
(2004) 02 JH CK 0080

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 101 of 1999 (R)

Hari Dada Singh Munda and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 19-02-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302

Citation : (2004) 2 JCR 352

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : P.K. Nayak and R.C. Khatri, for the Appellant; Manjusri Patra, APP, for the Respondent

Final Decision : Allowed

Judgement

Lakshman Uraon, J.—This appeal, has been preferred against the judgment and order of conviction and sentence dated 23.2.1999, and 25.2.1999 respectively, passed by Sri. P.K. Jha, learned 7th Additional Judicial Commissioner, Ranchi, in Sessions Trial No. 271 of 1988, arising out of Tamar P.S. Case No. 54 of 1986 (G.R No. 408 of 1986), whereby and whereunder, the appellants were convicted and sentenced to undergo rigorous imprisonment for life for the offence u/s 302/149 of the Indian Penal Code.

2. The prosecution case is based on the fardbeyan of the informant Sadhu Munda (PW 4), recorded by S.N. Pandey, S.I. of Tamar Police Station at Village Jhargaon on 4.11.1986 at 11.00 a.m. The informant has alleged that on the previous day i.e. 3.11.1986 in between 7.00 to 8.00 p.m. he along with deceased Ram Singh Munda had gone to attend the feast to his friend's home Sohan Kumhar on the occasion of Dipawali, After taking their feast, they were returning home and reached near the house of appellant Hari Pado Munda. At that time all the appellants, namely, Gandharv Singh Munda, Jiwan Singh Munda, Hari Pado Singh Munda, Bengali Munda and Doma Munda, all of the same village, who had concealed themselves in a straw thatched hut near the Pakur tree, came out,

armed with Jarsa and restrained them, asking them as to who are they. When the informant and his brother Ram Singh Munda did not reply, an altercation took place. The appellants assaulted Ram Singh Munda with Jarsa and axe on his head, due to which Ram Singh Munda became injured and fell down. The Informant escaped, went to his village and informed Gangadhar Singh Munda (PW 1), Jagarnath Singh Munda (PW 2) and Fanibhushan Singh Munda that all these appellants were assaulting Ram Singh Munda. When all these four witnesses went there, they saw the appellants fleeing away, leaving Ram Singh Munda in injured condition, who had died. The appellants had threatened the informant and others and hence at night, they did not inform the police rather on the next morning on 4.11.1986 chaukidar Ram Charan Mahto went to the police station and informed the police. When the police came to the village, the Jardebayan of the informant was recorded at 1 LOO a.m. in presence Phanibhushan Singh Munda (PW 3).

3. All the appellants have denied the charges, levelled against them and have taken plea that in between 2.11.1986 to 5.11.1986 they had gone to Village Jhargaon to attend Churakaran (Karnbidh) ceremony in the house of their relative Remeshwar Singh Munda (DW 1).

4. The prosecution case is based on the statement of single eye-witness Sadhu Munda, who is brother of the deceased Ram Singh Munda. The other three witnesses i.e. Gangadhar Singh Munda (PW 1), Janardan Singh Munda (PW 2) and Fanibhushan Singh Munda (PW 3), on being informed by PW 4, went to the place of occurrence and claimed to have seen the appellants fleeing away in the torch light, flashed by the appellant Gandharv Singh Munda. They also saw Ram Singh Munda dead in injured condition in a pool of blood. Dr. Tulsi Mahto (PW 5) had conducted the autopsy on the dead body of Ram Singh Munda and post mortem report (Ext. 1) has been prepared in his pen and signature. PW 6, another doctor P.K. Srivastava, has claimed that the post mortem examination was conducted by PW 5, Dr. Tulsi Mahto. The learned 7th Additional Judicial Commissioner, Ranchi, has relied the evidence of PW 4, the informant, who is the only eye-witness, holding that the other three witnesses i.e. PWs 1, 2 and 3 also saw the appellants fleeing away from the place of occurrence and the evidence regarding manner of assault, as deposed by PW 4, finds corroborated by the medical evidence of the doctor (PW 5). Relying their evidence, the learned Court below convicted these appellants and sentenced them thereunder.

