
(2018) 04 JH CK 0011

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No.1565 of 2005

ETWA ORAON , FAGUA ORAON

APPELLANT

Vs

STATE OF JHARKHAND

RESPONDENT

Date of Decision : 06-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 324
Code of Criminal Procedure, 1973 — Section 313
Indian Evidence Act, 1872 — Section 32(1)

Citation : (2018) 04 JH CK 0011

Hon'ble Judges : H.C. MISHRA, J;B.B. MANGALMURTI , J

Bench : Division Bench

Advocate : Akhauri Anjani Kumar, Ravi Prakash

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellants and learned counsel for the State.
2. The appellants are aggrieved by the impugned Judgment of conviction dated 17th December, 2005 and Order of sentence dated 20th December, 2005, passed by the learned Additional Judicial Commissioner-FTC-X, Ranchi, in S.T. No. 246 of 1992, whereby, both the appellants have been found guilty and convicted for the offence under Sections 302 / 34 of the Indian Penal Code. Upon hearing on the point of sentence, the appellants have been sentenced to undergo R.I. for life for the said offence.
3. The prosecution case was instituted on the basis of the F.I.R. lodged by the informant Bhaua Oraon, the brother of the deceased Sukhai Oraon. The informant also died during the treatment. The F.I.R. was lodged on 12.07.1991 at about 03:45 P.M. by the informant Bhaua Oraon in the injured condition, at Chanho Police Station, wherein he has stated that at about 01:00 to

02:00 P.M. on the same day, he was in his agriculture field when his co-villager Shyam Oraon and his two sons Fagua Oraon and Etwa Oraon came there. Fagua Oraon was armed with knife and others were armed with lathi. Shyam Oraon told the informant as to why he had cut the bamboos and why he was not allowing them to take water from the well, and started assaulting the informant. He was firstly assaulted by lathi on his head and other parts of the body by Shyam Oraon and his son Etwa Oraon, and when he fell down, Fagua Oraon assaulted him by knife causing injury on his back. His wife, who was grazing the cattle nearby, raised the alarm whereupon his brother Sukhai Oraon came to his rescue, whereupon all the three accused persons assaulted him also, and Fagua Oraon also assaulted him by knife, whereupon his brother tried to escape, but he fell down and died at the spot. He has stated that this occurrence was seen by his wife and his son and other villagers. He gave the statement at the Police Station, on which he put his thumb impression and his son Chanda Oraon put his signature as a witness. On the basis of the information given by the informant Bhaua Oraon, Chanhoo P.S. Case No. 59 of 1991, corresponding to G.R. No.3132 of 1991 was instituted for the offences under Sections 302, 324 / 34 of the Indian Penal Code, and investigation was taken up. After investigation, the police submitted the charge-sheet in the case.

4. After commitment of the case to the Court of Session, charge was framed against all the three accused persons for the offence under Sections 302 / 34 of the Indian Penal Code, for committing the murder of Sukhai Oraon and Bhaua Oraon, as also under Sections 324 / 34 of the Indian Penal Code, and upon the accused personsâ?? pleading not guilty and claiming to be tried, they were put to trial. The impugned Judgment shows that after conviction, and before passing the Order of sentence, the accused Shyam Oraon, the father of these appellants, died. Accordingly, the Order of sentence was passed only against these appellants.

5. In course of trial, nine witnesses were examined by the prosecution, including the I.O., and the Doctor, who had conducted the post-mortem examination on the dead body of the deceased Sukhai Oraon. Out of the material witnesses examined, P.W.-2 Sukro Orain, the wife of the deceased informant was only tendered by the prosecution and the other witnesses, P.W.-3 Nagu Oraon, P.W.-7 Lakhna Oraon and P.W.-8 Ram Lagan Mahli,

have turned hostile and have not supported the prosecution case.

