
(2006) 05 JH CK 0140
In the Jharkhand High Court

Jogo Pahan and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 10-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2007) CriLJ 449 : (2006) 3 JLJR 601 : (2006) 3 JCR 371 : (2006) 3 AIRJharR 462

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Jogo Pahan, Mangal @ Suku Pahan and Gopal Pahan were arrayed as A3, A2 and A1 respectively before the trial Judge for facing a charge under Sections 302/34 and 201 IPC. In the judgment the appellants will be referred as A1 to A3, in that order, as they were arrayed before the trial Court. The allegation against the appellants is that at 10.00 P.M. on 17-1-87 they inflicted injuries, on Ganesh Singh Munda with lathi and that on account of the said injuries, he died. The further allegation against the appellants is that in order to screen the offence they dragged the dead body from the place where he was initially beaten with lathi and the body was left near the National High Way. The trial Judge, finding the appellants guilty, as charged, sentenced each one of them to imprisonment for life u/s 302/34 I.P.C. The trial Judge, though found the appellants guilty u/s 201 I.P.C, did not specifically mention the sentence in the judgment.

2. The case of the prosecution is that the deceased Ganesh Singh Munda is the brother of P.W. 1, Dukhan Singh Munda. On 17-1-1987 at about 7.00 A.M. the deceased went to the house of Jogo Pahan (A3). The deceased did not return home. P.W. 1 went in search of his brother but could not find him. At about 1.00 A.M. on hearing some cries he went to the place from where the cries were emanating. P.W. 1 found A1 to A3 assaulting the deceased Ganesh Singh Munda

with lathi. P.W. 1 and P.W. 2 were present to witness the assault. They went back to the village to bring the villagers to the scene of occurrence; but as the villagers had taken drinks they could not be brought to the scene, as the villagers were fast asleep. P.W. 1 and P.W. 2 returned to the scene on the morning of 18-1-1987. They did not find the dead body of Ganesh Singh Munda. They went in search of the dead body and ultimately they found it near the boundary of Kasampusdih village adjacent to the National High Way. P.W. 1, thereafter, gave (Ext. 1) the fardbeyan at 6.00 P.M. on 18-1-1987 to G.N. Pandey, the Sub-Inspector attached to Tamar Police Station on the day on which the crime was registered. P.W. 8 took up investigation in the crime and prepared inquest report and sent the body for post mortem.

3. On receipt of the requisition and the dead body P.W. 6, Dr. D.K. Dhtraj, conducted post mortem examination and found three bruises, one over the left shoulder, another over front of the left side of chest and neck and third in the middle of front of right leg. The doctor also found multiple number of bruises on the front portion of the chest and on the lower abdomen and also over the left side of the back of chest. Diffused contusion of both upper arms on outer aspect and the right shoulder area were also found. Doctor noticed fracture of lower jaw and injury on the right leg.

He issued (Ext. 4) the post mortem certificate with his opinion that death is on account of injuries, which would have been caused by blunt and hard substance.

4. After the completion of investigation, final report was filed against the appellants, who denied all the incriminating circumstances, when they were questioned u/s 313 Cr.P.C.

5. The learned Counsel appearing for the appellants submits that the conduct of P.W. 1 & P.W. 2, who claimed to be the eye witnesses, in not going to the police station to lay a complaint about the attack on the deceased itself indicates that they could not have been present and witnessed the occurrence. It is his submission that P.W. 1 must have given the complaint on seeing the dead body of his brother implicating the accused with the crime on account of prior motive. He submits that the evidence of the eye-witnesses is not supported by the medical evidence and the finding given by the trial Judge is not based on the evidence. We have heard Mr. S.N. Rajgarhia, learned Counsel appearing for the State on the above contention.

6. Gahesh Singh Munda, died on account of injuries suffered by him. The autopsy was conducted by Dr. D.K. Dhiraj, and he was examined as P.W. 6. The postmortem certificate is marked as Ext. 4. The evidence of the doctor and the certificate (Ext. 4) issued by him prove the case of the prosecution that deceased died on account of homicidal violence.

7. P.W. 1, P.W. 2 & P.W. 3 were examined to prove that the deceased was murdered by accused 1 to 3. According to P.W. 1, who is the brother of the deceased, the deceased left along with A3 to see a mela and did not return

home. He has further deposed that he went in search of his brother and at about 10.00 P.M. on hearing cries emanating from a place he went there and found the deceased being assaulted with lathi by accused 1 to 3. According to him, the occurrence was witnessed by P.W. 2 and both of them failed to bring the villagers to the scene of the occurrence, as according to them, the villagers were fast asleep on account of consumption of liquor; They have further deposed that on the morning of 18-1-1987 they went to the place where the deceased was beaten and not finding the body went in search of the deceased and found the dead body of the deceased near a boundary of Kasampusdih village adjacent to the National High Way. According to them, thereafter, the fardbeyan was given to the police officer. On going through the evidence of P.W. 1 and P.W. 2, we find that their evidence is artificial. P.W. 1 is the brother of the deceased. If P.W. 1 was really present at the scene of the occurrence and witnessed the deceased being beaten by the appellants he would not have returned to the village to bring the villagers. If it is to be assumed that P.W. 1, was afraid that he will be beaten by the accused and therefore he went to the village to bring the villagers, then P.W. 1 on reaching the scene of the occurrence subsequently and not finding the deceased at the place would have certainly gone to the police station to inform the police authorities about the beating of the deceased by the accused and the missing of his brother. He did not do so. According to him, he went in search of his brother and P.W. 2 was helping him in the said search. Both of them have stated that they found the dead body on 18-1-1987 and thereafter the complaint was registered as a crime. We are unable to accept as to why the two witnesses did not take any steps to go to the police station to lay a complaint against A1 to A3 for the alleged assaulting of the deceased. The conduct of P.W. 1 and P.W. 2 in not informing any villagers on the next day about the deceased being beaten by the accused, their conduct of not going to the police station for laying a complaint and their evidence not being supported by the medical evidence, we find it difficult to accept that P.W. 1 & P.W. 2 have seen that the deceased was beaten with lathi by the accused. The doctor who conducted autopsy gave evidence to the effect that the said injuries found on the deceased could have been caused by Tangi. Therefore, the evidence of the witnesses is not supported by medical evidence as according to the witnesses the accused beat the deceased with lathi.

8. In the above background we do not accept the evidence of P.W. 1 and P.W. 2 and reject the same. In the result the conviction and sentence imposed upon the appellants, are set aside. It is reported that Appellant Nos. 2 and 3 are on bail. They are discharged from their bail bonds. It is further reported that Appellant No. 1 is in jail. He is directed to be released from the jail custody forth with, if not wanted in any other case(s). The appeal is allowed.