

(2016) 05 JH CK 0105

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 235 of 2006 (Against the judgment of conviction and order of sentence dated 01.02.2006 and 02.02.2006 respectively passed by Sri Revati Raman Tripathi, learned Addl. Sessions Judge, Fast Track Court IV, Garhwa in connection with S

Gorakh Sah @ Gorakh Sao

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324, 34

Citation : (2016) 3 ECrC 561

Hon'ble Judges : Mr. D.N. Upadhyay and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. Pankaj Kr. Jaiswal, Amicus curiae, for the Appellants In Cr. Appeal (DB) No. 235 of 2006; Mr. A.K. Kashyap, Senior Advocate, Mr. Anurag Kashyap and Mrs. Supriya Dayal, Advocates, for the Appellants In Cr. Appeal (DB) No. 168 of 2006; Mr. Pankaj Kumar,

Final Decision : Dismissed

Judgement

Mr. D.N. Upadhyay, J.—These criminal appeals have been directed against the judgment of conviction and order of sentence dated 01.02.2006 and 02.02.2006 respectively passed by learned Addl. Sessions Judge, Fast Track Court-IV, Garhwa in connection with Sessions Trial No. 255 of 1985 corresponding to G.R. Case No. 271 of 1984 arising out of Majhiaon P.S. Case No. 48 of 1984 whereby the appellants have been held guilty for the offence punishable under Section 302/34 & 324/34 of the Indian Penal Code and sentenced to undergo R.I. for life under Section 302/34 of the Indian Penal Code and three years R.I. under Section 324/34 of the Indian Penal Code. The sentences so passed have been directed to run concurrently.

2. The case of prosecution, in brief, is that on 14.05.1984 at about 8.00 a.m. when the informant along with his parents and grand mother was returning home after having bath in the river, he was intercepted on the way by the

appellants. Appellant Gorakh Sao was having Garasa in his hand whereas remaining two appellants were armed with lathi. It is disclosed that appellant Gorakh Sao is step brother of the informant and he caused injury on the neck of Chaturi Sao (father of the informant) by means of Garasa. After having injury Chaturi Sao fell down. Thereafter Gorakh Sao targeted his step mother and also caused injury on her neck by inflicting blow by means of Garasa. The informant raised alarm and in order to save his life ran from the place but chased by the appellants. Gorakh Sao also caused injury to the informant on his right hand. It is further alleged that grand mother of the informant was also not spared by appellant Gorakh Sao and he inflicted Garasa blow on her neck. Somehow informant ran to the house of Keshwar Rajwar and saved himself. It is alleged in the fardbeyan that appellants Kedar Sao and Naresh Sao assaulted the deceased by means of lathi. After sustaining injuries grand mother, father and mother of informant died at the spot.

3. On the basis of fardbeyan of Salik Prasad Gupta Majhiaon P.S. Case No. 48 of 1984 under Section 302 & 307/34 of the Indian Penal Code was registered against the appellants.

After due investigation, charge-sheet was submitted and accordingly cognizance was taken and case was committed to the court of sessions and registered as Sessions Trial No. 255 of 1985.

Charges under Section 302/34 & 307/34 of the Indian Penal Code were framed against all the three appellants to which they pleaded not guilty and claimed to be tried.

To substantiate the charges, prosecution has examined altogether 13 witnesses whereas the appellants also got examined two witnesses namely Jagdish Mahto DW1 and Dr. Annu Kumar, Medical Officer, DW2.

Kedar Prasad PW1, Kalam Ansari PW3 and Ram Dayal Pal PW13 are formal witnesses and they have proved the First Information Report. Alim Sheikh PW5 and Vishwanath Saw PW10 are hearsay witnesses. Dhuki Rajwar PW6, Bindeshwari Singh PW7, Kishwar Rajwar PW8 and Mangru Rajwar PW9 have not supported the prosecution case and they have turned hostile. Dr. R.N. Singh PW12 has proved the three post mortem reports of the deceased persons as Exhibits 4, 5 and 6. Therefore, the prosecution case is mainly based on evidence of PW2 Shambhu Prasad Gupta and PW4 Shalik Prasad Gupta (informant), both sons of deceased Chaturi Sao. Learned Addl. Sessions Judge, placing reliance on the evidence and documents available, held the appellants guilty and inflicted sentence, as indicated above.