6. The prosecution case is supported by only by one witness, P.W.-1 Chanda Oraon, the son of the deceased informant. This witness has stated that

the occurrence had taken place about two years ago in a raining season, and he was working in his agriculture field. Bhaua Oraon was also in the field

and at a distance of about 150 feet there is the house of the accused persons. Shyam Oraon, Etwa Oraon and Fagua Oraon came there, Fagua Oraon

was armed with knife and Shyam Oraon and Etwa Oraon were armed with lathi. All the three came and started assaulting his father. He was at some

distance, as such, he could not say as to which accused had assaulted by what weapon. On the alarm raised, his uncle Sukhai Oraon was also coming

and while he was at some distance, all the three accused persons assaulted him to death. His father had also fallen down, who was brought to Bariatu

hospital, where he died during treatment after seven to eight days of the occurrence. As the accused persons were represented through Advocate, the

identification of the accused was not under challenge. In his cross-examination this witness has stated that he was at a distance of 200 to 250 feet

from his father and he was informed by his father as to which accused had assaulted him by what weapon and he was also informed that Fagua had

assaulted him by knife and Shyam and Etwa had assaulted him by Lathi. He was also informed by his father that which accused had assaulted his

uncle by what weapon. In his cross-examination he has also stated that there was some dispute due to the water of the well and the bamboos

between the parties. He has also stated that he had seen the accused persons assaulting both the deceased. This witness was recalled and he has

proved his signature on the F.I.R. as witness, which was marked Ext.-1, stating that the statement was given by his father in injured condition, which

was also read over to him, and finding it true, he had put his thumb impression, and this witness had put his signature over it, on the basis of which the

F.I.R. was instituted. In his further cross-examination this witness has stated that the F.I.R. was lodged on the date of occurrence itself, and the

difference of time was only the time taken in reaching the Police Station. Â

7. PW-5 is Dr. Ram Sewak Sahu, who had conducted the post-mortem examination on the dead body of the deceased Sukhai Oraon on 13.07.1991,

and had found the following injuries on the dead body :-

Stab Wounds:-

- (i) 2 ½ x 1 cm x cavity deep on the left chest back situated six cm left to midline. The weapons passes through left 6th intercostal space and perforated the left lung and entered into heart.
- (ii) 3x1 cm x cavity deep on the left chest back situated 6 ½ cm left to preceding injury. The weapon passed through 7th intercostal space and entered into lung.
- (iii) 2 ¼ cm x 1 x 3 cm on left chest back lower part situated 2 cm left to midline. The track of the wound was confined to the chest wall only.
- (iv) 1 ½ cm x ½ cm x 2 cm on the right chest wall on the lateral side. The track was confined to the wall only.

On Internal Examination:-

Â There was presence of blood and blood clot in the left chest cavity.

Â He has opined that all the injuries were ante-mortem in nature caused by sharp cutting pointed weapon and death was caused due to the hemorrhage and shock due to the aforesaid injuries. He has proved the post-mortem report to be in his pen and signature, which was marked Ext.-2.

8. PW-6 Suresh Prasad Srivastava is the I.O. of the case. This witness has stated that on 12.07.1991 he was posted as Officer-Incharge of Chanh

Police Station. On that date at about 15:45 hours, the informant Bhaua Oraon along with his son and other persons came to the Police Station in

injured condition and he gave his statement, which was recorded by this witness. He read over the statement to the informant, whereupon he put his

thumb impression and his son put his signature, on the basis of which the F.I.R. was instituted by him. He has identified the F.I.R. which was marked

Ext. 3. He also recorded the restatement of the informant and the statements of the witnesses. He saw the injuries on the informant and sent him to

Chanh hospital for treatment. He went to the place of occurrence and he prepared the inquest-report of the dead body of the deceased Sukhai

Oraon, which he has proved, and the same was marked Ext.-4. He had found the dead body in the pool of blood at the distance of 25 to 30 meters

from the first place of occurrence, where the informant was assaulted, in the field of the deceased Sukhai Oraon, in which he had made some

plantation of vegetables. This witness has also stated that at a distance of about 200 to 250 feet, the house of the accused persons is situated. He has

further stated that on 24.07.1991, he was informed by the son of the informant that during treatment his father had died on 22.07.1991, and he had also

shown him the dead body carrying certificate. This witness has stated that on 10.09.1991 he had handed over the charge of investigation to R.N.

Sharma, who had submitted the charge-sheet in the case. In his cross-examination this witness has admitted that he had not seized the blood stained

soil from the place of occurrence and he had not recovered any weapon from the place occurrence. He had not submitted the charge-sheet due to his

transfer during the investigation. He has stated that the deceased had died on 22.07.1991 whereas the occurrence had taken place on 12.07.1991. He

was sent for treatment to Chanho hospital, from where he was referred to R.M.C.H., Ranchi, where he was undergoing treatment in the Unit of Dr.

