

(2004) 05 JH CK 0072

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 518 of 2001

Chadra Munda and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 300

Citation : (2004) CriLJ 3369 : (2004) AIR Jhar HCR 2035 : (2004) 3 EastCriC 87

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : B.M. Tripathy and Ritesh Kr. Jaiswal, for the Appellant; T.N. Verma, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Lakshman Uraon, J.—The appellants have preferred this appeal against the judgment and order of conviction and sentence dated 27-11-2001, passed by Sri R.R. Verma, learned 1st Additional Judicial Commissioner, Khunti, in Sessions Trial No. 85 of 2003, arising out of Torpa P.S. Case No. 65 of 1981 (G.R. No. 595 of 1991), whereby and whereunder, appellant No. 1 Chadra Munda and appellant No. 3 Mansukh Munda have been convicted for the offences under Sections 148 and 323 of the Indian Penal Code and sentenced to undergo imprisonment for one year and six months respectively whereas appellant No. 2 Jaipal Munda has been convicted for the offence under Sections 147 and 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and six months respectively. All the appellants have further been convicted for the offence u/s 302/149 of the Indian Penal Code and each of them have been sentenced to undergo imprisonment for life. The learned 1st Additional Judicial Commissioner, Khunti, has ordered that sentences in respect of each of the convicts on each count shall run concurrently.

2. The prosecution case has arisen on the basis of the fard-beyan (Ext. 4) of the informant Sahdeo Singh (P.W. 5), recorded by J. N. Singh, S. I., Torpa Police

Station, on 10-12-1981 at 5.30 a.m. at Village-Baski, Police Station-Torpa. The informant, son of deceased Budhnath Singh, has alleged that on 9-12-1981 at 3.30 p.m., appellant Chadra Munda, Mansukh Munda and two others, namely, Gopal Munda and Kapil Rawatia, who are now alleged to have died, along with 15 to 20 unknown persons, armed unlawful assembly, in search of Jyoti Singh and Kastu Singh. They were blaming jyoti Singh and Kastu Singh to have committed theft of he-goats. Budhnath Singh (deceased), father of the informant, in his Khalihan along with the informant was stocking the straws. Appellant Ghadra Munda and Kapil Rawatia went there and took them towards north in the field of Baldeo Singh Rawatia, towards north of their house. The other assailants had already gathered there. There was commotion. Arjun Singh (PW-3) and villager Chadra Singh, Raghunath Singh, Rajendra Singh (PW-4), Kishore Singh and others also went there. No sooner than they had arrived at the P.O. field of Baldeo Singh Rawatia, brother of appellant Mansukh Munda, gave a Lathi blow on the head of Budhnath Singh, Appellant Chadra Munda and Mansukh Munda assaulted Budhnath Singh with Balua and Ballam, Budhnath Singh having sustained injuries due to Balua, Ballam and Lathi, fell down. Even then the other accused assaulted him. The informant Sahdeo Singh when went to save his father, appellant Mansukh Munda gave two blows with Lathi portion of Ballam on his head and left thigh. Again he gave Ballam blow on the left parietal region of the informant. They also assaulted Arjun Singh, Raghunath Singh and Chadra Singh with Lathi and Balua, causing injuries to them. When the informant's mother Balo Devi (PW-2) heard the alarm she went to the place of occurrence along with the villagers Suresh Singh. Paras Singh and others, who witnessed the alleged occurrence. The father of the informant remained at the place of occurrence whereas informant fled away to save his life. Again when the assailants fled away from the place of occurrence, he along with other villagers went there and saw his father Budhnath Singh dead.

3. After investigation, the Investigating Officer submitted charge-sheet against these appellants and three others namely, Gopal Munda, Budhwa Munda and Kapil Rewatia, who having died after submission of charge-sheet, the case against them was dropped.