4. Learned counsel appearing in Cr. Appeal (DB) No. 168 of 2006 has submitted that these two appellants have falsely been roped in this case and they have been convicted with the aid of Section 34 of the Indian Penal Code. Neither they had motive to commit offence nor any overt act was committed by them. Aforesaid two eye witnesses PW2 and PW4 have stated that after the deceased

were assaulted by appellant Gorakh Sao by means of Garasa and after sustaining injury when they fell down, these two appellants hurled lathi blows on them. By referring post mortem reports Exhibits 4, 5 and 6 it is submitted that none of the deceased had sustained single injury on their person caused by hard and blunt substance. All the three deceased were having incised injuries on their persons and those injuries were caused by means of sharp cutting weapon. Admitted case of the prosecution is that these appellants were not having any sharp cutting weapon with them at the time of occurrence. The learned trial judge has committed gross error by holding them guilty for the offence punishable under Section 302/34 and 324/34 of the Indian Penal Code. The impugned judgment as against these appellants could not be sustained and the same is liable to be set aside.

5. Learned amicus curiae appearing on behalf of appellant Gorakh Sao has submitted that no motive behind alleged triple murder has been assigned by any of the witnesses. This appellant happens to be step brother of informant Salik Prasad Gupta. What was the grudge prevailing in his mind that he was compelled to commit murder of his father, step mother and grand mother has not been brought on record and that creates doubt on the prosecution story brought on record by the informant. Gorakh Sao has examined two defence witnesses to prove that he has been suffering from polio since childhood and he is not capable of discharging any work from his right hand. Dr. Arun Kumar DW2 has given certificate to this effect and he has also deposed before the court. If the physical condition of appellant Gorakh Sao was like that as described by DW1 and DW2, he was not in position to use Garasa for causing injuries to the deceased. It is known that Garasa is a sharp cutting heavy weapon and without using both hands this weapon cannot be used for any purpose. What to say about causing so serious injuries appearing on the person of the deceased because the neck of all the three deceased were practically chopped and the head was attached with the trunk only with the help of back skin of the neck. The other injuries caused to aforesaid deceased as it appear from post mortem report were not possible by a person like appellant Gorakh Sao who was physically handicapped. Besides the above, it was further argued that occurrence took place in the morning at 8.00 a.m. and that too on rasta. It is surprising part of the prosecution story that this handicapped person inflicted blows after blows and killed three persons within the public view but nobody dared to resist him or to apprehend him. Therefore, the story brought on record by these PW2 and PW4 who are none-else but son of one of the deceased Chaturi Sao, is not believable and no reliance should have been placed by the trial court for holding the appellant guilty for the offence of murder. The doctor who conducted post mortem examination has not been examined. The Investigating Officer has not been examined to prove the place of occurrence and non-examination of the Investigating Officer has caused serious prejudice to the appellant. It is further pointed out that informant PW4 has said that he was also assaulted by Gorakh Sao and he sustained injury on his hand but no such injury report has been proved by the prosecution and no doctor to

this effect has been examined. Furthermore, PW4 has said that after having injury, he ran to the house of Keshwar Rajwar to save himself and after the appellants left the place, he came out of the house of Keshwar Rajwar and then saw the dead bodies but Keshwar Rajwar PW8 has not supported the contention of the informant and therefore, prosecution case is not supported by any other witness except two brothers PW2 and PW4. By referring post mortem reports, it is submitted that undigested food in stomach of aforesaid three deceased were found and that suggest that the occurrence did not take place after they were returning after having their bath rather it suggest that they might had taken food before their death. The time of occurrence as assigned by informant thus becomes doubtful.

6. Learned A.P.P. has vehemently opposed the argument and submitted that it is a case of triple murder. There is direct allegation against appellant Gorakh Sao that he brutally killed his father Chaturi Sao, grand mother Dev Lakshmi Devi and step mother Manwati Devi by causing them grievous injuries by using Garasa. No contradiction is appearing in the statement of PW2 and PW4. The story narrated by them find support from post mortem report Exhibits4, 5 and 6. Other two appellants Kedar Sao and Naresh Sao in Cr. Appeal (DB) No. 168 of 2006 have been found assisting appellant Gorakh Sao. Both eye witnesses have stated that they used lathi for causing assault to the deceased. All the three appellants have rightly been held guilty and there is no merit in this appeal. The impugned judgment need no interference.