P.R. Prasad, but he had not recorded the statement of the Doctor at the R.M.C.H., Ranchi. This witness has denied the suggestion of making faulty

investigation. Â

9. PW-9 is Rangnath Sharma, the other Police Officer, who had only submitted the charge-sheet in the case.

10. The statements of the accused persons were recorded under Section 313 of the Cr.P.C., wherein they have denied the evidence against them. No

defence evidence was adduced in the case. On the basis of the evidence on record, the accused appellants have been convicted and sentenced by the

Trial Court below, as aforesaid.

11. Learned counsel for the appellants has submitted that the impugned Judgment of conviction and Order of sentence passed by the Trial Court

below cannot be sustained in the eyes of law, in as much as, though it is said to be a case of double murder, but the death of the informant is not

proved in the case, as there is no inquest report or the post-mortem report of the informant, who is said to have died during the course of treatment. It

is also submitted by the learned counsel that the Doctor, treating the informant, has not been examined in the case, due to which the reason of death of

the informant could not be ascertained. Learned counsel further submitted that the case is not supported by the independent witnesses examined in the

case, who have turned hostile, and even the wife of the deceased informant had only been tendered by the prosecution. The case is supported only by

Â P.W.-1 Chanda Oraon, who is the son of the deceased informant and his

evidence is also very shaky, in as much as, he has stated that he was at a distance of 250 feet from the place of occurrence and he could not see as to which accused had assaulted by what weapon, rather, he was informed about the assaults by his father, and at the same time, he has also stated that he had seen the occurrence. Learned counsel accordingly, submitted that the evidence of P.W.-1 Chanda Oraon, who is highly interested witness, is not at all reliable. Learned counsel further submitted that the F.I.R. in the case cannot be treated as the dying declaration of the informant, in as much as, the death of the deceased has not been proved in the case. In this connection, learned counsel has placed reliance upon the decision of the Honâ??ble Supreme Court of India in Sukhar Vs. State of U.P., reported in (1999) 9 SCC 507, wherein where, the informant, who had lodged the F.I.R. in the injured condition, subsequently died, which fact came during the trial only, and it was not at all established as to how and when he died and whether his death was in any way connected with the injuries sustained by him on the date of occurrence, it was held that the F.I.R. lodged by him cannot be treated as his dying declaration. Placing reliance on this decision, learned counsel submitted that the facts of that case are similar to the present case, in as much as, in the present case also the deceased had died after lodging of F.I.R., and in absence of the inquest report and the post-mortem report of the informant, it cannot be said that his death was proved. Learned counsel accordingly, submitted that in this case, neither the FIR could be treated as dying declaration, nor the evidence of PW-1 Chanda Oraon, is reliable, and as such, it is a fit case in which both the accused persons ought to have been acquitted by the Trial Court, and the impugned Judgment of conviction and Order of sentence cannot be sustained in the eyes of law.

12. Learned counsel for the State, on the other hand, has opposed the prayer and submitted that the case is fully supported by P.W.-1 Chanda Oraon, who is the son of the informant, and in view of the fact that it has come in the evidence that the informant also died in course of treatment, the F.I.R. lodged by him has to be treated as dying declaration. The F.I.R. is proved in this case as Ext.-3 and it is admissible in evidence. Learned counsel accordingly, submitted that though there may be minor discrepancies in the evidence of P.W.-1 Chanda Oraon, but on that basis only, his entire

evidence cannot be thrown away. Learned counsel further submitted that on the basis of the F.I.R., it is abundantly clear that both these appellants, along with their father, had assaulted both the deceased, i.e., the informant, who subsequently died, and his brother who had died at the spot, and the death of the brother of the informant is proved by P.W.-5 Dr. Ram Sewak Sahu and the post-mortem report proved by him as Ext. 2, in which four stab wounds caused by sharp cutting pointed weapon were found by the Doctor. Learned counsel accordingly, submitted that the evidence of P.W.-1 Chanda Oraon, as also the statements made in the F.I.R. of the deceased informant proved as Ext. 3, are fully corroborated by the medical evidence of P.W. 5 Dr. Ram Sewak Sahu, and there is no illegality in the impugned Judgment of conviction and Order of sentence passed by the Trial Court below.