5. Assailing the judgment and order of conviction and sentence, passed by the learned Court below, learned counsel for the appellants has submitted that the place of occurrence in this case has not been established due to non-examination of the Investigating Officer. The Jardebayan or the formal First Information Report has not been proved to corroborate the statements of the witnesses, be posed in the Court. PW 4, the informant has deposed that he along with the deceased had gone to the house of his friend Sohan Kumhar on the day of Dipawali whereas PW 1, Gangadhar Singh Munda has deposed that they had gone to the house of

Sohan Kumhar on the next day of Dipawali. The place of occurrence is near the house of the appellants and also of these witnesses. At the place of occurrence, when Ram Singh Munda is alleged to have been assaulted by the appellants, he (the informant) simply watched and did not raise any alarm rather he went and informed PWs. 1, 2 and 3, who are his relatives. Not a single independent village witness assembled there to chase the assailants. PW 5 (Dr. Tulsi Mahto), who conducted the post mortem examination on the dead body of deceased Rain Singh Munda, on 5.11.1986 at 12.00 noon, found three incised wounds and two abrasions. Time elapsed since death was in between 18 to 36 hours, which does not correspond the time of the alleged assault on 3.11.1986 in between 7.00 to 8.00 p.m. The blood stained soil was not seized by the Investigating Officer to establish the place of occurrence. The inquest report was also not brought on record. On the other hand, the appellants have examined DW 1, Rameshwar Singh Munda and DW 2 Sri. Nath Singh Munda, who have deposed that in between 2.11.1986 to 5.11.1986 they had gone to attend the churakaran ceremony in the house of Rameshwar Singh Munda (DW 1) at Village Jhargaon, which is at a distance of 1-1/2 Km. from the P.O. Village Jhargaon. There were other invitees, including these appellants. Both these defence witnesses have deposed that all the five appellants remained in the house of Rameshwar Singh Munda at Village Jhargaon in between 2.11.1986 to 5.11.1986 and had never gone out of the house for a moment, as Churakaran (Karnvidh) ceremony was being performed. On these grounds, it was argued that due to non-examination of the I.O. neither the place of occurrence could be established nor the time of the alleged occurrence has been corroborated as PW 1 and PW 4 have given contradictory statements as to whether it was on the day of Dipawali or on the next day of Dipawali.

6. The learned A.P.P. in course of his argument has submitted that PW 4 Sadhu Munda was along with the deceased Ram Singh Munda and is the eye-witness. He has described the manner of the alleged occurrence as these appellants assaulted with farsa and tangi on the head and neck of Ram Singh Munda, resulting his death. PW 5, Dr. Tulsi Mahto, who conducted the autopsy, also found three incised wounds and two abrasions on the dead body of Ram Singh Munda, He opined that the incised wounds were caused by heavy sharp cutting weapon and the abrasions were caused by hard and blunt substance. On these grounds, it was submitted that the learned Court below after considering the evidence has rightly convicted and sentenced the appellants.

7. The I.O. in this case has not been examined. Village chaukidar Ram Charan Mahto, who informed the police on 4.11.1986, has also not been examined. The P.O. village is situated at a distance of 12 Kms. from Tamar Police Station. The fardbeyan of Sadhu Munda is regarding the occurrence, which took place in between 7.00 and 8.00 p.m. on 3.11.1986. The informant saw these appellants assaulting with farsa and tangi to his brother Ram Singh Munda on his head and neck. He did not raise any alarm rather he informed PWs. 1, 2 and 3, who came there and claimed to have seen these appellants fleeing away in the torch light,

