
(2019) 01 JH CK 0027

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 273 Of 2001

Dodhi Singh Munda And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 11-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 324, 307
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 01 JH CK 0027

Hon'ble Judges : Ratnaker Bhengra, J

Bench : Single Bench

Advocate : Vishal Kumar Tiwary, Kerti Saboo, Manoj Kumar

Final Decision : Dismissed

Judgement

1. This Criminal Appeal has been preferred against the judgment of conviction and order of sentence dated 19th June, 2001 & 22nd June, 2001 respectively passed by the 2nd Additional Judicial Commissioner, Khunti (Ranchi) in connection with S.T. Case No. 275 of 1997/ T.R. No. 427 of 97 arising out of Sonahatu P.S. Case no. 10 of 1997, G.R. no. 68 of 1997, whereby and whereunder appellants were convicted u/s 307/34 of the Indian Penal Code and sentenced to undergo imprisonment for five years along with a fine of Rs. 3000/- payable to both the injured persons i.e. Rs. 3000/- will be paid by Lakhan Munda to Biresh Hazam and Rs. 3000/- will be paid by Dodhi Munda to Naresh Hazam and in default of payment of fine both shall further undergo sentence for one month.

2. The case of the prosecution as per the fardbeyan of informant Naresh Hazam PW-9 is that on 17.1.1997 at about 7 :30 in the evening the informant and his brother Biresh Hazam were returning from their sister's house. As soon as they reached between the village near the pond they were surrounded by the appellants. Dodhi Singh Munda was armed with tangi and Lakhan Singh Munda was armed with farsa. Apart from these two appellants there were other accused

who were variously armed. Dodhi Singh Munda ordered to kill them. Dodhi Singh Munda assaulted the informant with tangi on the head and when the younger brother Biresh Hazam came to his rescue, he too was assaulted with farsa by Lakhan Singh Munda. Due to assault, the informant injured became unconscious and gained sense on 27.1.1997 at R.M.C.H. and learned that he and his brother were admitted to the hospital by Duryodhan Hazam and Shashi Bhushan Hazam.

3. On the basis of fardbeyan police registered Sonahatu P.S. Case no. 10 of 1997 U/Ss. 147,148,149,307,323 and 324 of the IPC. After completion of investigation, charge sheet was submitted against the accused persons and after taking cognizance, the case was committed to the court of Sessions. Charge was framed against the accused under Section 307/34 IPC. The prosecution examined altogether thirteen witnesses and on the conclusion of the trial the learned trial court convicted and sentenced the appellant as aforesaid. Hence, this appeal.

4. P.W.-9 is Naresh Hazam, the informant of the case. He deposed that on the date of occurrence at 7:30 he and his brother Biresh had eaten food at their sister's place and were returning for home. When he and his brother reached near the Bhurku Talab then they saw Dodhi Singh Munda carrying an axe and Lakhan Singh Munda carrying a farsa and other accused persons were variously armed. When both the brothers reached near these persons then all of them surrounded both of them. Dhodi Singh Munda assaulted him with axe on his forehead. After that his brother reached there and tried to save him. Then Lakhan Singh Munda assaulted him with farsa on his head due to which his brother Biresh fell down and became senseless. After that he also became senseless and when he regained his consciousness on 29.1.1997, he gave his statement to the officer-in-charge of Sonahatu P.S. at RMCH, Ranchi which was read out to him and then he gave his thumb imprint upon it which has been marked as Ext. 1. He further deposed that the accused had assaulted with an intent to murder them. In his cross-examination in paragraph no.8 he has deposed that they had recognized all the accused in the light of the moon. He had further deposed that he had only received one injury on his forehead and that his brother had also sustained one injury on his head.

5. P.W.-8 is Biresh Hazam, he is the brother of the informant. He deposed that they were returning at 7:45 p.m. after eating food in his sister's house. When both the brothers had reached near the Bhurku pond, they saw Dodhi Singh Munda , Lakhan Singh Munda and other accused persons sitting there. Dodhi Munda was armed with an axe and Lakhan Munda was armed with farsa. On seeing both the brothers all the accused persons got up and surrounded them. After that Dodhi Singh Munda assaulted Naresh with the axe on his forehead. When he went to save Naresh then Lakhan Singh Munda assaulted him with tangi on his head. He was assaulted with farsa and then he fell down.

