

(2007) 03 JH CK 0061
In the Jharkhand High Court

Etwa Uraon and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 304, 323

Citation : (2007) 3 JCR 64

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—All the appellants stand convicted for the offence punishable under Sections 148/323 and 304 read with Section 149 of the Indian Penal Code and sentenced to serve rigorous imprisonment for one year and five years respectively, by the 3rd Additional Sessions Judge, Chaibasa in Sessions Trial No. 219 of 1987.

2. Brief facts leading to this appeal are that on 3.11.1986, informant Mango Uraon was sitting in front of his house situated in Mauza Pradhanpali when accused Soma Uraon (since dead) came there and asked him to compromise the case pending between them. As further stated, when the informant replied that he. will think over it, altercation started. In the meantime, the appellants along with others arrived at the place of occurrence armed with lathi and danda and started assaulting Mango Uraon and deceased Bishram Kujur who came to his rescue. The appellants fled away when the villagers started arriving. In the meantime, Bishram Kujur having received head injuries was removed for his treatment to. Manoharpur, Primary Health Center and thereafter Rourkella for better treatment.

3. However, the matter was reported to Manoharpur Police Station vide Station Diary Entry No. 42 dated 3.11.1986. Manoharpur Police did not register any case on 3.11.1986. During treatment, Bishram Kujur breathed his last on 8.11.1986 in

Rourkella. Thereafter the dead body was subjected to post-mortem examination and the father of deceased Martin Kujur (PW 4) brought the dead body and performed last rites. Since the police did not initiate any action against the aggressors, a registered letter was posted to Superintendent of Police, Chaibasa with copy to other officials-on 18.11.1986. Thereafter, the said Station Diary Entry was taken up as first fardbeyan and Manoharpur Police Station Case No. 43 of 1986 u/s 304 of the Indian Penal Code registered against the six persons. The police investigated the case and finally submitted charge-sheet against all of them under Sections 147, 148, 323 and 304 of the Indian Penal Code. Their cases were committed for trial and they were charged on 12.6.1990. One of the co-accused Soma Uraon was separately charged u/s 304 of the Indian Penal Code, but he died during pendency of trial and his name was expunged on 8.5.2000. The appellants pleaded not guilty and claimed false prosecution due to dispute for properties between Mango Uraon and the family of Soma Uraon. The learned trial Court after examining the witnesses held all of them guilty under Sections 148, 323 and 304 read with Section 149 of the Indian Penal Code and sentenced to serve rigorous imprisonment as stated above.

4. The present appeal has been preferred mainly on the grounds that the prosecution case depending upon the information received vide Station Diary Entry No. 42 dated 3.11.1986 has not been brought on record. It is further asserted that the death of deceased Bishram Kujur could not proved caused by assault made by the appellants. Mr. Kaushik Sarkhel, learned Counsel appearing on behalf of the appellant, submitted that even if the prosecution version is accepted, non-examination of doctors treating and conducting postmortem examination as well as the investigating officer of this case was fatal for the prosecution case. According to Mr. Sarkhel, the persons alleged to have been injured during occurrence have not been examined to prove the prosecution case beyond doubts. As such, in absence of any medical report regarding cause of death of Bishram Kujur after five days makes the whole prosecution case doubtful. According to learned Counsel, the learned trial Court has wrongly relied upon ocular evidence alone in the case where murder not amounting to culpable homicide has been held committed by the appellant. Therefore, the appellant deserves to be acquitted of the charges.

5. Learned A.P.P. for the State opposed these contentions.

6. I have gone through the materials on records to examine the validity of the submissions made on behalf of the appellants. The (sic) has examined altogether nine witnesses out of which, PW 6 is formal, PW 8 has been tendered and PW 7 has been declared hostile. PW 9 Chandradeo Roy, A.S.I., has drawn the First Information Report on the Station Diary Entry No. 42, dated 3.1.1986 only. Thereafter remaining five witnesses, PW 1, PW 2, PW 3, PW 4 and PW 5 have claimed to be eye-witnesses. These witnesses have supported the prosecution version that deceased Bishram Kujur was assaulted in the morning of 3.11.1986. He same fact has been disclosed in Station Diary Entry No. 42 dated 3.11.1986.

