
(2006) 05 JH CK 0054

In the Jharkhand High Court

Case No : Criminal Appeal No's. 52 and 60 of 1999R

Krishna Sahu 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 161, 313
Explosive Substances Act, 1908 — Section 3, 4
Penal Code, 1860 (IPC) — Section 149, 302

Citation : (2006) 05 JH CK 0054

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

Bench : Division Bench

Advocate : B.M. Tripathy, for the Appellant; T.N. Verma, APP, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—Cr. Appeal No. 52/1999R is by Krishna Sahu and Yogendra Das, who were arrayed as A1 and A5 in Sessions Trial No. 109/1997 on the file of 2nd Addl. Sessions Judge, Gumla. Cr.Appeal No. 60/1999R is by Ayodhya Sahu, Ram Kishun Das and Ram Chandra Das, who were arrayed as A2, A4 and A3 respectively in the aforesaid Sessions Trial. In this judgment, the appellants in Cr.Appeal No. 52/99R and the appellants in Cr.Appeal No. 60/99R will be referred as A1 to A5 in the same order as they were arrayed before the Trial Judge for the sake of convenience and the two appeals are also disposed of by the following common judgment. The appellants were charged u/s 302 read with Section 149 I.P.C. On being found guilty u/s 302 read with Section 149 I.P.C, each one of them was sentenced to imprisonment for life. The present appeals are against the said conviction and sentence.

2. The deceased, Govind Sahu, is the brother of P.W.9, Sita Ram Sahu. P.W.4 Arun Kumar Sahu is the son of P.W.9. P.W.5 Mungeshwar Sahu is the father of the deceased. P.W.6, Priyanka Kumari, is the daughter of the deceased. P.W.8 Smt. Chinta Devi, is the wife of the deceased. They were residents of village -

Varandha. Devanti Kumari, sister of A2 Ayodhya Sahu, was assaulted by the deceased, on account of which there were ill-feelings between the family of the deceased and the family of the appellants. It is said to be the motive for the occurrence, which took place at 5.30 a.m. on 25.5.1996.

3. On 25.5.1996 at 5.30 a.m., the deceased Govind Sahu was proceeding to field to answer calls of nature. While he was on his way, A1 to A5 accosted him. A1 was having a bomb, A2 was having a Bhujail, A3 was having a Baluwa, A4 was having a bomb and A5 was having a lathi. They surrounded the deceased and A1 and A4 threw bombs at the deceased. The deceased sustained injuries. He fell down. Thereafter A2, A3 and A5 started assaulting the deceased on various parts of the body. The deceased died instantaneously on receiving the injuries. The occurrence was witnessed by P.Ws.4, 5, 6, 8 and 9. The complaint, Ext.5, was given by P.W.9 at Bharno Police Station at 7.00 a.m. on 25.5.1996, on the basis of which a crime was registered. After registration of the crime, investigation was taken up and the inquest was conducted over the dead body. After the inquest, the body of the deceased was sent to the hospital for autopsy.

3. On receipt of the requisition, P.W.7, Dr. Mrityunjay Sarogi, conducted autopsy and he found the following injuries:

(i) Incised wound over left back of parietal region of the scalp 4" x 1" x 2" deep with fracture of under line bone and fracture of brain matter.

(ii) Lacerated wound criciate sharp 4" x 1" x 1" with fracture of under line bone in left occipital region.

(iii) Lacerated wound cruide in sharp 4" x 1" x 1" one inch medial to injury No. 2 with fracture of under line bone.

(iv) Incised wound over forehead 2" x 1" x 1/2"

(v) Incised wound over forehead in between two eye brows 1/2" x 1/2" x 1/2"

(vi) Injury No. 6 lacerated wound over left lower front of thigh 1" x 1/2" x 1" deep with charring of the surrounding skin.

(vii) Incise wound over left lower scapular region 3" x 1% x 2% and left thorasic cavity containing 50 C.C. blood.

(viii) Incised wound over left scapular region 3" above injury No. 7 3" x 1/2" x 1/2" deep with tailing on both side extending medially for 2" laterally far 6".

(ix) Incise wound over left scapular region 3% above injury No. 8 3" x 1/2" x 1/2".

(x) Incised wound over right scapular region 3" x 1/2" x 1/2".