13. Having heard learned counsels for both the sides and upon going through the record, we find that this case relates to double murder. One murder is fully proved by the help of inquest report and the post-mortem report of the brother of the informant, who had died at the spot. The informant had himself gone to the Police Station in the injured condition, as is apparent from the F.I.R. itself, and had lodged the F.I.R. The evidence of P.W.-6 Suresh Prasad Srivastava, the I.O. of the case, shows that he had also seen the informant in the injured condition and had sent him for treatment to Chanho Hospital. His evidence also shows that from Chanho Hospital he was referred to R.M.C.H., Ranchi, where he was being treated in the Unit of Dr. P.R. Prasad, and this fact has been taken by the defence in the cross-examination of this witness. He was informed by the son of the informant that his father died on 22.07.1991 in course of treatment, and dead body carrying certificate was also shown to him. The evidence of P.W.-1 Chanda Oraon also shows that his father died in course of treatment at Bariatu Hospital, which is the same hospital. In that view of the matter, even though the post-mortem report and the inquest report of the deceased informant have not been proved, and it appears that the post-mortem examination of this deceased had not been done, but the fact remains that there is evidence on record to show that the deceased informant had died during treatment at R.M.C.H., Ranchi, where he was sent for the treatment of his injuries, on the tenth day of the occurrence.

14. Section 32(1) of the Evidence Act reads as follows :-

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant” Statements, written or verbal, of

relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot

be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves

relevant facts in the following cases:-

(1) when it relates to cause of death” When the statement is made by a person as to the cause of his death, or as to any of the circumstances of

the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death,

and whatever may be the nature of the proceeding in which the cause of his death comes into question.

A plain reading of this Section shows that the statement made by a person about the cause of his death, or as to any circumstance which resulted in

his death, is relevant, whether or not at the time when the statement was made, the person was under expectation of death. In the present case, even

though the informant may not be expecting that he might die due to injuries sustained by him, but the fact remains that there is evidence on record to

show that he died during treatment on the tenth day of occurrence and as such, his statement comes within the purview of Section 32(1) of the

Evidence Act, and it can very safely be treated as the dying declaration of the informant Bhaua Oraon, once proved. The FIR has been proved in this

case as Exhibit-3. As such, the conviction of both these appellants can be based on the basis of the F.I.R. itself, treating it to be the dying declaration

of the informant. The decision of the Hon’ble Apex Court in Sukhar’s case (supra), is not at all applicable to the facts of this case, as in that case,

it was not at all established as to how and when the informant had died and whether his death was in any way connected with the injuries sustained by

him on the date of occurrence. In the present case it is proved that the

informant, who was injured in the occurrence, had died on the 10th day of the occurrence, while undergoing treatment at RMCH, Ranchi. The prosecution case as detailed in the FIR is also supported by P.W.-1 Chanda Oraon, the son of the deceased informant, and he has stated that all the three accused persons came armed with lathi and knife at the place of occurrence and they assaulted his father and also assaulted his uncle to death. We find no force in the submission of learned counsel for the appellant that the evidence of this witness is absolutely shaky, rather, we find that the evidence of this witness is quite reliable, in as much as, he has stated that he was at a distance of about 250 feet from the place of occurrence, due to which he could not see as to which accused had assaulted by what weapon, rather, he was informed about this fact by his father. He has reiterated that he had seen the accused persons assaulting both the deceased. There is nothing in the cross-examination of this witness to discredit his testimony. In the facts of this case, though the death of the deceased informant, due to specific injuries, could not be proved in the case, in absence of inquest report and the post-mortem report, but the prosecution has been able to show that the deceased informant, who was injured in the occurrence, died in course of treatment in the hospital. The death of the other deceased, i.e., Sukhai Oraon, is fully established by the inquest report as also by the medical evidence of P.W.-5 Dr. Ram Sewak Sahu, and the post-mortem report proved by him as Ext.-2.

15. For the foregoing reasons, we find that the prosecution has been able to bring home the charge against both these appellants beyond all reasonable doubts, and there is no illegality in the impugned Judgment of conviction dated 17th December, 2005, and Order of sentence dated 20th December, 2005, passed by the learned Additional Judicial Commissioner-FTC-X, Ranchi, in S.T. No. 246 of 1992, convicting and sentencing the appellants Etwa Oraon and Fagua Oraon, for the offence under Sections 302 / 34 of the Indian Penal Code, which, we hereby, affirm. The appellant Fagua Oraon is already in custody undergoing the sentence. The appellant Etwa Oraon is on bail. His bail is hereby, cancelled and he is directed to surrender in the Court below forthwith, for undergoing the sentence imposed by the Trial Court below. The Trial Court below is also directed to issue process forthwith, compelling the surrender / production of the appellant Etwa Oraon for

undergoing the sentence.

16. We do not find any merit in this appeal, and the same is accordingly, dismissed. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this Judgment.