Therefore, the fact that the deceased was assaulted in the morning of 3.11.1986 is not disputed. The defence has criticized all these witnesses on the grounds that there was previous litigation between informant Mango Uraon and the appellants. All of them have further asserted that "convict Dele Oraon has given lathi blows twice on the head of the deceased after which he fell down. PW 1, PW 2, PW 3, PW 4 and PW 5 have consistently stated that the convicts have gone to the house of Mango Uraon to assault him. This fact has also come on record that when deceased Bishram Kujur intervened, he was assaulted. PW 1 vide paragraph-8 has said that only convict Dele Oraon has asserted the deceased. This fact has been confirmed by PW 2 vide paragraph -9, PW 3 vide paragraph-7, PW 4 vide paragraph-19, PW 5 vide paragraph-13. Therefore, the fact apparent on the record is that the convicts have arrived at the house of Mango Uraon to assault him. However, during this marpit by the convicts deceased intervened and received two lathi blows on his head resulting in his death.

7. Learned Counsel for the appellants consistently stressed before me that prosecution has not been able to prove beyond doubts that this assault has resulted in death of Bishram Kujur as neither the medical officer treating, the deceased has been examined nor the post-mortem report has been brought on record to ascertain that the said lathi blows resulted in his death. The counsel for the appellant further pointed out that the copy of Station Diary Entry No. 42 dated 3.11.1986 as well as the letter dated 14.11.1986 by PW 4 are contradictory to each other. Learned Counsel placed before me that in the Station Diary Entry only Soma Uraon has been named to initiate altercation in which convict Chawa Oraon, Soma Uraon and Dele Oraon are named whereas in the letter dated 14.11.1986 more than ten persons have been named. Therefore, there are material contradictions in two details on the basis of which the prosecution has been initiated. Learned Counsel further pointed out that the learned trial Court having considered these things criticised the prosecution vide paragraph-18 and convicted the appellants only on the presumption that the death may have occurred with assault made by convict-appellant Dele Uraon ignoring the fatal lacunae.

8. After going through the materials on records, I find that the prosecution suffers from the following fatal lacunae. The incident as alleged took place in the morning of 3.11.1986. The First Information Report lodged on the basis of Station Diary Entry No. 42 dated 3.11.1986 provides different version. I find that only three to four persons are named in the said station diary entry. However, later on, letter dated 14.11.1986 Ext. 1 mentions about ten persons to have participated in the assault. It has also come on record that the intention of the convicts was not to assault and further to kill Bishram Kujur. Injured Mango Uraon (PW 2) was examined by doctor, but his injury report is not on record. It further appears that the deceased though being treated at different places no injury has been brought on record. The post-mortem report is also missing. The death has occurred after four days. Learned trial Court has considered all these aspects in details in the judgment and criticised the prosecution as well as the

lacunae in the investigation of this case. The conviction of the appellants merely on the basis of ocular version in such cases is not maintainable. In such circumstances, where there are vital lacunae in the investigation and prosecution, the conviction cannot be sustained.

9. Having considered the facts and circumstances mentioned above, I find and hold that the prosecution in the facts of this appeal has not been able to prove beyond doubts that all the appellants have participated in assault causing death of Bishram Kujur. Accordingly, their conviction under Sections 304, 323, 148 and 149 of the Indian Penal Code is found not maintainable. Accordingly, I find that the present appeal has got merit and deserves to be allowed.

10. In the result, the present appeal is allowed and the judgment of the trial Court convicting the appellants is hereby set aside. The appellants are acquitted from the charge levelled against them and further discharged from the liabilities of their bail bond.