flashed by appellant Gandharv Singh Munda. The fardbeyan shows that it was the day of Dipawali whereas PW 1 Gangad-har Singh Munda had deposed that it was the next day of Dipawali. All the villagers were celebrating Dipawali festival. The place of occurrence is surrounded by the houses of both the parties and other villagers. Even then the informant did not inform the others except PWs. 1, 2 and 3, PW 1, claims that he saw the appellants fleeing away from a distance of 100 ft. PWs. 2 and 3 claim that they saw the appellants fleeing away from the place of occurrence at a distance of 25 to 30 hands. All the witnesses i.e. PWs. 1, 2, 3 and 4 have deposed that it was dark night. In the village on the occasion of Dipawali also the houses or the lanes are not so lightened as they are found in the town. The witnesses have deposed that it was dark night and there was no source of identification rather the witnesses have claimed to have seen the appellants fleeing away in the torch light, flashed by appellant Gandharv Singh Munda. The evidence is that all the appellants had concealed themselves in a straw thatched but under a Pakur tree in front of the house of appellant Hari Pado Singh Munda. There is no reason of the alleged assault, as the parties were not in inimical terms in the village. The question arises as to whether PW 4, Sadhu Munda, who was along with the deceased Ram Singh Munda, is the truthful witness, who claims himself to be the eye-witness. He has deposed that when the appellants were assaulting Ram Singh Munda with axe and Jarsa, he remained standing there at a distance of 2 hands and saw them assaulting. At that time, he did not raise any alarm or even tried to rescue his brother. This is against the conduct of a human nature. He went and informed PWs. 1, 2 and 3, who are all relatives, and none else in the village. None of the independent villagers was informed nor anyone went even to see the dead body. At the time of the alleged occurrence, it was dark night. His friend Sohan Kumhar, where they had gone to celebrate Dipawali festival, has also not been examined to support his claim that he had gone there along with his brother Ram Singh Munda and was returning after taking meal. The blood found at the place of occurrence has also not been seized by the I.O. PW 5, Dr. Tulsi Mahto on 5.11.1986 at 12.00 noon conducted the autopsy on the dead body of deceased Ram Singh Munda and found the following ante-mortem injuries :

Incised Wound :

- (i) 10 cm x 1-1/2 cm x bone deep on the left side of the occipital region of head cutting the left occipital bone completely and brain matter underneath.
- (ii) 8 cm x 2 cm x bone deep on the left parietal occipital region of head cutting the left parietal occipital bone completely and brain underneath.
- (iii) 2 cm x 1 cm x scalp deep on the right occipital head.

Abraions :

- (i) 8 cm x 4 cm on the right cheek.
- (ii) 3 cm x 1 cm on the right side of forehead.

The doctor found incised wounds, caused by heavy sharp cutting weapon, such as, farsa and axe. The abrasions, which are injury Nos. 4 and 5, have been caused by hard, and blunt substance, may be by fall. The death was due to head injury within 18 to 36 hours from the time of the post-mortem examination.

8. When the post mortem report (Ext. 1) is compared with the time of the alleged occurrence, which took place on 3.11.1986 in between 7.00 to 8.00 p.m. then the time of post mortem examination is beyond 36 hours. When post mortem report (Ext. 1} is believed, then the time of occurrence must be in the morning of 4.11.1986 in between 7.00 to 8.00 a.m. Thus, the time elapsed since death from the time of post mortem examination does not correspond the time of the alleged occurrence as stated by the informant PW 4 in the fardbeyan. It is also not clear as to whether the alleged occurrence took place on the day of Dipawali i.e. 3.11.1986 or on the next day i.e, 4.11.1986, as PW 4 claims that it was Dipawali night whereas PW 1, claims that it was the next day of Dipawali. Thus, I find that the time of alleged occurrence has not been corroborated rather the Interested witnesses i.e. PW 1 and PW 4 have given contradictory statements. Due to non-examination of the I.O., the appellants have been highly prejudiced as they could not draw the attention of the witnesses, as to whether they saw and identified the appellants, while they were running, only in the torch light, flashed by Gandharv Singh Munda (one of the appellants). It is unbelievable that when PW 4 was there and saw the assault on his brother Ram Singh Munda, he did not raise any alarm. He even did not try to rescue his brother rather he was standing at a distance of 2 yards and claimed to have seen the alleged manner of assault. At night it is not possible to identify as to who was armed with axe or who was armed with Jarsa and who assault on which part of the body. The doctor (PW 5) found three incised wounds whereas the appellants are five in number, who were armed with heavy sharp edged weapons, like axe and farsa. There is no ocular evidence that the appellants assaulted with the blunt portion of axe or lathi. The appellants who were assaulting Ram Singh Munda, would not have remained at the place of occurrence till arrival of PWs 1, 2 and 3, who were informed by PW 4 and returned back to the place of occurrence. By the time they might have fled away without being seen by any witness. PW 1, Gangadhar Singh Munda In paragraph No. 2 of his deposition has deposed that as it was dark night, he saw the appellants in the torch light, flashed by him and identified them but could not identify properly. There is no corroborative evidence that PW1 had also torch in his hand as also the witnesses have deposed that they identified the appellant in the torch light, flashed by appellant Gandharv Singh Munda, while they were fleeing away. It is quite unnatural that even after the alleged occurrence none of the villagers assembled there to apprehend the appellant. It is only because the appellants were not in the village, as deposed by DW 1 and DW 2, and had gone to attend the churakaran ceremony in the house of DW 1 Rameshwar Singh Munda at Village Jhargaon, 1-1/2 Km. away from village Jhargaon. They remained there throughout during the ceremony in between 2.11.1986 to 5.11.1986, as deposed