On alarm Fuleshwari Devi, his wife Fulkati Devi reached there and both the injured were taken home. He regained consciousness in the home. He regained

consciousness in the home but Naresh did not regain consciousness. Both the brothers were taken to Sonahatu P.S. from where both the brothers were taken to hospital. The police had questioned them in the Sonahatu police station itself. From Sonahatu hospital both the brothers were taken to RMCH. Naresh was admitted in the hospital for one month.

6. P.W.-1 Fuleshwari Devi is the mother of informant. She deposed that she did not see the actual occurrence. She had named all the accused persons as the assailants and in para 5 she stated that some days prior to the occurrence, accused Dodhi Singh quarreled with her son Naresh. She was well cross-examined on the place of occurrence in para 10 and 11 and in para 13, she deposed that her son Biresh did not tell anything about the occurrence and she attended the injured son at RMCH for a month and the police officer firstly took the statement of PW-8 Biresh.

7. PW-2 Jera Devi is another hearsay witness. She is the sister of the injured who disclosed her about some quarrel between Naresh and Dodhi Singh. In cross-examination she deposed to have learnt from Dhiresh PW-10 and then she came to the house but she had no talk with her brothers. She further deposed on query that Biresh PW-8 had told the names of the assailants.

8. P.W.-10 Dhiresh Hazam deposed that he reached the scene of occurrence on hearing hulla and noticed the accused persons fleeing away and he also saw Naresh and Biresh in injured condition lying near side of a pond with pool of blood. Both the injured were taken to RMCH for a month. In cross-examination it has come that he went to the place of occurrence on hearing hulla and saw that both the injured were unconscious. In para 9 it has come that the statement of Biresh was not recorded by the police at the hospital and there was no enmity with the accused persons.

9. P.W.-12 Shashi Bushan Hazam is a hearsay witness. He deposed that all eight accused persons have assaulted Naresh and Biresh but did not tell the weapons used. Then he went to the house and found Naresh senseless but Biresh in sense and they were carried to the hospital where the police came and recorded the statement upon which he put his signature as witness which is marked as Ext. 2/2. During cross-examination it has come that he has not seen the occurrence and he carried the injured upto Baria where he stayed for 15-20 days.

10. P.W.3 Hari Shankar, PW-4 Sukhlal Seth, PW-5 Ghasi Mahto, PW-6 Bipat Mahto and PW-7 Ahlad Singh Munda are declared hostile as they have got no knowledge about the occurrence.

11. P.W.13 is Dr. Mritunjay Sarawagi deposed that on examination of both the injured persons following injuries were found:

On examination of Biresh Hazam one incised wound over right parietal of scalp semi linear in shape 6"x1"x1" deep and X-ray of the scalp vide plate no. 199 dated 18.1.1997 showed no bonny injury. Nature of injury is simple and caused

by sharp cutting weapon like tangi within 12 hours. This injury report is proved as Ext.3.

On examination of Naresh Hazam he found one incised wound over forehead extending from right frontal region to left parietal region semi linear in shape 12"x3"x3" deep with fracture of underline bone. Laceration of brain and extrusion of brain matter in the right frontal region. Injury is grievous and caused by sharp cutting weapon such as tangi within 12 hours of examination. In cross-examination he admits that both the injured sustained single blow and the measurement of the injury is assessed on the basis of change in colour of adjacent skin of the injury and scab formation and bleeding.

Doctor proved the injury report of informant Naresh Hazam as Ext.3/1.

ARGUMENTS ON BEHALF OF APPELLANTS:

12. Learned counsel for the appellant argued that there has been complete delay in lodging of the FIR. He has argued that the incident had occurred on 17.1.1997 and the police was informed on 27.1.1997 and for this delay, the plea has been taken that as the victims were injured so it could not be informed in the nearby Police Station and only when the informant became conscious then only the police recorded the statement of the injured. Thereafter, after a long delay, FIR was lodged on 5.2.1997. This aspect of the case has also not been considered by the trial court. This needs to be viewed in the light that the police station was not very far away and they could have been informed much earlier and the delay is only for manufacturing of the case against the appellants. Learned counsel also submitted that there was no need for the police to wait to lodge the FIR. In this connection he has cited the judgment of Hon'ble Apex Court passed in the case of Nallabothu Ramulu Vs. State of A.P. reported in (2014) 12 SCC Page 261. Learned counsel has submitted that delay is not satisfactorily explained and cited a judgment passed by the Apex Court in the case of State of A.P. Vs. Madhusudhan Rao reported in (2008)15 SCC 582 at Paragraph 30 to 31 in this regard.