4. The prosecution in order to substantiate the charges against these appellants examined eight witnesses. Out of them, P.W-5 Sahdeo Singh (informant) and PW-3 Arjun Singh are the sons of the deceased. PW-2 Balo Devi is the wife of deceased Budhnath Singh, PW-1 Kali Singh is a hearsay witness, who was informed about the alleged occurrence by the informant Sahdeo Singh that the appellants have caused murder of his father. He is a witness of the seizure-list and has seen the dead body of Budhnath Singh, PW-2 Balo Devi, widow of the deceased, claimed that her husband was eye-witness, who also claimed that Kapil Rewatia and appellant Chadra Munda took his father from his house to the field of Baldeo Singh, where his father was assaulted, resulting in his death. PW-4 Rajendra Singh, a village witness, is the witness of inquest report and also an eye-witness of the alleged occurrence. PW-6 Raj Kishore Singh is a villager,

who was at his Khalihan. He has deposed that the accused went to the Khalihan of Budhnath Singh. Jaipal Singh gave a brickbat blow on the back portion of the head of Budhnath Singh and took him to the P.O. field of Baldeo Singh. PW-7 has proved the Post-Mortem Report (Ext. 2), conducted by Dr. B. K. Sinha. PW-8 Bindeshwari Rai, a formal witness, has proved the formal First Information Report (Ext. 3), Fard-beyan (Ext. 4), seizure list (Ext. 5) and inquest report (Ext. 6).

5. The defence has examined DW-1 Ghasi Ram Munda, DW-2 Rama Kant Sahay and DW-3 Soma Munda, who have deposed that Kapil Singh, Gopal Singh and Chadra Munda were assaulted by Budhnath Singh, father of the informant, who sustained injuries and due to those injuries, in course of treatment after fifteen days of the alleged occurrence, Kapil Singh and Gopal Singh died.

6. The learned 1st Additional Judicial Commissioner, Khunti, relied the evidence of the eye-witnesses, namely, PW-2 Balo Devi, PW-3 Arjun Singh, PW-4 Rajendra Singh, PW-5 Sahdeo Singh and PW-6 Raj Kishore Singh, having found that after 13 years of the occurrence, the witnesses were examined for the first time and after framing charge u/s 307 of the Indian Penal Code, again they were examined after 20 years of the alleged occurrence, resulting contradictions in their evidence, which he found due to lapse of time, convicted and sentenced the appellants, as stated above, while acquitted all of them for the charge levelled against them u/s 307 of the Indian Penal Code.

7. Assailing the judgment and order of conviction and sentence, passed by the learned Court below, the learned counsel for the appellants argued that the prosecution has not examined either the Investigating Officer or the doctor, who conducted the autopsy, causing serious prejudice to the appellants' case. PW-2 to PW-6 claim themselves to be the eye-witnesses. There is major contradiction in each material particulars, making the prosecution story doubtful as also creates doubt as to whether they are the eye-witnesses. After 20 years of the alleged occurrence, charge u/s 307 of the Indian Penal Code was framed in addition to the charges framed under sections 148 and 302/149 of the Indian Penal Code on 7th August, 1995 against the appellants. Subsequently, the appellants were acquitted from the charge, framed u/s 307 of the Indian Penal Code, in absence of injury report. It was further submitted that the place of occurrence from where deceased Budhnath Singh was taken has also been contradicted as to whether, as deposed by PW-3 Arjun Singh, son of deceased, his father was taken from his home or, as deposed by PW-5 Sahdeo Singh, another son of deceased, his father was taken from the Khalihan. Wife of the deceased Balo Devi (PW-2) has also deposed that her husband Budhnath Singh was at home along with his sons Sahdeo Singh (PW-5) and Arjun Singh (PW-3) from where her husband was taken away by Chadra Munda and Kapil Rewatia. It was day time. Even then none of the independent village witnesses has been examined in this case, except the related witnesses, alleged to be the eye-witnesses. The deceased sustained only three injuries whereas it is alleged that 5

to 6 persons assaulted the deceased Budhnath Singh. Non-examination of the doctor, who conducted autopsy on the dead body of Budhnath Singh, to explain the injuries, has also caused serious prejudice to these appellants, while evaluating the evidence of the witnesses. Post-Mortem Report was proved by Dr. Sudhir Kumar Sandilya (PW-7), a formal witness, which is inadmissible in evidence. Thus, the manner of the alleged occurrence has not been supported by the medical evidence. These appellants have erroneously been convicted with the aid of Section 149 of the Indian Penal Code. These appellants have not properly been explained, while recording their statements u/s 313 of the Code of Criminal Procedure, the circumstances and evidence appearing against them, causing prejudice to them. On these grounds, it was urged that all the appellants deserve acquittal.

