
(2002) 12 JH CK 0041

In the Jharkhand High Court

Case No : Criminal Appeal No. 211 of 1994

Jagdish Pandey and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 10-12-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 302, 323, 452, 84

Citation : (2003) 1 JCR 282

Hon'ble Judges : Vinod Kumar Gupta, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : Ranjan Kumar Singh, for the Appellant; D.K. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Lakshman Uraon, J.—The appellants have preferred this appeal against the judgment and order of conviction and sentence dated 31.3.1994 passed by Shri Ram Kishore Singh, Sessions Judge, Deoghar in Sessions Case No. 37/1987, whereby and whereunder the appellant No. 1, Jagdish Pandey, has been convicted under Sections 302, 452 and 148, IPC and sentenced to go RI for life u/s 302, IPC, RI for 5 years u/s 452, IPC and RI for one year u/s 148, IPC, the other appellants, Basudeo Roy, Laxman Roy and Arjun Mandal have been convicted and sentenced to go RI for life u/s 302/34, IPC, RI for 5 years u/s 452, IPC and RI for one year u/s 148, IPC. The appellant No. 2, Basudeo Roy, was further convicted and sentenced to go RI for one year u/s 323, IPC. The learned Sessions Judge had ordered that the sentences in respect of all the convicts for each count will run concurrently.

2. The prosecution case as per the fardbeyan of the informant, Falguni Mandal, PW 6, is that in the night of 6.9.1983 he along with his father, Lalgovind Mandal, PW 4, and maternal uncle, Budhram Mandal were sleeping in a room on the first floor. A lantern was burning. At about 11.30 p.m. 10-12 persons skipped upon the roof. They surrounded all of them and tied their hands to kill them. Their

intention was not to take any property of the informant. In the light of the burning lantern the informant identified Jagdish Pandey of village Hurla, Basudeo Roy of village Nawadih, Laxman Roy of village Hurla, Arjuri Mandal of village Hurla and Dhokla Mandal of village Hurla, P.S. Madhupur, District-Deoghar. He could not identify the others. The appellant, Basudeo Roy had chaku, Laxman Roy had farsa, Jagdish Pandey had barchha, Arjun Mandal had balam and Dhokla Mandal had farsa in their respective hands. The appellant, Basudeo Roy asked the informant to go down from the roof. The informant managed to escape but he fell down on the roof itself. He could not see who injured him from behind. He could not see who assaulted his father, Lalgovind Mandal but on being assaulted his father fell down from the roof. The assailants also injured Budhram Mandal with Barchha on his abdomen. The Barchha was thrown from the roof. On his hulla when the villagers assembled then the assailants fled away. The informant has stated that there was some differences with the appellants who had threatened to ruin the entire family of the informant. On 14.8.1983 the informant had informed Madhupur P.S. resulting S.D. entry in the said P.S. It was also the cause of annoyance of these appellants. On hulla of the informant the villagers Lalchand Mandal, Gangu Mandal, PW 3, Bhuneshwar Mandal, Hemlal Mandal, PW 1, Saudagar Mandal and others went to his home and saw the alleged occurrence. The prosecution has examined altogether nine witnesses in order to prove its case. PWs 1, 2 and 3, Hemlal Mandal, Darogi Mandal and Gangu Mandal respectively went to the P.O. on hearing hulla after the alleged occurrence and learnt about the same from the informant, PW 6, Falguni Mandal. PW 4, Lalgovind Mandal, is the father of the informant who claims himself to be an eye witness and as injured by the appellants along with his son, Falguni Mandal, PW 6. PW 5, Fuleshwari Devi, is the mother of the informant who also claims that she saw the appellants through the window while they were fleeing away. PW 7, Dr. S.N. Bhagat, conducted the post mortem examination on the dead body of Budhram Mandal. PW 8, Premchand Mal-viya, S.I. submitted the charge sheet after completion of the investigation and PW 9, Gonda Lal Das, a formal witness, has proved the C.D. as Ext. 6. The learned Sessions Judge has relied on the evidence of the informant, PW 6, his father PW 4, his mother, PW 6 and also the evidence of PWs 1, 2 and 3 before whom the informant has named the assailants, supported by the evidence of Dr. S.N. Bhagat.

