

(2006) 05 JH CK 0117

In the Jharkhand High Court

Case No : Criminal Appeal No. 158 of 1991R

Deomohon Singh, Prahlad Singh, Jatan Rautia and Basant
Kumar Singh

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 300, 302, 304, 34

Citation : (2006) 05 JH CK 0117

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

Bench : Division Bench

Advocate : H.K. Shikarwar, for the Appellant; V.S. Sahay, APP, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellants are Deomohan Singh, Prahlad Singh, Jatan Rautia and Basant Kumar Singh, who were arrayed as A5, A7, A8 and A9 before the 2nd Addl. Sessions Judge, Gumla, in S.T.No. 3/1989. The above four appellants were tried along with six others, who were arrayed as A1 to A4, A6 and A10. In the judgment, the appellants will be referred as A5 and A7 to A9 and the other accused (who were acquitted by the Trial Judge) will be referred as A1 to A4, A6 and A10 for the sake of convenience. The appellants were convicted u/s 302 read with Section 34 I.P.C and each of them was sentenced to imprisonment for life, though they were charged u/s 302 read with Section 149 I.P.C.

2. The appellants and the deceased Bartu Singh were residents of the same village. On 5.6.1988 at about 8.00 p.m., the deceased Bartu Singh was sitting in his house. A1 Laloo Singh went there and abused the deceased by telling him that he is a beef-eater. On hearing the filthy language and hearing the accused say that he is a beef-eater, the deceased was annoyed and therefore, asked A1 Laloo Singh not to use such language against him. Shanti Devi, P.W.1, who is said to be the second wife of the deceased Bartu Singh, informed the village

Mukhiya. P.W.2, Firan Rautia, reached the place and even after P.W.2 arrived, A1 Laloo Singh continued to abuse the deceased, as a result of which there were exchange of words between them. While the quarrel was going on, the other accused joined A1. On seeing the mob, the deceased attempted to go away from the place but he was beaten with a lathi by A9 Basant Kumar Singh. A5 Deomohan Singh, A7 Prahlad Singh and A8 Jatan Rautia beat the deceased with Baluwa and Tangi. He ran to a distance but he was followed and A7 Prahlad Singh hit him on his leg by Baluwa. He was also assaulted by lathi, as a result of which the deceased Bartu Singh fell down. He was brought home where he died. A written report, Ext. 2, was given by Mangal Devi (first wife of the deceased Bartu Singh) at 11.00 p.m. on 6.6.1988 at the police station, which was registered as a crime on 7.6.1988 under Ext.3. Investigation in the crime was taken up by P.W.6, Durga Prasad Singh, who, during the course of investigation, conducted inquest over the body of Bartu Singh and prepared inquest report, Ext.4. After the inquest, the body was sent to the hospital for post mortem.

3. On receipt of the requisition and the dead body, Dr. A.K. Thakur, P.W.8, conducted autopsy and found the following injuries:

1. Incised wound of 5" ? 1" ? 1 1/2" over left mandible with mandible cut.
2. Incised wound of 5" ? 1" ? 1 1/2" below left pinna with temporal bone cut.
3. Incised wound of 5" ? 1" ? 1 1/2" over left side of neck with cut cervical vessels.
4. Incised wound of 3" ? 2" ? 1 1/2" over left suprascapular
5. region; on the superior aspect of left shoulder and over
6. left suprascapular region.
7. Incised wound of 3" ? 2" ? 1 1/2" below left knee
8. (anteromedial aspect) and above right ankle (anteromedial aspect).

The Doctor issued the post mortem certificate, Ext.7, with his opinion that death is on account of shock and hemorrhage due to the injuries. In the meantime, P.W.2, who was also beaten by the accused, was treated by P.W.7, Dr. Janak Lal Singh, for which Ext.6, the injury report, was issued.

4. After the completion of investigation, final report was filed against the appellants and the other accused, who were acquitted by the trial court.

