
(2006) 05 JH CK 0022

In the Jharkhand High Court

Case No : Criminal Appeal No's. 154 and 178 of 1998R

Dinesh Singh and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 01-05-2006

Acts Referred:

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

Citation : (2006) CriLJ 3560 : (2006) 3 JLJR 199 : (2006) 3 EastCriC 18 :
(2006) 2 AIRJharR 456

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

Bench : Division Bench

Advocate : T.R. Baja and R. Singh, for the Appellant; A.K. Aman, B.B. Sinha, APP, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The appellants in Cr.Appeal No. 154/1998R are A3, A4, A5 and A6 and the appellants in Cr.Appeal No. 178/1998R are A2 and A1 respectively on the file of 4th Addl. Sessions Judge, Palamau at Daltonganj, in S.T. No. 35/1996. In the judgment, the appellants of Cr.Appeal Nos. 154 & 178 of 1998R will be referred as A1 to A6 in the same order as they were arrayed before the Sessions Judge for the sake of convenience and the above two appeals are disposed of by the following common judgment.

2. The deceased Kamta Singh was charged for the murder of the father of A3, Dinesh Singh. After the trial, Kamta Singh was acquitted. Therefore, the accused, who were related to each other, were nurturing a grievance against the deceased Kamta Singh, and this is said to be the motive for the occurrence.

3. On 21.8.1995, all the accused persons, deceased and P.W.8, Yogendra Singh, who is the cousin of the deceased Kamta Singh, as well as other villagers went to attend the funeral procession of Bijay Nandan Singh, who died in the village. After the cremation was over at Deowaria Ghat near the bank of Sona river, all

the witnesses, the deceased and the accused returned. When the deceased reached Harihar Chawk, the deceased and P.W.8 as well as some villagers went to the Tea Stall of Rameshwar Sao to take tea. After taking tea, while Kamta Singh went to find out the availability of Kerosene Oil, the others including Brihaspati Singh(who turned hostile) went to a Beetle Shop, which was 100 yards away from the Tea Stall. While P.W.8, Yogendra Singh, and others were buying beetle leaves and nuts, they heard gun shots. They reached the place from where gun shot emanated, and found A1 to A6 surrounding the deceased Kamta Singh, who was trying to run away from the place. When P.W.8 went there, he saw the deceased being assaulted by Fasuli in indiscriminate manner by all the accused. At that time, A1 to A6 ran away from the place. The occurrence was witnessed, according to the prosecution, by P.W. 1 Deogovind Singh, P.W.2 Jaigovind Singh and P.W.8 Yogendra Singh. Thereafter a complaint, Ext.5, was given at the police station by P.W.8 Yogendra Singh, on the basis of which a crime was registered.

4. Investigation in the crime was taken up by Sidheshwar Prasad Singh, who was examined as P.W.9, who on reaching the scene of occurrence, conducted inquest over the dead body by preparing inquest report, Ext.6. After the inquest, the body was sent to the hospital for postmortem.

5. On receipt of the requisition, P.W.5A, Dr. Gayani Prakash Singh, conducted autopsy and he found the following injuries:

1. Firearm injury : (a) wound of entry : in front of right ear 2 cm x 2 cm bone deep with irregular edges which were invested and blackening and charring around it.

(b) wound of exit : Below and in front of left ear 4 cm. x 4 cm. x bone deep with irregular invested margins.

2. Firearm injury : wound of entry : 2 cm x 2 cm cavity deep at right 8th costo chondral junction with tatooing marks around it.

3. Incised wound : 5 cm. x 2 cm. x bone cut at left mallar eminence. ?

4. x (cross) shaped incised wound over left parietal region with fracture of outer table of skull

5. Incised wound : 5 cm x 2 cm. over vertex.

6. Incised wound : over occipital region 9 cm x 2 cm with fracture of outer table of skull with three incised wounds of approximately 5cm x 5cm skin deep by its side.