3. The defence has not examined any witness but the case of the defence is that the prosecution has suppressed the real fact of commission of theft and dacoity. Some known dacoits had entered into the house of the informant with an intention to commit dacoity and in that course they injured the informant, his father and his mama. These appellants due to enmity have been implicated in this case. The injured, Budhram Mandal, was taken to hospital where his statement was recorded by the Circle Officer, Madhupur as mentioned in the C.D., Para 10, Ext. 6. Budhram Mandal in his dying declaration had stated that while he was sleeping at night then at about 11 p.m. he was awoken and asked not to raise any hue and cry otherwise he would be killed. When he started

raising hulla then he was assaulted. He could not see who assaulted him as they were 18-20 persons but he was given only one barchha blow on his waist by one person in the house of Lalgovind Mandal, PW 4, of village Hurla. The learned counsel for the appellants has also submitted that there is contradictory statement of the injured witnesses, PWs 4 and 6 which does not reveal that they are the eye witnesses of the alleged occurrence. The other witnesses PWs 1, 2, 3 and 5, claimed that they saw the appellants while they were fleeing away. Even PWs 4 and 6 have not named Arjun Mandal among the assailants. PWs 4 and 5 have claimed that they are the injured eye witnesses who were also examined by the Doctor but neither the injury report is on the record nor the Doctor who examined their injuries, was examined by the prosecution. In this case the real I.O. who investigated the case, has not been examined which has caused prejudice to the appellants. The learned Court below has not considered the dying declaration of Budhram Mandal, recorded by the C.O., Madhupur which was suppressed by the prosecution. Para 10 of the diary, Ext. 6, contains the statement of Budhram Mandal. He had not named any assailant. The learned Court below has wrongly arrived at a conclusion that Budhram Mandal was of another village Amiasar and he was not knowing the names of the assailants as he was married 30 years ago and his sasural was the P.O. village. His elder sister was also married with PW 4, Lalgovind Mandal since long. He was in visiting term in that village. There was litigation in between the informant's family and the appellants. Even then the deceased has not implicated these appellants in his dying declaration. The evidence of interested and inimical witness, PW 4, Lalgovind Mandal, cannot be relied as he has contradicted the statement of his son, PW 6, Falguni Mandal, the informant.

4. The alleged occurrence took place at about 11.30 p.m. on 6.9.1983 at village Hurla. The deceased, Budhram Mandal, was sleeping on a khat along with PW 6, Falguni Mandal, the informant and on another khat in the same room PW 4, Lalgovind Mandal, was sleeping. At about 11.30 p.m. 10-12 persons skipped upon the roof. They tied the hands of PW 6, Falguni Mandal and PW 4, Lalgovind Mandal whereas they tied the legs of Budhram Mandal. In the fardbeyan, Ext. 2, the informant has not named any appellant specifically who injured him, his father and Budhram Mandal. However, he has deposed that Basudeo Roy had chaku, Lax-man Roy had farsa, Jagdish Pandey had barchha, Arjun Mandal had balam and Dhokla Mandal had farsa in their respective hands. The informant, PW 6, Falguni Mandal, has stated that the assailants had gone thereto cause murder and not to take any property. In his evidence also he has not named specifically against these appellants who caused injuries to him, his father and Budhram Mandal rather his statement is omnibus as he had identified these appellants who were 10-12 persons on the roof. When he fell down then the accused assaulted him with Chaku on his right leg and head. His father and maternal uncle were also assaulted. He has admitted that there was enmity in between his family and the appellants prior to the alleged occurrence. When the injured were taken to Madhupur Dutta Hospital his fardbeyan was recorded on which he

signed, Ext. 2. He claimed that his maternal uncle, Budhram Mandal died due to barchha blow given on his abdomen. He has also admitted that after institution of this case one co-accused, Dhokla Mandal was murdered. In that murder case the informant and his father have been made accused. When the accused asked the informant, his father and his maternal uncle to step down from the roof then he managed to escape. Hence he could not see as to who assaulted his father and maternal uncle, Budhram Mandal. When he fell down then he was also assaulted from behind. Hence he could not see as to who assaulted him. PW 4, Lal-govind Mandal, father of the informant, has also stated that the criminals skipped upon the roof, entered into their room, they cut the rope of the Khat and they tied their hands by that Khat rope. Thereafter, all three were asked to step down and disclose their properties. In the meantime the informant, PW 6, Falguni Mandal, managed to flee away but he fell down on the roof. This witness has stated that then Basudeo Roy assaulted him with farsa, Budhram Mandal was assaulted with baton on his left abdomen below ribs by Jagdish Pandey and he was assaulted with danda by Basudeo Roy whereas Basudeo Roy has alleged in the fardbeyan, Ext. 4 that he was armed with chaku and there was no lathi in his hand. When Basudeo Roy assaulted him on his leg causing fracture, he fell down from the roof. He claims to have identified all the five named accused only and not others. On hulla Hemlal Mandal, Saudagar Mandal, Shobha, Dhaneshwar Mandal, Gango Mandal, Darogi Mandal and others went to his home, He informed that he had identified the five accused who had assaulted them. He also admits that in the murder of Dhokla Mandal he and his son have been made accused who was the brother of the appellant, Arjun Mandal. There is a long standing land dispute since 30-40 years in between him and the appellant, Jagdish Pandey, He could not identify the four persons who tied their hands in the room. He also could not say the village of those persons. He has also stated in para 19 that he could not see as to who assaulted his son, Falguni Mandal, when he fell down on the roof. He was also assaulted with lathi. He tried to flee away but he fell down from the roof on the thatch. In para 31 he has deposed that the appellant, Jagdish Pandey, was in inimical term with the appellant, Arjun Mandal. The appellant, Basudeo Roy, was also in inimical term with Arjun Mandal.

