

(2006) 03 JH CK 0090

In the Jharkhand High Court

Case No : Criminal Appeal No. 182 of 1990 (P)

Chaudhary Mahto

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2006) 03 JH CK 0090

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Advocate : K.P. Deo, for the Appellant; S.N. Rajgarhia, APP, for the Respondent

Judgement

1. Cr. Appeal No. 182 of 1990 is by A-8, Chaudhary Mahto, and Cr. Appeal No. 174 of 1990 is by A-1, Jodhan Mahto, A-2, Puran Manjhi, A-3, Chandi Mahto @ Cheri Mahto, A-4, Bhim Rana, A-4, Shaligram Rana, A-6, Thakur Mahto, A-7, Etwari Mahto and A-9, Sahdeo Modi.

2. In the judgment, the appellants in both the appeals will be referred to as A-1 to A-9, in the same order as they were arrayed in Sessions Case No. 155 of 1984/10 of 1986 before the Additional District & Sessions Judge, I, Deoghar, for the sake of convenience.

3. The deceased Tejan Rana was residing in the village Baijukura. There were disputes pending between A-7, Etwari Rana and others on one side and the deceased, Tejan Rana, on the other, on account of which proceedings u/s 107 Cr.P.C. were initiated. The accused executed bonds in the said proceedings and, therefore, they were aggrieved against the deceased. It is said to be the motive for committing the occurrence. The occurrence took place at 7.30 a.m. on 13.11.1980 in the village Gobardaha.

At about 7 a.m. the deceased Tejan Rana went to the village Gobardaha for hiring labourers to do agricultural work in his village. While he was in the village

Gobardaha, accused 1 to 9 saw him and started chasing him. The deceased ran towards western field of Gobardaha and while running he fell down. The accused were armed with Lathi, Bhala, arrows and swords. After he fell down, the accused inflicted injuries on the deceased Tejan Rana with swords and other weapons. Chaudhari Mahto, A-8, cut his hands and legs, leading to bleeding injuries. Thereafter, the occurrence was witnessed by PW-1, Rameshwar Prasad Roy, PW-2, Shiv Shankar Modi, PW-3, Sachi Kant Roy and PW-5, Bhola Prasad Roy. The witnesses took the deceased Tejan Rana to Mohanpur Police Station where the deceased gave his statement, Ext. 4, on the basis of which a crime was registered and investigation was taken up by the Investigating Officer. The injured was sent to the hospital and thereafter the Sub Inspector of Police, Mohanpur Police Station, issued a requisition to the Judicial Magistrate, Deoghar, requesting him to go over to the hospital to record the statement of the deceased, Tejan Rana. Accordingly, PW-13, the Judicial Magistrate, Deoghar proceeded to the hospital and recorded the statement, Ext. 7, given by the deceased at 1.00 p.m. on the same day. It was recorded in the presence of a Medical Officer.

4. The investigation continued and witnesses were examined. In the meantime, Tejan Rana, who was undergoing treatment at the hospital, died at 2.30. P.M. and on coming to know of the death, the Officer went to the hospital and conducted inquest by preparing the inquest report. After completion of inquest, a requisition was issued to the doctor, requesting him to conduct autopsy.

5. On receipt of the requisition, PW-11, Dr. Kameshwar Prasad, conducted autopsy on the dead body of Tejan Rana and he found the following injuries:

- i) Incised wound on the front of left knee- 5" $\times$ 3/4" cutting the patella and exposing the knee joint;
- ii) Incised wound on the antero lateral aspect of left ankle 4" $\times$ 1" cutting both the tibia and fibula, muscles and blood vessels with a small portion of skin only left on medial side;
- iii) Incised wound on the left ankle 2" $\times$ 3/4" cutting the tibia;
- iv) Incised wound on the lower part of the left leg above ankle 3" $\times$ 3/4" bone deep;
- v) Incised wound on the lower part of the right leg 2" $\times$ 3/4" cutting the tibia;
- vi) Incised wound on the right leg just above the ankle 3" $\times$ 3/4" cutting the tibia;
- vii) Incised wound on the left upper arm 2" $\times$ 3/4" with fracture of left humerus.
- viii) Right hand completely chopped off at the level of wrist joint cutting the lower ends of radius and ulna;
- ix) Two bruises on left upper arm on deltoid region 2" $\times$ 1" and 2" $\times$ 2" $\times$ 1".

The doctor issued Ext. 2, the post mortem certificate, with his opinion that the

death is on account of shock and haemorrhage, as a result of the injuries suffered by Tejan Rana.

6. After the completion of the investigation, the final report was filed against the accused and when questioned u/s 313 Cr.P.C. on the incriminating circumstances, appearing against them, after the trial, they denied all the incriminating circumstances.

7. The learned trial judge, finding the appellants guilty, sentenced each one of them for imprisonment of life under Sections 302/149 of the Indian Penal Code and also directed them to suffer imprisonment for a period of two years u/s 148 and one year u/s 147 of the Indian Penal Code with a direction that the sentence of imprisonment imposed upon them u/s 147 and 148 of the Indian Penal Code will run concurrently. Against the said judgment of conviction and order of sentence, the appellants have preferred the present appeals.

