

(2001) 04 JH CK 0016

In the Jharkhand High Court

Case No : Criminal Appeals No's. 79, 84 and 86 of 1995 (R)

Deori Bankira and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 302, 34, 364, 452

Citation : (2001) CrLJ 3579 : (2001) AIR Jhar HCR 145 : (2001) 1 JLJR(Jhar) 289 : (2001) 49 BLJR 1843

Hon'ble Judges : Deoki Nandan Prasad, J

Bench : Single Bench

Advocate : Jaya Roy, Jasvinder Mazumdar, Tarun Kumar and A. Banerjee, for the Appellant; Shekhar Sinha, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Deoki Nandan Prasad, J.—All the three appeals heard together as they are arising out of the same judgment and are being disposed of by this common judgment.

2. These appeals have been directed against the Judgment dated 1-9-1995 passed by the District and Sessions Judge, Singhbhum West at Chaibasa in Sessions Trial No. 188 of 1995 whereby the appellants have been convicted u/s 148/364 read with Section 34 and under Section. 452/34 of the Indian Penal Code and sentenced to undergo R.I. for seven years under Section. 364, I.P.C. whereas the appellant Jain Ram Mahali was sentenced to undergo R.I. for two years u/s 364 of the Indian Penal Code.

3. The case of the prosecution, in brief is that one Lakhi Ram Mahali along with his family members was staying at his house on 14-1-1995 and on the same day at 6/7 P.M. all the accused persons/appellants variously armed with Revolver, Bhujali and Lathi reached there and called the informant. When the informant. Lakhiram Mahali came out from the house, the accused persons caught hold of

him and enquired about his mother. Accused persons entered into the house of the informant whereas the accused Hagua Mahali and Kobro Samad brought out the informant's mother, namely, Sulo Mahalin and thereafter the accused persons took her away. The accused persons also threatened the informant and his family members. The informant and his family members fled away out of fear. Accordingly the first information report was lodged. The police investigated into the case and submitted charge-sheet against all the accused persons/ appellants.

4. Accused persons appeared in the Court below. The charge was framed u/s 364/34 of the Indian Penal Code, Sections. 148 and 452/34, I.P.C. to which the accused persons/ appellants pleaded not guilty. Witnesses were examined in the Court below. After hearing both sides and considering the evidence on record, the trial Court convicted and sentenced the appellants in the manner as stated above.

5. Being aggrieved by the judgment impugned, the appellants preferred this appeal claiming therein that the Court below committed error in convicting the appellants as there is no direct evidence against the appellants as well as no any independent witness was examined by the prosecution. It is further alleged that the first information report has been lodged after much delay of the occurrence as there is no cogent explanation has been assigned and as such the judgment impugned is fit to be set-aside.

6. Learned counsel for the appellants, at the very outset submitted that there is much contradiction in the evidence of the witnesses which makes out the whole prosecution case suspicious as well as the first information report has been lodged after much delay of the occurrence and no independent witness has been examined in this case to corroborate the prosecution story. It is also pointed out that the Court below has silent about Section 148 of the I.P.C. as well as three accused persons, namely, (1) Robro Samad (2) Berga Samad and (3) Bagrai Gagrai have already been acquitted giving benefit of doubt and as such, the case of the remaining appellants/accused persons are similar and identical and, therefore, the appellants are also entitled for the benefit of doubt.

7. The learned counsel for the State contended before me that the first information report has been lodged after delay which has duly been explained by the informant.

8. P.W.I is the informant, stated that the accused Hagua Mahali, Dokro Jamuda, Diuri Bankira, Selai Jamuda, Jairam Mahali and Karam Singh Mahali entered into his house whereas he stated in the written report that the accused Hagua and Rogro Samad had taken away his mother whereas P.W.3 has stated that accused Robro Samad and Hagua Mahali took away his mother Sulo Mahalin. P.W.1, the informant, further stated in his cross-examination that he had reported the matter on the next day about the incident and he had gone to the police station along with his son. He further claimed that his statement was recorded and he put his signature. He also stated that the statement of his son was also recorded

on which his son also put his signature. But surprisingly enough that a written report dated 14-1-1995 was submitted on 20-1-1995 by the informant on which the informant put his L.T.I. and this first information report has admittedly been lodged after six days of the occurrence which does not bear the signature of either of the informant or his son.

9. P.W.3 is the Nephew of the informant and he also stated that he had gone to Thana on the next day and his statement was also recorded but no such statement has been produced nor the first information report was lodged on the next day has been brought on record by the prosecution, as a result of which much suspicion arise. P.W.4 is the Investigating Officer who stated that the mother of the informant could not be tressed. P.W.2 is a formal witness.

10. The first information report has admittedly been recorded after much delay of the occurrence and the informant claimed to have reported the matter about the incident on the next day of the occurrence and he also put his signature on the statements recorded by the police official but that document is not brought on the record to substantiate such story. No any independent witness has been examined in this case. Moreover there appears much contradiction in the evidence of P.Ws as regards to the manner of occurrence as there is allegation that accused Hagua and Robro Samad had taken away the mother whereas the informant claimed in his evidence that the accused Hagua, Dokro Diuri, Selai, Jairam and Haran Singh entered into the house and took away his mother. He had not named other three accused persons. P.W.3 stated that accused Rosai and Hagua caught hold the mother of the informant. He also deposed that he had not named any of the accused persons in taking away the victim. Both P.W.1 and P.W.3 are relation and seem to be interested witnesses. Conviction on the ba-i sis of interested and related witnesses which has not been corroborated by other circumstantial evidence, cannot be susitained. In the instant case the first information report has also been lodged after much delay of the occurrence for which no cogent explanation has been assigned. The trial Court has already acquitted three accused persons giving benefits of doubt. Charge under Section. 302/34, I.P.C. was framed against all the accused persons, out of which three accused persons have already been acquitted against whom there was also allegation/charge with common intention and there was no independent charge framed u/s 302, I.P.C. against the appellant as well as there is no evidence showing that the appellants independently committed the crime. In the result, rest of the accused/ appellants cannot be convicted for the same offence and they can also be acquitted giv-i ing them benefit of doubt. (Reference can be made of the case of State of West Bengal Vs. Vindu Lachmandas Sakhrani alias Deru,

11. It is well settled that burden of proof about the manner of occurrence squarely rests in Criminal trial upon the prosecution and it has to be established beyond all reasonable doubts. If any doubt arose, the accused will get the benefit. There is no corroboration of any independent witness in respect of the

manner of occurrence and as such the whole prosecution case comes under the mischief of suspicion and for which the appellants are entitled for the benefit of doubt.

12. Having regard to the above facts and circumstance, coupled with the evidence on record, it is evident that the prosecution has failed to establish the charges against the appellants beyond all reasonable doubts. Thus I do not find them guilty for offences charged.

In the result, all the appellants are acquitted for the benefit of doubt. All the three appeals are allowed. The Judgment of conviction and sentence passed by the learned Court below is hereby set aside. The appellants are already on bail and as such they are discharged from the liability of their bail bonds.