8. Learned A.P.P. refuting the arguments, advanced on behalf of the appellants, has submitted that PW-2 to PW-6 are the eyewitnesses of the alleged occurrence, who have seen Budhnath Singh being taken away by Chadra Munda and Kapil Munda to the field of Baldeo Singh. The village independent witnesses PW-4 Rajendra Singh and PW-6 Raj Kishore Singh are also the eyewitnesses, who had seen Budhnath Singh being assaulted by these appellants with Lathi, Ballam and Balua. Due to lapse of time of examination of the witnesses in the Court, there is minor contradiction, which has not discredited the prosecution case. The learned Court has considered the prevailing circumstances and has rightly convicted and sentenced these appellants.

9. The Investigating Officer has not been examined in this case. DW-1 Budhnath Singh, since dead, has lodged information, alleging that his he-goat was missing and in course of search, Budhnath Singh assaulted Kapil Singh on his back and Gopal and Chadra were also assaulted. All of them were treated in the hospital but in course of treatment, after 15 days of the alleged occurrence Kapil and Gopal both died. The informant in his Fardbeyan has deposed that while he was at Khalihan along with his father, the appellants along with 15 to 20 unknown persons of Village-Jamtoli reached Village-Baski, armed with Lathi, Balua, bows and arrows, in search of Jyoti Singh and Kastu Singh. At that time Chadra Munda and Kapil Rewatia took them to the field of Baldeo Singh towards north of his house where the other accused persons had assembled. There at the field of Baldeo Singh, as per the Fard-beyan, brother of Mansukh Munda gave a Lathi blow on the head of his father and thereafter, appellants Chadra Munda and Mansukh Munda assaulted him with Balua and Ballam, who fell down and died. The informant and his brother Arjun Singh (PW-3) were also assaulted at that place. As per Fard-beyan, the assault took place in the field of Baldeo Singh. The informant and his father were called from their Khalihan, PW-1 Kali Singh was informed by informant Sahdeo Singh that his father was assaulted by the villagers of Jamtoli, who were 15 to 20 in number, including Chadra Munda, Mansukh Munda, Budhwa Munda, Jaipal Munda and others. The village of the informant Baskitoli is 11/2 km. away from Village Jamtoli. The police seized blood stained soil and prepared seizure-list on which he and Raj Kishore signed

(Exts. 1 and 1/1 respectively). The seizure-list is Ext. 5, which indicates that the P.O. field is the field of Baldeo Singh, Ext. 6 is the inquest report, which shows that the dead body of Budhnath Singh was found on the field of Baldeo Singh and Ext. 2 is the Post-Mortem Report. All these documentary evidences prove univocally that the alleged place of occurrence is the Tand field of Baldeo Singh, Non-examination of the I.O. has not discredited the establishment of the place of occurrence.

10. PW-2 Balo Devi the wife of deceased Budhnath Singh. She has deposed that she was at home along with her husband and both sons i.e. Arjun Singh (PW-3) and Sahdeo Singh (PW-5). Appellant Chadra Munda and Kapil Rewatia went to her home and took her husband towards north. Thus, she has contradicted that her husband was along with the informant (PW-5) at the Khalian where they were assaulted by the appellants. She went to the field of Baldeo Singh where 20 to 30 persons of Jamtoli, armed with Lathi, Balua and Ballam, assaulted her husband and both her sons i.e. son of deceased, has also deposed that he was at his home along with his mother PW-2, father Budnath Singh, since dead, and the informant Sahdeo Singh (PW-5). From their home, appellant Chadra Munda and Kapil Rewatia called his father and took him to the Tand field of Baldeo Singh. This witness and his brother PW-5 also followed their father where 20 to 30 persons had assembled at the P.O. Tand of Baldeo Singh. As soon as they arrived there, Jaypal Munda assaulted with Lathi on the head of his father and appellant Mansukh assaulted him with Ballam whereas appellant Chadra assaulted him with Balua. Budhwa assaulted him with Lathi. His father fell down and died at the spot. When Sahdeo Singh (PW-5) went to save his father, he was also assaulted by Gopal and appellant Mansukh. This witness PW-3 was also assaulted. Both of them also fell down but after some time they managed to flee away. The villagers Raghunath Singh, Suresh Singh and Chandra Singh were also there but these independent village witnesses have not been examined by the prosecution. Arjun Singh (PW-3) when re-examined on 27th August, 2001 has just contradicted his earlier statement by stating that he and his father were at the Khalian and not the home. Jaypal Munda, Mansukh Munda, Chadra Munda (all appellants), Gopal Munda, Budhwa Munda and Kapil Rewatia went there and started assaulting his father. His father fell down at the Khalian and died at the spot. When this witness Arjun Singh (PW-3) went to save his father, Gopal Munda assaulted him with Balua on his head and Kapil Rewatia assaulted with Lathi on his left knee. He also fell down and became unconscious. Chandar Singh, his uncle, was also assaulted by appellant Jaypal Singh Munda and appellant Chadra Munda. But the uncle (injured Chandra Singh) has not been examined in this case. Subsequently this witness has developed the prosecution case to the effect that his father was taken to the field of Baldeo Singh and was assaulted by the accused, which is at a distance of 100 yards north from their Khalian. He claims that her mother was also at the Khalian but his mother (PW-2) claims that she went after the alleged occurrence. At that very evening on being injured, this witness, Raghunath Singh, Chandra Singh and Sahdeo Singh were referred to hospital for treatment.