13. Learned counsel has also argued that no motive has been attributed or explained as to why the accused persons would be committing the offence that they are alleged to have committed. Learned counsel further argued that during the alleged occurrence there was apparently no source of light or at the most it has been recorded that there was moon light. Learned counsel argued that it is to be noted that the occurrence is of a mid-winter night i.e. on the 17th January and at 7:30 in the evening and therefore it would be very dark and therefore recognition of the appellants would not be possible. Moreover, since all eight persons have been named it creates much doubt as it is very surprising that only in the moon light how all the eight persons were recognized by the informant. The learned court below has failed to appreciate that there is no independent witness to prove the charges against the appellants as the witnesses who have been examined are highly interested witness. PW-1 Fuleshwari Devi, PW-2 Jeera

Devi, PW-10 Dhiresb Hazam and PW-12 Shashi Bhushan Hazam have supported the case only because they are family members and highly interested persons. Only the two injured person PW-8 and PW-9 are the most interested persons and they have only supported the case and except that there is no other evidence against the appellants. PW-8 Biresh Hazam has also tendered inconsistent evidence about the weapon used in the offence. He said that Naresh Hazama was assaulted by tangi and then he changed it to farsa and there is vast difference between both these weapons. In the FIR and in the deposition informant PW-9 Naresh Hazam an injured witness has himself stated that two blows were given on his head, one by lathi and another by tangi, and he had fallen down due to the blow by the lathi but this has not been supported by PW-13 Dr. Mrityunjay Singh while examining the injured persons.

14. Learned counsel for the appellants submitted that all the witnesses who supported the case are hearsay witnesses and had not seen the occurrence and solely relying on those witnesses will highly prejudice the case of the appellants. All the independent witnesses PW-3 Hari Shankar Singh Munda, PW-4 Shukhlal Seth, PW-5 Ghasi Mahto, PW-6 Bipat Mahto and PW-7 Ahlad Singh Munda have not supported the case of prosecution and this fact of the case has not been considered by the court below. If it had been considered by the court below the accused or the appellants herein would have definitely been acquitted. None of the villagers have supported the case of prosecution and no independent witness has been brought by the prosecution who could have supported the case of the prosecution and in fact the incidence has occurred in the heart of the village. I.O. of the case has not been examined by the prosecution and because of this no opportunity was offered to the appellants to verify the exact place of occurrence and they could not even examine or cross examine the I.O. regarding any tramplng marks on the place of occurrence or any blood stain on the place of occurrence. Learned counsel has also argued that there was no proper compliance of Section 313 of Cr.P.C.

15. Learned Counsel for the appellant has also submitted that the lack of motive on the part of the accused or the appellants can be also made out because there was no repeated assault and he has cited a judgment of Firangi Sah & Ors. Vs. The state of Jharkhand and Ors. reported in (2010) 4 JLJR 556. Counsel said that along with no motive being attributed and along with lack of intention which is made out by lack of repeated assault and there is no criminal antecedent of the appellant on record and all these may also be considered while deciding the case. Finally learned counsel for the appellant without conceding his guilt has argued that that the period already undergone may be considered sufficient punishment even otherwise and he has cited the case of Kailash Mandal & Anr. Vs. State of Jharkhand reported in (2005) 4 JLJR 522.

ARGUMENTS ON BEHALF OF STATE:

16. Learned A.P.P. has argued that this is a case in which there are two injured eye witnesses whose evidence has been supported by the doctor and this itself is