by DWs. 1 and 2.

9. When considered the evidence of the single eye-witness i.e. PW 4. I find that his conduct is quite unnatural, as he remained watching the occurrence for some time, standing at a distance of two hands away from Ram Singh Munda, his brother, who was being assaulted. When Ram Singh Munda fell down, he fled away and informed PWs. 1, 2 and 3. He came back to the place of occurrence along with PWs. 1, 2 and 3, who claimed that they saw the appellants fleeing away. The appellants would not have remained there after assaulting the deceased, only to be identified by the villagers or surrounded by them to be caught red handed. The time of the alleged occurrence is contradicted by the post mortem report, submitted by Dr. Tulsi Mahtq (PW 5). This shows that it was not 3.11.1986 at about 7.00 to 8.00 p.m., when the alleged occurrence took place rather it must have taken place in the morning of 4.11.1986, in between 7.00 to 8.00 a.m., to correspond the time of death since elapsed, as deposed by PW 5 Dr. Tulsi Mahto. Due to non-examination of the I.O., neither the inquest report nor the seized blood stained soil from the place of occurrence was brought on record to establish the place of occurrence. When considered cautiously I find that the evidence of PW 4 the informant Sadhu Munda is itself full of doubt as to whether he is the eye-witness or not. The other witnesses have very safely deposed that they did not see any assault rather they saw the appellants fleeing away and claimed to have identified them in the torch light, flashed by Gandharv Singh Munda, which is improbable. If the appellants have fled, then they might have flashed torch in front of the them and the witnesses might have seen them on their back portion, which was never flashed with torch light. The learned Court below has erroneously relied the evidence of PW 4 holding that his evidence was corroborated by the evidence of PWs 1, 2 and 3, who are also eye-witnesses.

10. In view of the above considered facts, I find that the manner of the alleged occurrence has also been contradicted by the evidence of the doctor (PW 5). The time of the alleged occurrence is also doubtful and so also the place of occurrence. The witnesses i.e. PWs 1, 2, 3 and 4, who claim to have identified the appellants, while they were fleeing away in a dark night when there was no source of identification is also doubtful that they actually identified the appellants. The appellant had no animosity with the deceased, the informant and even with the villagers. Even then none of the villagers was informed about the alleged occurrence nor they were examined by the prosecution. This is only because of the fact that the case of the prosecutions doubted. The I.O. has also not come forward to depose in his case causing great prejudice to these appellants. In view of the fact, the appellants deserve acquittal, giving them benefit of doubt.

11. In the result, I find merit in this Criminal Appeal, which succeeds and is hereby allowed and all the appellants are acquitted of the charges. The judgment and order of conviction and sentence, passed by the learned 7th Additional

Judicial Commissioner, Ranchi in Sessions Trial No. 271 of 1988 is hereby set aside. Appellant No. 2, namely, Gandharv Singh Munda, who is on bail, is discharged from the liability of bail bonds. On the other hand, appellants No. 1, 3, 4 and 5, namely, Hari Dada Singh Munda, Jiwan Singh Munda, Bengali Munda and Doma Munda, who are in custody, are ordered to be released forthwith from the custody, if not wanted in any other case.

S.J. Mukhopadhaya, J.

12. I agree.