(xi) Incised wound over right scapular region 1/2 inch below injury No. 10 size 1" x 1/2" x 1/2".

(xii) Incised wound over left lateral aspect of neck 4" x 1" x 1/2" deep.

(xiii) Incised wound over left lateral aspect of neck 1" above injury No. 12 4" x 1" x 1/2" deep.

(xiv) Incised wound semilunar part in shape over left upper surface of shoulder 4" x 2" x 1" deep.

(xv) Bruise over back of right forearm and upper lateral right chest wall with ringing of hair involving about 2% of body area.

The Doctor issued Ext.2, the post mortem certificate, with his opinion that injury Nos. 6 and 15 could be on account of explosive substance and injury Nos. 2 and 3 could have been caused by hard and blunt substance, such as Tangi and that other injuries could have been on account of sharp cutting weapon like Baluwa, Bhujali and knife. The Doctor was of the opinion that injury Nos. 1 to 3 are sufficient to cause death in the ordinary course of nature.

4. After the completion of investigation, final report was filed against all the accused, who denied their complicity in the crime, when they were questioned u/s 313 Cr.P.C.

5. Learned Counsel appearing for the appellants submits that since the trial court acquitted the accused u/s 3 and 4 of the Explosive Substance Act, the appellants ought to have been acquitted u/s 302 read with Section 149 I.P.C, since, according to the counsel, the very case of the prosecution that bombs were thrown at the deceased and thereafter the deceased was attacked by the accused by various weapons stands disbelieved on account of the said acquittal. It is his further submission that P.W.4, though claimed in his evidence that he saw the entire occurrence, in his earlier statement recorded u/s 161 Cr.P.C, has only stated that on hearing the noise, he rushed to the place and found the appellants running away from the scene and hence P.W.4 could not have witnessed the occurrence. On the above submission, we have heard Mr. T.N. Verma, learned Counsel appearing for the State.

6. Govind Sahu died on account of the injuries. The Doctor, P.W.7, who conducted autopsy and the post mortem certificate, Ext.2, issued by him conclusively establish the said fact.

7. P.Ws.4, 5, 6, 8 and 9 were examined by the prosecution to prove that A1 to A5 caused injuries on the deceased leading to his death. They are relatives of the deceased. According to the prosecution, some time prior to the date of the incident, the daughter of A2 was assaulted by the deceased and therefore, there was enmity between the two families. On going through the evidence of P.Ws.4, 5, 6, 8 and 9, we find that their evidence is cogent and convincing and that there is no artificiality attached to their evidence. The occurrence had taken place at 5.30 a.m. in the month of May and therefore, there would have been sufficient sun light at the time of occurrence. In fact, the eye-witnesses are related to the deceased and were very much present in the village and it is not the case of the

defence that they were not present and could not have witnessed the occurrence. Their evidence is also supported by the medical evidence. The contention of the counsel that since P.W.4, in his earlier statement has only stated that he saw the accused running away and did not speak about the assault will not in any way affect the prosecution version, even if it is assumed that P.W.4 did not speak about the assault by the accused on the deceased in his earlier statement. The evidence of P.W.4 shows that even as per his earlier statement, he saw the accused running away from the scene of occurrence and the deceased lying with injuries. Apart from the evidence of P.W.4, we have evidence of four other witnesses, who are consistent in their evidence, when they stated that the appellants caused injuries on the deceased. We accept their evidence.

8. The contention of the counsel that since the accused were acquitted u/s 3 and 4 of the Explosive Substance Act, the prosecution case is to be disbelieved cannot be accepted by us. A perusal of the records and the judgment of the Trial Judge show that the accused were acquitted under the Explosive Substance Act not because the Trial Judge disbelieved the evidence of witnesses but because the prosecution did not produce sanction order issued by the competent authority. In fact, the judgment shows that the Public Prosecutor, even at the Trial Court, conceded that the sanction order was not given by the competent authority. Under the circumstances, the trial court acquitted the accused under the said Act. In the above background, we cannot hold that the acquittal of the accused under the Explosive Substance Act should automatically lead to the acquittal of the accused u/s 302 read with Section 149 I.P.C also. We accept the evidence of the witnesses, which is supported by the medical evidence and hold that the Trial Judge was justified in convicting A1 to A5. These appeals are accordingly dismissed.