5. The manner of the alleged occurrence and the identification of the assailants have been contradicted by the injured witnesses, PWs 4 and 6. The informant, PW 6, when did not identify any of the assailants, his father, PW 4, gave a picture that he had identified the appellants who had assaulted his son, his sala and him, which is a development in his evidence. His wife, Fuleshwari Devi, PW 5, has claimed that she was on the ground floor of the house. She saw the appellants while they were fleeing away from the house through angan. She has claimed to have identified the appellants, Jagdish Pandey, Basudeo Roy, Laxman Roy, Arjun Mandal and Dhokla Mandal. She saw her brother, Budhram Mandal and her son, Falguni Mandal lying on the roof in injured condition whereas her husband, Lalgovind Mandal had fallen down from the roof. PW 1, Hemlal Mandal, PW 2, Darogi Mandal and PW 3, Gangu Mandal, went to the house of the informant on

hearing the explosion of bomb and hulla, PW 1 claims that on his way he saw Jagdish Pandey, Basudeo Roy, Laxman Roy, Arjun Mandal and Dhokla Mandal running away. He has stated that Dhokla Mandal has now died. He saw Falguni Mandal in injured condition along with his father, Lalgovind Mandal and mama, Budhra Mandal. They have deposed that the informant, Falguni Mandal, PW.6, has stated that Jagdish Pandey and Basudeo Roy assaulted them. He also claimed to have identified Laxman Roy and Dhokla Mandal. As per his deposition it was dark night. He heard two sounds of bomb explosion just one after another. But this fact of bomb explosion has been suppressed by the prosecution. When he went on the roof then he saw Lalgovind Mandal and Falguni Mandal on the courtyard whereas Budhram Mandal was on the roof. About 20-25 villagers had also gone to the house of the informant along with Gangu, Dhaneshwar, Bhuneshwar, Lalchand and Saudagar. PW 1 had claimed to have identified the appellants while fleeing away in the light of the torch but before the I.O. he has not stated that he had identified the appellants in the light of the torch while they were running, para 16.

6. PW 2, Darogi Mandal, also saw Lalgovind Mandal and Falguni Mandal in injured condition who were in the courtyard and injured Budhram Mandal was on the roof who had sustained injury on his abdomen. He heard the hulla of chor chor and thereafter bomb was exploded. One bomb was found kept in the gali of the house of Lalgovind Mandal. He also admitted enmity with Jagdish Pandey since 20-25 years. PW 3 also saw Falguni Mandal and Lalgovind Mandal in injured condition who were in the courtyard whereas Budhram had sustained injury on his abdomen and was on the roof. He was informed by PW 4, Lalgovind Mandal and PW 6, Falguni Mandal, that Jagdish Pandey, Basudeo Roy, Laxman Roy, Arjun Mandal and Dhokla Mandal were among the criminals. In his presence bhala, chapped and Lantern were seized and seizure list was prepared on which he signed, Ext. 1. Thus the evidence of the PWs who are interested due to previous enmity with the appellants have themselves contradicted the manner of the alleged occurrence. It seems that due to enmity the prosecution witnesses have tried to implicate these appellants in the alleged assault on the person of PW 4, Lalgovind Mandal, PW 6, Falguni Mandal and Budhram Mandal who died on the next morning of the alleged occurrence.

7. The Doctor, PW 7, Dr. S.N. Bhagat, conducted the post mortem examination on the dead body of Budhram Mandal of village Anaiyasar on 8.9.1983 at 12.45 p.m. and found penetrating wound with sharp cutting margin 1.5" X 1/2" x peritoneal cavity deep. On left side of abdomen 6" lateral from umbilicus 1" below coastal margin through which momentum protruding blood oozing was found. The injuries were ante mortem in nature caused by sharp penetrating weapon. The cause of death was due to shock and haemorrhage within six hours from the time of post mortem examination, Ext. 3.

