also fairly submitted that the defence produced by accused would also be of no help to them.

13. Learned State Counsel prays for dismissal of the appeal in toto qua all the accused, stating that all of them have actively participated in the commission of offence, therefore, none of them has any escape.

14. Although an attempt has been made by Mr. Tripathi, learned Senior Advocate

to dislodge the prosecution case, vis-?-vis involvement of six male accused, pointing out certain infirmities created in the statements of the three eye witnesses to the occurrence including an attempt to dislodge the evidence of P.W. Narendra Nath Mandal and Shanti Devi, as their name did not figure in the initial report (Fard Bayan) lodged by Nandi Kumar Mandal, but, in our considered view, this aspect not shred the basic substratum of the prosecution case. No doubt, categorically PW Nandi Kumar Pandal has not named his son Narendra Nath Mandal and wife Shanti Devi to be present on the scene of occurrence, but, he stated in his initial statement (Fardbayan) that persons from his house reached there (Ghar Ke Log Aa Gaye). This would naturally include the wife and son also. We are conscious of the fact that there is no medical evidence available with regard to injury on the person of Narendra Nath Mandal despite he had received injury at the hands of accused Sheo Prasad Mandal with stone, but, they would also not go to show that he has been introduced as eye witness subsequently. It is quite possible that he had received some simple injury with a stone and did not feel the necessity of getting himself medically examined. He did not say that he was medically treated by any doctor. It is very common in villagers to ignore simple injuries. It is but natural that the attention after the occurrence was diverted towards two persons only; the deceased, who had received several injuries and Nandi Kumar Mandal, the other injured, who too had received sharp cut injuries at the hands of the accused. Therefore, we do not find any difficulty in holding that the occurrence is witnessed by P.W. Nandi Kumar Mandal, the first informant and injured stamped witness and his two family members (son and wife), who were present in the house and came out after hearing noise.

15. We do find certain discrepancies in the statement of these witnesses vis-?-vis the manner of occurrence, as pointed out by Mr. Tripathi, learned Senior Counsel, but, in totality, their evidence is cogent, coherent and reliable with regard to involvement of male accused persons, who were armed with different weapons. There is no dearth of injuries in this case, as the deceased had received as many as 16 injuries; 15 turned out to be cut wounds and 1 abrasion. Two of the six male accused, namely, Rati Lal Mandal and Pawan Mandal have also assaulted the first informant, the moment he intervened to save the deceased, which fact is clear from his evidence available on record. The male accused persons, in our considered view, at least, have no escape in this case.

16. We, however, find the involvement of accused Sumitra Devi doubtful in this case. The part, initially attributed to her as one finds from the initial statement (Fardbayan) of catching hold of the deceased from back. It is not understandable that if six male accused persons had already surrounded the deceased, having different weapons in their hands, would seek the help of a lady to catch hold of the deceased. Had the first informant not intervened, they would not have spared the deceased as one finds from the number of injuries, ultimately, received by the deceased. Accused Sumitra Devi, in that event, would have created trouble for them, instead of facilitating them. Admittedly in the first occurrence in which only the first informant has received injuries at the hands of

accused Rati Lal Mandal and Pawan Mandal, accused Sumitra Devi did not extend any helping hand to the male accused persons. What appears to us is that the involvement of accused Sumitra Devi by attributing her one injury on the person of the deceased by stone is shown on account of finding one abrasion on the person of the deceased in the postmortem report, whereas in the initial statement, it is nowhere stated that accused Sumitra Devi had assaulted the deceased either in the Gali or anywhere else. Advantage of finding abrasion over right shoulder of the deceased, which injury is otherwise possible by fall and the deceased, admittedly, fell on the ground also after receiving injuries appears to have been taken by the complainant side during the trial, so as to rope accused Sumitra Devi. Accused Sheo Prasad Mandal is also shown to be having stone in his hand, which he used for causing injury to P.W. Narendra Nath Mandal. All these facts, when taken collectively, can be said to be enough for doubting the prosecution case with regard to presence of accused Sumitra Devi, at least, alongwith the male accused persons. Allegation, as leveled against Sumitra Devi, otherwise, is of inherently weak character, which is commonly noticed by the Court in many cases.

17. After rescanning entire prosecution evidence in its right perspective, we, thus, conclude that participation of accused Sumitra Devi, wife of accused Rati Lal Mandal appears to be doubtful in the commission of the alleged offence, so as to hold her guilty with the aid of Section 149 I.P.C. for the substantive offences for which she stands charged and convicted alongwith other six male co-accused. We, thus, giving her benefit of doubt, disturb the conviction and sentence already recorded qua her. She is acquitted of all the charges framed against her.

18. So far as the remaining five accused, namely, Bishwa Nath Mandal, Rasraj Mandal, Pawan Chandra Mandal, Arun Mandal and Rati Lal Mandal, as Sheo Prasad Mandal, the sixth accused being dead, as stated herein above, in our considered view, the prosecution has been able to prove its case beyond any shadow of doubt against all of them for the charges for which they faced the trial. Their conviction and sentence, as already recorded by the learned Trial Court, thus, stands confirmed.

19. We have been informed that accused Arun Mandal and Rati Lal Mandal are languishing in jail since the date of their initial arrest, i.e., 21.03.2000. They shall serve the sentence as already slapped upon them by the learned Trial Court. Accused Bishwa Nath Mandal, Rasraj Mandal and Pawan Chandra Mandal are stated to be on bail as their substantive sentence was suspended by the Court during pendency of the appeal. Their bail bonds/surety bonds shall now stand cancelled. They shall be taken in custody forthwith to serve the remainder of their substantive sentence. However, accused Sumitra Devi is discharged of the bail bonds submitted by her during the pendency of the appeal.

20. Appeal, on hand, stands allowed partly in the aforesaid terms acquitting accused Sumitra Devi and upholding the conviction and sentence of other five male accused persons.

21. Copy of the judgment alongwith Trial Court Record (in original) be sent at once to the learned Trial Court for compliance.