
(2002) 09 JH CK 0076

In the Jharkhand High Court

Case No : Criminal Appeal No. 22 of 1994 (R)

Budhua Oraon and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

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

Citation : (2002) 50 BLJR 2051

Hon'ble Judges : Vinod Kumar Gupta, J; Lakshman Uraon, J

Bench : Division Bench

Advocate : P.S. Dayal and S.K. Srivastava, for the Appellant; R.P. Gupta, APP, for the Respondent

Final Decision : Allowed

Judgement

Lakshman Uraon, J.—The appellants, named above, have preferred this appeal against the judgment and order of conviction and sentence, passed by the learned 6th Additional Judicial Commissioner, Ranchi, in Sessions Trial No. 200 of 1993, dated 17.12.1993 and 21.12.1993, respectively, convicting all the appellants u/s 302 read with 34 of the Indian Penal Code and sentencing them to undergo imprisonment for life.

2. The informant Md. Badrudoja (PW 5) in his fardbeyan (Ext. 3) has alleged that on 24.11.1992 he along with Tahir Ansari (PW 6), Anwar Hussain (PW 1) and Jiyaul Huda (PW 3), all of village-Jari, had gone to village Murchu in search of labourers at about 6 p.m. as they had to get their paddy crops harvested on 25.11.1992. Having not found any labourer, they were returning home at village-Jari and at about 7 p.m. while they were crossing the road in front of the field of Budhram Oraon, they heard the sound of crying of a person. All the three persons flashed torch light and went toward them. They saw three persons dragging one man, who were Budhua Oraon, Hari Das Oraon, both of village-Banapiri and Budhram Oraon of village-Murchu, armed with weapons. They threatened the informant and other two persons to flee away otherwise they

would not be spared. When they saw the weapons in the hands of the three persons, then they went to their village and informed the neighbours. In the village, they came to know that Hadish had also gone in search of labourer and also to realise the balance amount towards sale of pumping set. The villagers went near the field of Budhua Oraon on the road. They saw blood stain in huge quantity on the Moram road. They also saw trail mark of dragging. They followed the trail mark, which led to a nearby well. They flashed the torch inside the well and saw the dead body of Md. Hadish Ansari. His head was injured with sharp cutting weapon. They believed that all the three appellants with common intention having killed the uncle of the informant Md. Hadish Ansari, carried his dead body dragging and threw it in the well.

3. The reason of the alleged occurrence has been stated that one week prior to that date, the uncle of the informant Hadish Ansari, had stood as a guarantor to sell of his friend's pumping set to Budhram Oraon. Budhram Oraon had not paid Rs. 2,000/-. Md. Hadish Ansari was demanding that balance dues and was usually visiting the house of Budhram Oraon. That is why the appellants murdered Md. Hadish Ansari. The fardbeyan was recorded on the same day at about 11.30 in the night.

4. I have already mentioned above that the informant (PW 5) was returning along with Anwar Hussain (PW 1), Jiyayul Huda (PW 3) and Tahir Ansari (PW 6), who is also alleged to be the eye witness of the occurrence. The said PW 6 (Tahir Ansari) has been tendered by the prosecution. Now only three witnesses are before me, who are the informant (PW 5), Anwar Hussain (PW 1) and Jiyayul Huda (PW 3), whose evidence is to be scrutinised as to whether the judgment and order of conviction and sentence of the learned Court below can be sustained.

5. PW 5 Md. Badrudoza (informant in this case) and the other two witnesses, namely. PWs 1 and 3 while returning home at village-Jari from village-Murchu, they heard sound of cry to save and from a distance of 100 yards they flashed torch light and saw these appellant Budhram Oraon, Budhua Oraon and Hari Das Oraon dragging one person towards the field of Budhram Oraon. All the three accused threatened these witnesses to flee away otherwise they would not be spared. PW 5 claimed that Budhua Oraon had Balua in his hand whereas Hari Das and Budhram had farsa in their hands. All these witnesses went to the village and informed Jalaluddin Ansari (PW 4), who was in his khalian, who informed that Hadis had gone to realise the balance amount of pumping set price as also in search of labourers to village-Murchu and had not returned by that time. Hundreds of persons of the village went to the place where the informant and two witnesses (PWs 1 and 3) had seen the accused persons dragging a man. They went there and found mark of dragging and blood spot leading towards well. They saw with the help of torch light into the well and found dead body of Hadis, whose neck and head was injured. There were also injuries at three places on the left side of the head.