8. The learned Counsel appearing for the appellants, in the above two appeals, strenuously contends that there is discrepancy between the Fardbayan given by the deceased to the Police Officer at the police station at 11.00 A.M. and the statement given by him to the Judicial Magistrate, Deoghar, PW-13 at 1.00 P.M. which was recorded at the hospital. The learned Counsel submits that though in the Fardbayan the names of all nine accused are found mentioned, in the latter statement, which was recorded by the Magistrate, the names of A-1, A-7 and A-8 were not mentioned by the deceased and, therefore, the prosecution case cannot be accepted. He further submits that even in the Fard-beyan, Ext. 4, the deceased had only implicated A-8, Choudhary Mahto, as the person, who inflicted injuries on his hands and legs with sword and that he did not give any specific overt act to any of the other accused and, therefore, the case of the prosecution, as put forth by the eye witnesses in court, has to be rejected.

10. We have heard Mr. S.N. Rajgarhia, learned A.P.P., on the above contention.

11. There can be no dispute that Tejan Rana died on account of the injuries, suffered by him and that those injuries were on account of cutting with sharp edge weapons. The doctor, P.W. 1, who conducted autopsy and who issued Ext. 2, gave evidence in court and stated that he found injuries on the dead body, which he noted in Ext. 2, the Post Mortem Certificate, and according to him, the deceased would have died on account of shock and haemorrhage, due to the injuries. We, therefore, find no difficulty in arriving at a conclusion that the deceased Tejan Rana died on account of homicidal violence.

12. The prosecution before the trial court, in order to establish that the appellants inflicted the injuries on the deceased, relied upon the oral testimony of P.W. 1, P.W. 2, P.W. 3 and P.W. 5 as well as the statement of the deceased, one recorded at 11.00 a.m. by a police officer at Mohanpur Police Station and the other recorded by the Magistrate, P.W. 13, at the Hospital at 1.00 p.m. We have perused the evidence of P.Ws. 1, 2, 3 and 5 as well as the two statements, given by the deceased. On going through the materials, placed before us, we find no

infirmity in the evidence to reject the prosecution version. The evidence of eye witness is not only supported by the medical evidence but is also supported by the two statements of the deceased, one marked as Ext. 4 and the other as Ext. 7. It is, no doubt, true, as pointed out by the counsel, that in the latter statement, Ext. 7, recorded by the Magistrate, the deceased did not mention the names of A-1, A-7 and A-8, but this by itself can not be a reason for us to disbelieve the prosecution version. It is to be remembered that the statement was recorded at 1.00 p.m. and the deceased Tejan Rana died at 2.30 p.m. i.e. within one and half hour of giving the statement. It could be easily presumed that at the time when he gave statement, due to the pain, he was suffering from, he would not have mentioned the names of all the accused. In the said statement, he has stated that A-2 to A-6 and A-9 have assaulted him with Lathi and Bhala. Ext. 7 has to be read in the backdrop of Ext. 4, which is the earliest document to come into the existence. In the said document, Ext. 4, the deceased had specifically mentioned that he was cut by A-8 with sword in hands and legs, as a result of which he suffered injuries.

13. We, therefore, find it difficult to hold that merely because there is some omission in the latter statement, Ext. 7, the accused have to be acquitted. We, therefore, reject the argument of the learned Counsel and accept the prosecution version by holding that the appellants (A-1 to A-9) attacked the deceased in the village- Gobardaha at 7.00 a.m. and as a result of which, the injured Tejan Rana died at 2.30 p.m. at Hospital.

14. The only question that has to be decided by us is that nature of the offence, committed by the accused. The facts, we have extracted above, show that though all the accused were armed with deadly weapons, they did not cause any injury on the vital part of the deceased, even after he fell down. It could be seen from the Post Mortem Certificate, Ext. 2, issued by P.W. 11, that all the injuries were on the hands and on the legs, beneath the knee. If the accused had the intention of causing the death of Tejan Rana, nothing could have prevented them from attacking the deceased by inflicting injuries on the vital parts. On the contrary, none of the accused inflicted injuries on the vital parts but only caused injuries on the legs, beneath the knee, and on the hands. We, therefore, feel that the conviction of the appellants u/s 302 read with 149 of the Indian Penal Code is to be set aside and, accordingly, it is set aside. But when the accused caused injuries, they must have had knowledge that by causing such bodily injuries to the deceased, the death is likely to occur. We are, therefore, of the view that the accused (appellant in both the appeals) are to be convicted u/s 304 Part-I of the Indian Penal Code. Accordingly, we set aside the conviction u/s 302/149 of the Indian Penal Code and instead, convict them u/s 304 Part-I read with Section 149 of the Indian Penal Code for which each one of them is sentenced to seven years rigorous imprisonment. The conviction and sentence, imposed upon the appellants under Sections 147 and 148 of the Indian Penal Code are confirmed with a direction that the sentence of imprisonment, imposed upon them u/s 147 and 148 of the Indian Penal Code, will run concurrently with the sentence,

imposed upon them u/s 304 Part-I of the Indian Penal Code, With the above modification in the order of sentence, both the appeals are disposed of. As all the appellants are on bail, their bail bonds are cancelled and they are directed to surrender before the court below for serving the sentence. The court below is also directed to take all coercive steps for their arrest.