sufficient to bring home the case for conviction and so even if the I.O. has not been examined the conviction of the appellant could not be set aside. There is no record to the extent that the accused or appellant had also sustained any injury which would be sufficient indication that it was only the accused or the appellants who are the aggressors and had committed the injuries. The informant of the case is P.W. 9 Naresh Hazam and he has supported the prosecution case and deposed that Dodhi Singh Munda was at the place of occurrence with tangi in his hand while Lakhan Singh Munda had a farsa in hand. Appellant Dodhi Singh had assaulted him on his forehead. PW-8 Biresh sought to rescue him then appellant Lakhan Singh Munda assaulted P.W.8 by farsa. He has further deposed that informant became unconscious and regained conscious in hospital. Police had taken his statement at the RMCH hospital where the informant stayed for about a month. PW-8 is Biresh Hazam is also an injured eye witness he has also supported the prosecution case. Therefore, counsel for the State said that it is clear from the evidence of PW-9 and PW-8 who were the injured witnesses that they had received severe injuries so much that they had to be hospitalized wherein they were treated. He has then referred to the evidence of PW-13 Dr. Mritunjay Sarawagi and pointed out the injuries that PW-8 Biresh had received incised wound over right parietal of skull. The nature of injury was simple however it was shown that it was caused by sharp cutting weapon such as a tangi. Learned counsel for the state then referred to the injuries of informant PW-9 Naresh Hazam and pointed out that he has also received one incised wound over forehead extending from right to left 12"x3"x3" deep with fracture of underlined bone. Counsel for the state pointed out that injury sustained by Naresh Hazam is grievous in nature and has been caused by sharp cutting weapon such as tangi. The injury report of Naresh Hazam has been proved by the doctor and it was marked as Ext. 3/1. Counsel for the State further submitted that both the injuries of Naresh and Biresh had been caused by sharp cutting weapon and this displays the intention and motive of the appellants. Counsel said therefore, ocular evidence is fully established by the medical evidence and guilt of the appellants is fully proved and therefore judgment of conviction and order of sentence of the learned trial court needs to be fully upheld.

17. FINDINGS:

After hearing both the parties, having gone through the record of the case and the evidence I find that one of the first objections of the counsel for the appellant is that there was delay in lodging of the FIR. However, it is to be noted that the informant PW-9 also injured eye witness was hospitalized for quite some time and therefore, the injured witnesses themselves and the family members must have been informed to look after the health and well being of the injured persons which would have been the first priority and thereafter they were able to attend to lodging of the FIR. Therefore, the delay may be there but it is not totally unexplained and in the facts and circumstances I do not see why this court should not accept the delay that has been caused for valid reasons. Regarding

the identity of the accused since the accused were known to the informant's side the assault was done from close quarter and it is not something like a gun being firing upon them but it required inflicting injuries from close quarter and therefore from that distance it would not be difficult to recognize the assailants particularly if they were already known or familiar to the injured or other witnesses.

18. Regarding no proper compliance of section 313 Cr.P.C. this court finds that in view of doctor's injury report, no prejudice was caused to the appellants

19. Regarding the assault it is seen that the informant PW-9 has described the assault wherein the present appellants had been specifically named and even in the evidence of PW-8 who is Biresh Hazam he had also corroborated the prosecution case regarding the manner of occurrence. He had described vividly the manner of assault and the reliability and trustworthiness of an injured witness is of a higher degree than an unharmed witness and there is no reason why I should not believe PW-8 and PW-9. The medical evidence of the doctor PW-13, Dr. Mritunjay Sarawagi corroborates the assault made on PW-8 and PW-9.

20. But, I find that learned court below erred in convicting the appellants under section 307/34 of the IPC. The reason is that in cross-examination Doctor PW-13 Mritunjai Sarawagi at para 8 and para 9 specifically deposed that injury caused to PW-9 Naresh Hazam and PW-8 Biresh Hazam was caused by single blow. In such circumstances, there was no repetition of assault by the appellants on PW-9 and PW-8. So there was no intention to commit murder. Hence, no offence under section 307/34 is made out and as such the conviction and sentence of the appellants under section 307/34 IPC is set aside. The appellants are found guilty under section 324/34 IPC

21. Regarding sentencing this court finds that occurrence is of the year 1997 and almost 21 years has passed and also considering the rigour and vigour of trial, appellants are sentenced to modified sentence of 6 months rigorous imprisonment and any period undergone to be subtracted from the modified sentence imposed by this Court. As both appellants caused injury to Naresh Hazam and Biresh Hazam, appellant no.1 Dodhi Singh Munda will pay Rs. 5,000/- as compensation to Naresh Hazam and appellant no.2 Lakhani Singh Munda will pay Rs. 5,000/- as compensation to Biresh Hazam and in default of payment of fine both shall further undergo simple imprisonment of one months.

22. Bail bond of the appellants are cancelled. Learned court below is directed to take steps as per law to carry out the modified sentence imposed by this Court.

23. Accordingly, this appeal is dismissed with alteration in conviction and sentence.