But there is no evidence that they were examined by any doctor at the hospital, having sustained any injury, to corroborate their ocular evidence. The village independent witness Rajendra Singh saw that at the field of Baldeo Singh, out of 25 to 30 persons, who had assembled, he identified Jaypal Munda (appellant), who gave Lathi blow on the head of Budhnath Singh. Thereafter, these appellant assaulted him. Witness Arjun Singh and Sahdeo Singh were also injured, besides Chandra Singh and Raghunath Singh. Sahdeo Singh (PW-5) while working at his Khalihan along with his father, Chadra Munda and Kapil Rewatia took his father to the field of Baldeo Singh. He also followed them. Thus, the evidence of this witness contradicts that the appellants went to the Khalihan and assaulted his father who fell down and died at the Khalihan and at the same time PW-3 has deposed that his father was taken to the field of Baldeo Singh, being assaulted from the Khalihan. Deceased Budhnath Singh is not concerned with the he-goat thieves i.e. Jyoti Singh and Kastu Singh. Even then, the allegation is that when deceased Budhnath Singh did not disclose the whereabouts of Jyoti Singh and Kastu Singh, he was done to death. On the other hand, the evidence is that Jyoti Singh and Kastu Singh had died after the alleged occurrence. The evidence of PW-5 Sahdeo Singh (informant) contradicts the evidence of his mother and brother and also the village witness Rajendra Singh (PW-4) that his father was assaulted with Balua by Chadra Munda and Mansukh Munda assaulted him with Ballam on his head. This statement contradicts the statement of PW-3 Arjun Munda, son of the deceased, that first Jaypal Singh Munda gave a Lathi blow on the head of his father and then the other appellants Chadra and Mansukh assaulted him with Balua and Ballam and Budhwa with Lathi. PW-5 had not gone to the police station to lodge any information. There is no evidence as to who informed the police who reached the village-Basuki Tola. When the informant Sahdeo Singh (PW-5) was examined on 27th August, 2001 he deposed that while he was at Khalihan along with his father, at that time appellant Jaypal Singh Munda, Mansukh Munda and Chadra Munda besides Budhwa Munda and Kapildeo Singh, were at the field of Baldeo Singh. Budhnath Singh, father of the informant, also went there to know as to why there was a mob where he was assaulted by appellant Mansukh on his head with Lathi, contradicting his earlier statement that Mansukh assaulted with Ballam. This also contradicts the statement that his father was taken from the Khalihan, being assaulted by the appellants, rather his father voluntarily went to the field of Baldeo Singh where the villagers had assembled. In paragraph No. 8 he has specifically deposed that at 5.30 p.m. on that very day he went to Torpa Police Station and informed the police. He had informed the police in detail, which was recorded by the Sub-Inspector of Police and read over to him on which he signed and thereafter, he returned home on cycle. That very statement, which was given at the police station, on which this informant signed has not been brought on record. Due to non-examination of Investigating Officer, this fact remained suppressed as the informant in his evidence has deposed that he had not gone to the police station, only to suppress his earlier statement. He has also contradicted that at the place of occurrence only he and his father sustained injuries due to assault and none

else. This also contradicts the evidence of his brother Arjun Singh (PW-3) that he along with others also sustained injuries. This is only because that there is no such injury report nor there is any medical evidence to corroborate ocular evidence regarding assault on their persons. Again the informant in paragraph No. 19 has deposed that on the alleged date of occurrence he had not gone to his Khalihan. When he went to the place of occurrence, he saw his father dead. This also shows that he is not the eye-witness of the alleged occurrence. The village independent witness PW Raj Kishore Singh was at his Khalihan from where he saw that 40 to 50 persons of Jamtoli, armed with Lathi and Balua, went to the Khalihan of Budhnath Singh in search of Jyoti Singh and Kastu Singh. They took Budhnath Singh to the field of Baldeo Singh. This witness also went there. He saw appellant Mansukh Singh hurling brickbat on the back portion of the head of Budhnath Singh. Appellant Jaypal Singh also assaulted on the head of Budhnath Singh. Thereafter, he found Eudhnath Singh dead.