7. Incised wound : 9cm x 2cm x bone deep just above left ear.

8. Incised wound : 2 cm x 5cm at frontal region.

9. Incised wound : right parietal region 4cm x 2 cm x skin deep

10. Incised wound : post aspect of neck 7cm x 2 cm subcut, tissue deep.
11. Two small lacerated wound near left clavical
12. Incised wound : left 1st webspace 4cm x 2cmxmucle deep
13. Puncture wound : right to the midline mid back 1 cm x 1 cmx muscle deep
14. Puncture wound : near border of right scapula 1 cm x 1 cm muscle deep
15. Incised wound : left scapula bonder.

6. After the completion of investigation, final report was filed and the accused denied all the incriminating circumstances. They examined Shirpujan Singh Tayagi, an Advocate's clerk, and marked Exts. A, B and C series through him to show that the deceased Kamta Singh was facing several criminal cases.

7. The Trial Judge, accepting the evidence let in by the prosecution, convicted A1 to A6 u/s 302 read with Section 34 I.P.C, and sentenced each of them to imprisonment for life. A2 and A3, on being found guilty under , were sentenced to rigorous imprisonment for three years each. A7, A8 and A9, who also faced charges along with the above accused appellants, were acquitted. Hence, the above two appeals are by the convicted accused.

8. Learned Senior Counsel appearing for the appellants in both the appeals contends before us that there is no material for the Court to infer that the accused shared the common intention of each other. According to him, since the Doctor found gun shot injuries and according to the prosecution, those gun shot injuries were caused by A2 and A3, the other accused cannot be held guilty with the aid of Section 34 I.P.C. He submits that though Manoj, son of P.W.4, was present at the Tea Stall, he was deliberately not examined as an eye-witness and the prosecution only examined P.Ws.1, 2 and 8 as eye-witnesses, who are related to the deceased and that non-examination of Manoj is fatal to the prosecution. On the above submission, we have heard Mr. B.B. Sinha, learned Counsel appearing for the State.

9. There is no doubt that Kamta Singh died on account of the injuries suffered by him. Dr. Gayani Prakash Singh, who conducted autopsy and who issued the post mortem certificate, Ext.5/A, proves the said fact. We, accordingly, hold that the deceased died on account of homicidal violence.

10. The prosecution examined P.Ws.1, 2 and 8 as eye-witnesses to the occurrence. It is, no doubt, true that P.W.1 is the brother of P.W.2 and P.W.8 is the cousin brother of the deceased. The fact that they are related to the deceased is no ground to reject their evidence, if their evidence is found satisfactory and trust-worthy. On going through their evidence, we find no material in favour of the accused to reject the evidence of the witnesses and in particular, the evidence of P.W.8, who set the law in motion by giving fardbeyan, Ext.5, which shows that on hearing gun shot, they reached to the place from where the gun shot was heard and found the deceased being attacked by all the

accused. At that time, witnesses noticed pistols in the hand of A2 and A3. On seeing the witnesses, the appellants went away from the place. In fact, the Doctor, who conducted autopsy, found gun shot injuries on the dead body and also noticed punctured and incised injuries on the dead body, which shows that the deceased was indiscriminately cut and stabbed by several persons after he was shot. The prosecution witnesses had given evidence and stated that it was the appellants accused, who inflicted those injuries. We find no reason to reject their evidence on the only ground that they are related to the deceased.

11. We also find it difficult to accept the argument of the learned Senior Counsel that the accused could not have shared the common intention of each other. The case of the prosecution, as we have noticed, is that the deceased was shot at and on hearing gun shot, the witnesses rushed to the place and thereafter found all the accused cutting and stabbing the deceased in indiscriminate manner. If the accused did not share the common intention of each other, then there was no need for any of the accused to have inflicted all the injuries, after he was shot at by A2 and A3, as they were the persons who were having pistols in their hands. The very fact that after the deceased was shot at, he was further assaulted indiscriminately by all the accused shows that all the accused shared the common intention of each other by cutting and stabbing the deceased, as a result of which he died. We, therefore, reject the argument of the learned Senior Counsel that there was no common intention among the accused. The conviction and sentence imposed upon the appellants are confirmed.

The above appeals are dismissed.