7. Heard both sides, perused the case record, evidences and the documents available and the impugned judgment. Learned counsel has raised a point that post mortem reports have not been proved by the doctor who conducted post mortem examination rather it were proved by another Dr. R.N. Singh PW12. We do not find that due to non-examination of the doctor, who conducted post mortem examination, any prejudice has caused to the appellants for the reason those post mortem reports have been proved by a competent doctor who would be presumed to be capable of giving answer regarding findings appearing in those post mortem reports. Not only that, he was duly cross-examined and the doctor has given satisfactory answer to those questions. It is not a case that post mortem reports have been proved by a layman. In the circumstances and the reasons assigned above, we reject said argument advanced by the counsel for the appellants.

8. The second point which the appellants have raised is that prejudice has caused to them due to non-examination of the Investigating Officer. Again, we do not agree with the submission for the reason that contradictions have not been taken from PW2 or PW4. It was submitted that place of occurrence has not been proved due to non-examination of Investigating Officer. In a case where eye witnesses are available and they have described the place of occurrence, manner of occurrence, time of occurrence and the testimony of eye witnesses are worthy of credence, non-examination of the Investigating Officer is no ground to

disbelieve the place of occurrence, as described by eye witnesses.

9. To test the veracity of aforesaid eye witnesses regarding place of occurrence, we have gone through the inquest reports which have been proved by the prosecution as Exhibits 7, 8 and 9. In column 3 the places where dead bodies were found, find mentioned. It is very clear that it was a rasta coming from the side of river. On that rasta at a distance of 200-250 yard from the river aforesaid dead bodies were found by the Investigating Officer. Therefore, the place of occurrence as described by PW2 and PW4 further find corroboration from the inquest report in which location of dead bodies is indicated. Again we reject this argument that place of occurrence has not been proved by the prosecution.

10. So far as motive behind murder is concerned, relation of appellant Gorakh Sao with his parents and step brothers was not cordial and prior to present incident he had thrown acid in the eyes of his father and also caused fracture injury on his leg. Of course, exact motive behind the occurrence has not been brought by the prosecution but the facts remain that appellant Gorakh Sao was not having good relation with his father, step mother and step brothers. Furthermore, in a case where evidence of eye witnesses are trustworthy and reliable, motive has no role to play. We have gone through the post mortem reports and we find how brutally the deceased were killed. It reveals that head of all the three deceased were severed from the trunk at the level of cervical vertebra and it was attached with the trunk with the broad skin at the back of the neck. The anger of appellant Gorakh Sao was not quenched after causing that severe injury to the deceased and he had gone to inflict further injuries on the persons of deceased by using Garasa. At this juncture, we have carefully gone through Exhibits 4, 5 and 6, the post mortem reports but we do not find any other injury caused by hard and blunt substance. The informant has implicated appellants namely Kedar Sao and Naresh Sao by levelling allegations against them that they also caused injury to the deceased by means of lathi but we do not find any injury caused to them by means of lathi. Considering aforesaid aspect, we feel inclined to allow Cr. Appeal (DB) No. 168 of 2006 preferred by appellants Kedar Sao and Naresh Sao and the judgment of conviction and sentence recorded as against these appellants stands set aside. Both these appellants are on bail, they are discharged from the liabilities of their respective bail bonds and set at liberty.

11. So far appellant Gorakh Sao is concerned, we do not agree to accept the statement given by defence witnesses for the reason DW1 has clearly stated that Gorakh Sao is married and he has been earning his bread by discharging his duties by himself. He is also having landed property. We do not agree with the contention made by DW2 also because disability report has not been placed before the trial court. No disability certificate granted by a competent doctor like Civil Surgeon has been brought on record. Therefore, we feel that only to make a defence appellant Gorakh Sao has got examined these two defence witnesses to bring it on record that his right hand is not properly working and he has been

suffering from polio since childhood. Besides the above, we do not intend to disbelieve version of PW2 and PW4 who have clearly deposed as to how this appellant had killed his father, grand father and step mother. The ocular version of eye witnesses find support from post mortem report. In the circumstances stated above and the evidence available on record, we do not feel inclined to interfere with the findings of the trial court in respect of appellant Gorakh Sao and accordingly.

12. Cr. Appeal (DB) No. 235 of 2006 preferred by appellant Gorakh Sao stands dismissed.