

(2006) 03 JH CK 0081
In the Jharkhand High Court
Case No : Criminal Appeal No. 212 of 1990

Jagarnath Pal and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2006) 2 BLJR 1210

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Advocate : Rajeev Sharma, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

1. The appellants 1 to 5 were arrayed as AI to A5 before the 2nd Addl. Sessions Judge, Dumka. They were tried under Sections 147, 148 and 302 read with 149 I.P.C. They were also charged u/s 324 I.P.C. for causing injury to P.Ws.4 and 9 and further they were charged u/s 323 I.P.C. for causing simple injury to P.Ws.5 and 9. The learned trial Judge, while finding the appellants guilty as charged, sentenced each one of them to imprisonment for life u/s 302 read, with 149 I.P.C. On being found guilty u/s 324 I.P.C., AI, A2 and A5 were sentenced one year imprisonment and the third accused was found guilty u/s 323 I.P.C. for which he was sentenced to six months imprisonment. The accused-appellants were also found guilty under Sections 147 and 148 I.P.C. for which each one of them was sentenced to one year imprisonment under each charge. The present appeal is against the said conviction and sentence.

2. The accused 1 and 3 are the brothers. A2 and A4 are their cousins. A5 is the nephew of AI and A3. P.W.5, Nandlal Pujahar as well as P.W.I, Kalipada Pujahar are the brothers of the deceased, Shrikhat Pujahar. P.W.9, Lalmohan Pujahar is the brother-in-law of the deceased. On 14.01.1986 at about 3 P.M., P.W.5,

Nandlal Pujahar was proceeding to his house in his village Bliaga. At that time, Sitaram Pal, the 3rd accused who was standing there with a lathi in his hand confronted P.W.5 and an altercation ensued between them. The 3rd accused, Sitaram Pal wanted P.W.5 to engage him as daily labourer to which P.W.5 refused. Therefore, Sitaram Pal(A3) fisted and slapped P.W.5. On seeing this Shrikhat Pujahar, the deceased, who is the elder brother of P.W.3, Rainpada Mohali reached there. At that moment, A1,A2,A4 and A5 also went there armed with iron rod, knife and lathi. On seeing them Shrikhat Pujahar tried to run away but he was chased and surrounded. All the accused persons indiscriminately beat the deceased, Shrikhat Pujahar with the weapons in his hand and he was also attached with sharp edged weapon and assaulted him till his death. When P.Ws.4 and 5 intervened they also suffered injury at the hands of the accused and after the incident all the accused ran away from the place. P.W.5 leaving the scene of occurrence went to Nala P.S. and gave fardbeyan, Ext.4 at 8.15 P.M. on the same day. The crime was registered and investigation was taken up by P.W. 13.

3. P.W. 13 on taking up investigation proceeded to the scene of occurrence, conducted inquest and prepared inquest report, Ext.5. After the inquest he sent the dead body to the hospital with a requisition requesting the doctor to conduct autopsy.

4. On receipt of requisition and the dead body, Dr. S.K. Jha, P.W. 10 conducted autopsy on the dead body of Shrikhat Pujahar and he found a diffused swelling measuring 4"x4" covering the entire right eye ball and right lateral portion of the forehead. The doctor noticed swelling on the surface. On internal examination the doctor found swelling near the skull. He noticed big haeotoma covering entire area of fractured bone and right temporal region. The membrane was seen congested. The doctor issued Ext.3, the post mortem certificate with his opinion that the death is on account of the injuries found on the dead body which could have been caused by blunt substance.

5. After the completion of investigation the final report was filed against all the accused.

6. When the appellants were questioned u/s 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied all the incriminating circumstances. They did not examine any witness on their side.

7. The learned counsel appearing for the appellants submits that the case of the prosecution is totally unbelievable since, according to him, if all the five accused surrounded the deceased and attached him indiscriminately with various types of weapons including sharp edged weapon till his death then the doctor who conducted autopsy on the dead body must have found more number of injuries and in any event at least five injuries. The learned counsel also submits that though, according to the prosecution, the occurrence took place at 3.30 P.M. on 14.1.1986 and fardbeyan was given at 8.15 P.M. on the same day it was received by the Magistrate only on 19.01.1986. Therefore, it is possible that the first

information statement, Ext.4 must have been prepared at a later point of time implicating all the accused who are closely related to each other on account of prior enmity. On the above contention we have heard learned counsel appearing for the State.

8. It is not in dispute that Shrikhat Pujahar died on account of homicidal violence and the same stands proved through the evidence of the doctor who conducted autopsy and the post mortem certificate issued by him.

9. The prosecution, before the trial court, in order to establish that the deceased, Shrikhat Pujahar suffered injuries at the hands of the accused and died, examined P.Ws.1 to 5, 7 and 9 and of them P.W.3 turned hostile. We have perused the evidence of P.Ws 1, 2, 4, 5, 7 and 9. At the out set we may say that the prosecution case cannot be accepted in view of several infirmities which we find.

10. We have already noticed that according to the prosecution the occurrence took place at 3.30 P.M. on 14.1.1986 when P.W. 5, the brother of the deceased refused to engage A3, Sitaram Pal as a daily labourer. According to P.W. 5 when he refused to engage A3 as daily labourer he was slapped and fisted and that when his brother Srikhata Pujahar reached the place the other accused also came to the scene armed with various types of weapons including sword and that they surrounded the deceased after chasing him. According to him, the deceased was indiscriminately cut and beaten by various types of weapons by all the accused till the death of Srikhata Pujahar. He further deposed that P.Ws. 4 and 9 intervened but they also suffered injuries. The prosecution did not examine the doctor who treated P.Ws. 4 and 9 to prove that they suffered injuries. They also did not mark any injury report. In this background, when we look at the evidence of the witnesses, the substance of the witnesses which have already extracted will go to show that the deceased was indiscriminately attacked with various types of weapons including sharp-edged weapons by all the accused. But this evidence of the witnesses does not find corroboration from any other source. The doctor, P.W. 10 who conducted autopsy on the dead body of Srikhata Pujahar and issued Ext. 3, the post mortem certificate. It clearly shows that the deceased suffered only one injury and died on account of the said injury. It is unbelievable that the deceased suffered only one injury when according to the prosecution, he was attacked with all kinds of weapons including sword. If the deceased was actually attacked by all the accused indiscriminately till his death, the doctor would have certainly noted more number of injuries but he found only one injury. In this background, when we look at the ferdbeyan, Ext. 4, it could be seen that the same was received by the Magistrate only on 19.1.1986 though, according to P.W. 5, it was given at the Police Station even at 8:15 P.M. on the day of incident. There is no explanation from the side of the prosecution as to why the ferdbeyan, Ext. 4 said to have been given at the Police Station at 8:15 P.M. on 14.1.1986 was not dispatched and was belatedly received by the Magistrate on 19.1.1986. Though we are aware that mere delay in receipt of the first

information statement by the Magistrate will not be fatal in each case it may be fatal on the facts and circumstances of a particular case. In the case on hand we have already noticed that the doctor found only one injury on the deceased though the witnesses have claimed that he was beaten by all the accused in indiscriminate fashion. It is also worthwhile to remember that all the accused are related to each other and therefore, it is possible that the first information statement, Ext. 4 would have been prepared at a later point of time by implicating several accused with the crime. We, therefore, find it unsafe to accept the evidence of witnesses, who were produced as eye witnesses, to uphold the conviction of the appellants-accused.

11. In view of the discussions made above, we set aside the conviction and the sentence imposed upon the appellants. They are acquitted.

12. The appeal is allowed. It is reported that the appellants are on bail. They are discharged from their bail bonds.