6. Dr. Ram Sewak Sahu (PW 7) on 25.11.1992 at about 12 noon conducted the post mortem examination on the dead body of Md. Hadis Ansari, aged about 28 years and found (i) incised wound 7 x 1 cm. x bone deep left side temporal region of head cuts the pinna, left mostroid bone and brain matter underneath; (ii) 12 x 2 cm. x bone deep just above preceding injury cuts the pinna, temporal occipital bone and brain matter underneath; (iii) 12 x 2 cm. x bone deep just above injury No. 2 cuts soft tissues, temporal occipital bone and brain matter underneath and pinna; (iv) 6 x 1 cm. x soft tissues cuts the pinna and adjoining left cheek with tailing over left cheek which is 5 cm. long. There was infiltration of blood and blood clots at the sides of incised wounds.

The doctor also found three abrasions (a) 2 x 1 cm. over right cheek; (b) 2 x 1 cm. over right forehead; and (c) 1 x 1/2 cm. over right forehead. All the injuries, as per the opinion of the doctor, were ante mortem in nature, caused by sharp cutting weapons, such as, Balua and Farsa. The abrasions were caused by hard and blunt substance, which may be possible by blunt portion of Balua. Death was due to head injuries caused by incised wounds. The death was within 12 to 48 hours from the time of post mortem examination. The doctor prepared post-mortem report in his pen and signature (Ext. 2). The doctor also opined that the injured would not be in a position to speak after having received injury No. 1.

7. Shambhu Sharan Prasad (PW 8) is the Investigating Officer of this case. He recorded the fardbeyan (Ext. 3) of Badrudoza on 24.11.1992 at 11.30 p.m. at the field of Budhram Oraon of village-Murchu. On that basis case was registered at Ratu Police Station (Ext. 4). The I.O. had gone to the place of occurrence on rumour to verify the truth along with other police personnel. He found on the pitch road blood in abundance. Thereafter from that place at a distance of 100 yards he went to the well of Budhram Oraon where he found the dead body of Hadish. There was no water in the well and the dead body was visible. He also found one blood stained stone towards west of the well. From that place Murchu village is at a distance of 500 yards and the boundary road of village Murchu and Banapiri is at a distance of 50 yards. From that place village-Banapiri is at a distance of 2 kms. north and village-Jari is at a distance of 1 km. The village-Murchu is at a distance of 500 yards towards north-east. The I.O. prepared inquest report in the pen of ASI S.P. Verma on which he signed (Ext. 6). He also seized blood stained soil in presence of the witnesses. Thereafter, the dead body was sent to R.M.C.H. for post-mortem examination (Ext. 5/1). The I.O. did not seize the torches of the witnesses, the only source of identification at that night. He also did not examine the labourers of village- Murchu. The I.O. also did not examine any of the family members of the deceased. He did not enquire about the pumping set and its transaction by demanding any paper or document. However, he found the dragging mark in the field of Budhram Oraon.

8. Learned counsel for the appellants has assailed the judgment of the learned Court below on the ground that the only source of identification was the torches of the witnesses, namely, PWs 1, 3 and 5. On this point it was argued that these

three witnesses although claimed to have identified in the light of the torches but they could not identify the uncle of the informant Md. Hadish Ansari (deceased), who was crying for help and was also being dragged. These three witnesses had gone to the place of occurrence and saw the occurrence by flashing torch light from a distance of 10 yards at night and claimed to have identified only the appellants and not that person, who was the uncle of the informant, who was being dragged by these appellants on the road and in this context, he has relied upon the case of Mangal Singh and 5 Ors. v. State of Bihar and Ors., as reported in 1990 (1) PLJR 755, wherein, it has been held that "non-production of torch, the only means of identification, in Court, makes the prosecution case doubtful and the accused are entitled to the benefit of doubt."