5. Learned Snr. Counsel, appearing for the appellants, submits that there is absolutely no evidence to show that A9 participated in the incident, since the case of the prosecution that the deceased was beaten with a Lathi by A9 is not corroborated by the medical evidence as the Doctor, who conducted autopsy, did not find any injury corresponding to the lathi blow. He also submits that the Trial Judge, having disbelieved that there was an unlawful assembly, has committed an error in convicting the appellants u/s 302 read with Section 34 I.P.C, since,

according to him, the occurrence had taken place during a quarrel between the parties. On the above submission, we have heard Mr. V.S. Sahay, learned Counsel appearing for the State.

6. It is not in dispute that Bartu Singh died and he died on account of the injuries suffered by him. The Doctor, who conducted autopsy, and the post mortem certificate, Ext.7, conclusively establish the said fact.

7. P.W.1, Shanti Devi, second wife of the deceased, P.W.2, Firan Rautia, and P.W.3, Paku Ghasi, were examined as witnesses to the occurrence and of them, P.W.3 turned hostile. The evidence of P.Ws.1 and 2 shows that at about 5.00 when the deceased was sitting in his house, A1, who was acquitted by the trial court, went to the house of the deceased and abused him by telling that he is a beef-eater. The deceased raised objection and quarrel ensued between the two. At this stage, A9 is said to have joined A1 Laloo Singh and gave a blow with Lathi on the deceased. Their evidence further shows that other accused also joined A1 and A9, and that A5, A7 and A8 inflicted injuries on the deceased with Baluwa and Tangi. On going through the evidence of P.Ws.1 and 2, we do not find any reason as to why we should not accept their evidence as regards the part played by A5, A7 and A8, specially when they are not only natural witnesses but their evidence is also supported by medical evidence. We, accordingly, accept their evidence as far as the part played by A5, A7 and A8 is concerned. As regards the part played by A9, the two witnesses have stated that the deceased was beaten with a Lathi. The Doctor did not find any injury corresponding to the said overt act attributed to A9. We, therefore, give the benefit of doubt to A9 Basant Kumar Singh and hold that he is entitled to an acquittal, like others who are acquitted by the trial court.

8. The question that is to be decided by us is the nature of offence committed by A5 Deomohan Singh, A7 Prahlad Singh and A8 Jatan Rautia. We have also noticed that the accused had no motive against the deceased and it was A1 Laloo Singh who went to the house of the deceased and thereafter abused him and when the deceased raised objection, wordy quarrel ensued between him and the deceased and at that time, the other accused joined and during the said quarrel, the deceased was inflicted with injuries. In the above circumstances, we are of the view that A5 Deomohan Singh, A7 Prahlad Singh and A8 Jatan Rautia are entitled to the benefit of Exception 4 to Section 300 I.P.C as the occurrence had taken place during a quarrel and that there was no premeditation on the part of any of the accused to cause the death of the deceased Bartu Singh. It cannot also be said that they acted in a cruel or unusual manner as most of the injuries found on the body of the deceased by the Doctor are on non-vital parts. We, therefore, set aside the conviction of A5 Deomohan Singh, A7 Prahlad Singh and A8 Jatan Rautia u/s 302 read with Section 34 I.P.C and instead find each of them guilty u/s 304 Part II I.P.C as they must have caused the death without the intention of causing death but with the knowledge that such act will cause death. On being convicted u/s 304 Part II I.P.C, each of them is sentenced to

imprisonment for a period of five years.

9. In the result, the appellant No. 4, Basant Kumar Singh A9, is acquitted. A5 Deomohan Singh, A7 Prahlad Singh and A8 Jatan Rautia are also acquitted u/s 302 read with Section 34 I.P.C and instead each of them is found guilty u/s 304 Part II read with Section 34 I.P.C, for which each of them is sentenced to imprisonment for a period of five years. It is reported that the appellants are on bail. Their bail bonds stand cancelled. The Sessions Judge is directed to take steps to commit the appellants to prison for serving the remaining part of the sentence.

With the above modification, this appeal is dismissed.