11. When the evidence of closely related witnesses i.e. PW-2, PW-3 and PW-5 are considered, there is contradiction as to whether they were at home from where appellant Chadra Munda and Kapildeo Munda took Budhnath Singh to the P.O. field of Baldeo Singh where he was done to death. The evidence is that PW-3 and PW-5 both were at their Khalihan along with their father Budhnath Singh. There is contradictory statement that the appellants along with other villagers went to the Khalihan and assaulted Budhnath Singh there. Their father Budhnath Singh on being assaulted at the Khalihan died. Only to prove the place of occurrence, they have deposed that their father was taken to the field of Baldeo Singh and was assaulted with Lathi, Balua and Ballam. This also contradicts the statement of PW-5 itself that there was a gathering of 40 to 50 villagers at the field of Baldeo Singh where his father Budhnath Singh went to know as to what is the matter, where he was assaulted. PW-5 once has deposed that he has not gone to the police station rather in the evening he along with other injured was referred to the hospital for treatment. In the same breath he has deposed that he had gone to the police station on cycle where he gave details of the alleged occurrence, which was recorded on which he signed. But that statement, which the very first information Report was not brought the next day i.e. 10-12-1981 at 5.30 a.m. at Village-Baski, has been brought on record. There is contradiction in the ocular evidence itself of the interested witnesses. Non-examination of the I.O. and the doctor, who conducted the postmortem examination, has caused prejudice to the appellants. This also shows that the prosecution has not come forward with clean hands rather has suppressed the earliest version of the informant (PW-5), which was recorded at the police station, where he had gone on cycle and returned back in the evening itself. This gets supported by the evidence of DW-1 Ghasi Ram Munda, who is Chowkidar, who has deposed that Kapil Singh Munda, Gopal Singh Munda and Chadra Singh Munda sustained injuries due to assault by Budhnath Singh. After fifteen days of the said assault, Kapildeo Singh Munda and Gopal Singh Munda died. Had the I.O. been examined and the earlier version recorded at the police station of the informant been

brought on record, the real fact of the alleged occurrence would have been revealed. Due to non-examination of the doctor, the injuries sustained by the deceased Budhnath Singh could not be corroborated by the ocular evidence of the interested witnesses i.e. PW-2, PW-3 and PW-5 and also the village witness PW-4 Rajendra Singh. PW-7 Dr. Sudhir Kumar Sandilya has simply proved the Post-Mortem Report (Ext. 2), which is in the pen and signature of Dr. B. K. Sinha. This proves the death of Budhnath Singh. But the manner of the alleged assault could not be proved by the medical evidence, as deposed by the witnesses.

12. When considered all the oral and documentary evidence, I find that the findings recorded by the learned Court below that there is contradiction in ocular evidence due to passage of 20 years of time has relied on their evidence, resulting conviction of these three appellants, cannot be accepted. On the other hand, the learned Court below did not consider that in this case, which was instituted in the year, 1981 and after 17 years charge was amended and framed u/s 307, I.P.C. in which all the appellants were acquitted, resulting their harassment in attending the Courts for a pretty long period of about 20 years. The contradictions regarding lodging of First Information Report at the Police Station, the place of occurrence either Khalihan of the informant where Budhnath was assaulted and done to death or whether he was dragged up to the field of Baldeo Singh where he was assaulted and done to death or whether he was taken, while he was at his home along with wife (PW-2) and two sons i.e. PW-3 and PW-5 as to whether the informant, his brother PW-3 and others were examined by the doctor and what was the First Information prosecution case itself. These aspects were not considered meticulously by the learned Court below. Hence the order of conviction is based only on the presumption that due to lapse of time, there is contradiction in the evidence of the interested witnesses, which cannot be sustained.

13. In the result, I find merit in this Criminal Appeal, which is allowed. The appellants are acquitted of the charges, levelled against them, giving them benefit of doubt. As all the appellants are in custody, they are ordered to be released forthwith from the custody, if not wanted in any other case.

S.J. Mukhopadhyaya, J.

14. I agree.