9. Learned counsel for the appellants has submitted that the story of dragging on the road is disproved from the fact that no dragging mark was found on the person of the deceased, as no portion of the body or bone had any sign of dragging. These three witnesses, i.e. PWs 1, 3 and 5 had not seen any assault made by these appellants on the deceased. They only heard the sound of cry of a person to save, who was none else but the uncle of the informant himself. Even then neither by voice nor by face, who was at a distance of 10 yards, they could identify that man. who was being dragged by these appellants. Hence the identification becomes doubtful. It was also argued that the only source of identification, i.e. torches were neither seized by the Investigating Officer nor produced by the witnesses and the Investigating Officer did not investigate regarding the sale of pumping set, which is also genesis of the alleged occurrence.

10. The doctor has found three abrasions which may be the sign of dragging but the three abrasions were not on the front portion of the body nor on the back portion of the body rather they were on the right cheek and right forehead. Learned counsel for the appellants has argued that had the dead body been dragged then the abrasions must have been there on the body of the injured Md. Hadish Ansari or if it would have been dragged face-wise, then the frontal side of the body, i.e. chest, face, abdomen etc. would have the sign of abrasions, as the road was Moram road on which the injured was dragged. The story of dragging by catching hold of all the three appellants and the medical evidence that besides sharp cut injuries on the head, the dragging marks are on the right side of the cheek and forehead. These injuries are possible if the dead body is thrown into the well and the dead body dashes against the wall of the well in which there was no water at all. If this evidence is taken into consideration, which is the evidence of the doctor itself and the ocular evidence of the witnesses, the story of dragging becomes doubtful.

11. I have considered above that neither any member of the family of the deceased nor the villagers have been examined to support the prosecution case. The story of going to village- Murchu in search of labourers and also going of the deceased Md. Hadish Ansari in search of labourers and also to realise the balance

amount towards the sale of pumping set has also not been brought on record. Learned counsel on this point has vehemently argued that the story of all these three witnesses, i.e. PWs 1, 3 and 5 as also the deceased of going to village-Murchu, meeting some labourers there and also regarding dues of pumping set price were not investigated by the Investigating Officer.

12. I have also considered that there are no eye witnesses regarding assault on the person of the deceased by these appellants. Only once all these witnesses namely, PWs 1, 3 and 5 heard the cry of Md. Hadish Ansari, went there and since thereafter, they could not identify that man. On the other hand, they have claimed to have identified only these appellants in the torch light, which also seems to be doubtful in my mind.

13. In view of the above considered facts when all the three witnesses are the only interested witnesses who have alleged that they were also returning from village-Murchu but they had not met Md. Hadish Ansari, who had also gone to that village for labourers and the balance money of pumping set, naturally it happens that if all the three witnesses of the same village of the deceased had gone to the same village-Murchu in search of labourers then they might have also met Md. Hadish Ansari (deceased) either in the village-Murchu or on their way itself. But a story was made out that Hadish had gone earlier to the village and was returning alone to village-Jari. Thereafter, they were returning from Murchu. In their way, they did not meet with the deceased Md. Hadish Ansari. Even there was no consultation with him that they were also likely to go to village-Murchu in search of labourers. Non-examination of the village-labourers of Murchu also creates doubt in my mind as to whether these witnesses had actually gone to village-Murchu in search of labourers or not.

14. Thus, in view of my above considered facts and evidence as also the manner of the alleged occurrence, I find that the identification of the appellants and at the same time not identifying the injured, who was the uncle of the informant himself, even the witnesses were at a distance of 10 yards at the time and place of occurrence and also the dragging mark not found on the body of the deceased, which is the evidence of the doctor itself, does not corroborate the oral evidence of dragging of PWs 1, 3 and 5. It is a fact that there is no eye witness as to who assaulted Md. Hadish Ansari on his head with sharp cutting weapons. Hence the only evidence as adduced by these three witnesses, i.e. PWs 1, 3 and 5, that they saw these appellants dragging Md. Hadish Ansari on the Moram road and later on the dead body was found into the well, stands falsified.

15. In view of my above considered facts, I find that the prosecution case is full of doubts, in all the aspects, discussed above by me. Hence the appellants must be given the benefit of doubts. In the result, the criminal appeal is allowed and the impugned judgment and order of conviction and sentence, passed against all these appellants, are set aside. As all the appellants are on bail, they are discharged from the liabilities of bail bonds.

Vishnudeo Narayan, J.

16. I agree.