8. The death of Budhram Mandal is not in dispute but the manner of the alleged occurrence and involvement of these appellants in the alleged assault of the

informant, his father and Budhram Mandal has been challenged by the defence. As per the evidence of the interested witnesses, PWs 4 and 6, they were in inimical term with the appellants due to land dispute and there were pending cases against them since 25-30 years prior to the alleged occurrence. This fact was also corroborated by the other witnesses, PWs 1, 2, 3 and 5. The informant and his father are the accused in a murder case of Dhokla Mandal who was the brother of the appellant, Arjun Mandal. Due to enmity the informant and his father have tried to implicate these appellants in causing injuries to them resulting the death of Budhram Mandal who was the sala of PW 4, Lalgovind Mandal. The dying declaration of Budhram Mandal as mentioned in the C.D., para 10, Ext. 6, which was recorded by the C.O., Madhupur in the hospital, does not reveal the involvement of these appellants in causing injury to him or the informant and his father. Pws 1, 2 and 3 went there on hearing hulla of Chor-Chor and after hearing the sound of bomb explosion they claimed to have identified these appellants while running away in the torch light. But they had not stated this fact before the I.O. In course of investigation u/s 161, Cr PC. Even though the informant and his father were in inimical term with the appellants. The informant, PW 6, neither in the fardbeyan, Ext. 2 nor in his deposition in the Court, had stated that he had named these appellants who had caused injury on the person of Budhram Mandal and also on the person of his father rather he had stated that he could not see who assaulted whom. Even he could not see as to who assaulted him. His father, PW 4, Lalgovind Mandal, tried to develop the story by alleging that these appellants assaulted his son, PW 6, Falguni Mandal and his sala, Budhram Mandal. This remained uncorroborated by any of the witnesses. Later on he has also deposed that he could not see as to who assaulted his son after his fall on the roof. Admittedly the appellants are also in inimical term inter se. It is not supposed that when Jagdish Pandey was in inimical term with Arjun Mandal and Dhokla Mandal and Basudeo Roy was also in inimical term with Arjun Mandal, then they have joined together causing injury to the informant, his father and his mama. The learned Court below has given reasons that common enmity with the informant had joined to serve their common object. But this fact could not be corroborated by the injured informant, PW 6, Falguni Mandal and also in the dying declaration made by Budhram Mandal before the C.O. Madhupur.

9. In view of these considered facts I find that the learned Court below has approached in a misguided manner in convicting these appellants without considering the contradictory statements of PW 4 and his son, PW 6. When PW 6, injured himself, has not named these appellants either in the fardbeyan, Ext. 2 or in his deposition then the evidence of his father, PW 4, Lalgovind Mandal that these appellants assaulted him, his son and Budhram Mandal remained uncorroborated by any other witnesses. The witnesses, PWs 1, 2 and 3, who saw these appellants in the torch light fleeing away, are also in inimical term with the appellants. However, they have not deposed before the I.O. that they had identified them in the torch light. In view of this fact, I find that due to non-examination of the I.O. It has caused prejudice to the appellants. The manner of

the alleged occurrence is that the informant, Falguni Mandal, PW 6, while fleeing away on the roof, fell down, then he was assaulted from behind, which he could not see. On the other hand, PW 4, Lalgovind Mandal and his sala Budhram Mandal stepped down on the ground floor but when Lalgovind Mandal was assaulted with lathi by Basudeo Roy on his leg causing fracture then he fell down on the thatch from the first floor. The witnesses PWs 1, 2 and 3 claimed that they saw PW 4, Lalgovind Mandal, and his son, Falguni Mandal, PW 6, in the courtyard in injured condition whereas Budhram Mandal was on the roof. PW 5 is the mother of the informant. She claims that she saw her son Falguni Mandal and her brother, Budhram Mandal, in injured condition on the roof and her husband, Lalgovind Mandal had fallen on the chhappar from the first floor. She claims that she had identified the appellants while they were fleeing away through the window. This is also not convincing to me.

10. The criminals had entered into the house of the informant to commit dacoity. They had exploded two bombs as supported by PWs 1, 2 and 3 but it was suppressed by the informant, PW 6, Falguni Mandal, his father, PW 4, Lalgovind Mandal, and mother, PW 5, Fuleshwari Devi. Even PW 4, Lalgovind Mandal, could not identify the criminals who tied their hands. The witnesses who went after the alleged occurrence, saw Budhram Mandal in injured condition but they have not deposed that his leg was tied with any rope.

11. In view of these contradictory statements and also that the informant had not named specifically the assailants who assaulted whom in the fardbeyan and also in his evidence as mentioned above, the evidence of PW 4, Lalgovind Mandal, which remained uncorroborated, is only due to long standing enmity with the appellants.

12. Considering these facts I come to the conclusion that the findings of the learned Court below regarding the participation of these appellants in causing injuries to the informant, his father and his mama, Budhram Mandal, can not be sustained.

13. In the result this criminal appeal is allowed. The order of conviction and sentence passed by the learned Court below is hereby set aside. All the appellants-convicts are acquitted from the charges levelled against them and are also discharged from the liability of their bail-bonds, who are on bail.

Vishnudeo Narayan, J.

14. I agree.