
(2019) 08 JH CK 0081

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 100, 104 Of 2002

Kushar Sao @ Rajendra Sao And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 01-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 141, 147, 148, 149, 302, 307, 323, 324, 326, 341

Citation : (2019) 08 JH CK 0081

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : H.K. Shikarwar, Sidhant Sinha, Priyanka, Mukesh Suman, Ajit Kumar, A.K. Sahani, Amrita Kumari

Final Decision : Partly Allowed

Judgement

Shree Chandrashekhar, J

1. Nine persons were made accused in Sadar P.S. Case No.413 of 1996 which was registered under sections 147, 148, 149, 341, 323, 307, 302 IPC, on the basis of fardbeyan of Chedi Sao recorded on 11.11.1996 at about 15:00 hrs. After the investigation they were sent up for trial to face the charge under section 147 IPC, under section 307 IPC and under section 302/149 IPC.
2. Against the accused persons, namely, Modi Sao and Arbind Sao separate charges under section 148 IPC and under section 302 IPC were also framed.
3. The appellants, namely, Kushar Sao @ Rajendra Sao, Girza Sao, Prabhu Sao, Keshwar Sao @ Keshav Sao and Rajdeo Sao in Cr.Appeal (DB) No. 100 of 2002 have been granted bail vide order dated 19.6.2002 by this Court; the appellants in Cr.Appeal (DB) No. 104 of 2002, namely, Jalmalo Devi @ Raj Kali Devi and Sarro Sao have been granted bail vide order dated 19.6.2002; and the appellants, namely, Modi Sao and Arbind Sao have been granted bail vide order dated 7.12.2009 by this Court.

4. During the trial, the prosecution has examined altogether nine witnesses; the informant is PW-5 and his daughter-in-law, namely, Anarkali Devi has been examined as PW-6.

5. Dr. Krishna Murari Sah who has been examined as PW-7 has conducted autopsy and found the following injuries on Laxmi Sao:

"(i) Penetrated wound 1"x1/4" cranial cavity deep in the frontal region;

(ii) Incised wounds in the right side of neck 1"x1/2"x1 1/2";

6. The doctor has found fracture of frontal bone on the left side. He has also found brain matters damaged and the cranial cavity full of blood. On the right side of the neck, the major vascular bundle of upper part was found bi-sected.

7. According to the doctor, the injuries on Laxmi Sao were caused by sharp cutting weapon and in his opinion death has been caused due to shock and hemorrhage resulting from such injuries. The doctor has stated that the injuries found on Laxmi Sao may be caused by chura (knife) and the two injuries found on Laxmi Sao could have been caused by two different weapons.

8. In his fardbeyan, the informant has stated that in the morning of 11.11.1996, at about 11 a.m., his son, namely, Laxmi Sao had gone to make water channel for irrigating their field but his agnate, namely, Arbind Sao had filled the channel, which was again made by his son. The informant says that at the time when his son was digging channel for irrigation, the accused persons, namely, Modi Sao, Arbind Sao, Jalmalo Devi @ Rajkali Devi, Sarro Sao, Keshwar Sao @ Keshav Sao, Girza Sao, Prabhu Sao, Rajdeo Sao and Kushar Sao, variously armed with lathi and axe, came there and started assaulting his son. On hearing hulla, he along with Surendra Sao and Anarkali Devi rushed there. When they reached the place of occurrence the accused persons assaulted Anarkali and Surendra Sao with Tangi. The informant has alleged that Modi Sao and Arbind Sao have inflicted knife blows on the head of his son, Laxmi Sao.

9. In the court, the informant has largely supported the incident as narrated by him in his fardbeyan. He has made specific allegation of assault on Laxmi Sao by Arbind Sao. He says that first of all Surendra Sao was assaulted by Kesho Sao with Tangi and, thereafter, Rajkali Devi has assaulted Kalo Devi with Tangi on her head. He has further stated that all nine accused persons have encircled Laxmi Sao and started assaulting him. He has made specific allegation against Arbind Sao of giving two knife blows in the neck of Laxmi Sao. PW-6 has also named all the nine accused persons as assailants. She has deposed that Arbind Sao had a knife in his hand, whereas Rajkali Devi had a Tangi and other accused persons were holding Lathi. She has further said that Arbind Sao gave a chura blow to Laxmi Sao, his husband, on his head and when she tried to save him Rajkali Devi gave two Tangi blows on her head. She says that her son Surendra Sao was also assaulted by Tangi on his head.

10. The prosecution has not examined Surendra Sao and Draupadi Sao, though

both were cited as eye-witness in the charge sheet; Surendra Sao was the injured eye-witness. PW-1 and PW-2 are inquest witnesses, PW-3 is a formal witness and PW-4 has been declared hostile at the instance of the prosecution.

11. The charge under section 307 IPC has failed.

12. During the investigation, the Investigating Officer has not seized the crime weapon, clothes of the deceased, blood-stained earth and other incriminating materials.

13. From the evidences led by the prosecution, we find that there is considerable confusion on assault made by appellant, namely, Modi Sao on Laxmi Sao. In his examination-in-chief, the informant has not said that Modi Sao has assaulted his son either on his neck or head with a knife. He has made a general statement that all the accused persons have assaulted his son. There were only two incised injuries found on Laxmi Sao. According to prosecution, besides the appellants, namely, Arbind Sao and Modi Sao there were others also who were holding Tangi.

14. In the above facts, we are inclined to grant benefit of doubt to the appellant, namely, Modi Sao and, accordingly, his conviction under section 302/149 IPC is set-aside.

15. Except the appellant, namely, Arbind Sao other appellants have been convicted for causing death of Laxmi Sao with the aid of Section 149 IPC.

16. Section 141 of the Indian Penal Code provides that an assembly of five or more persons shall be designated "unlawful assembly", if the common object of any member of the unlawful assembly was to commit any of the act out of five circumstances provided under section 141 IPC. Section 149 IPC is a substantive offence in itself. It provides that if any member of the unlawful assembly has committed an illegal act, in furtherance of common object of all, each member of the unlawful assembly shall be liable for such act if it is proved that it was within the knowledge of each of the members of the unlawful assembly that such act would be committed in furtherance of the common object of the unlawful assembly. To rope in every member of an unlawful assembly with the aid of section 149 IPC, it is not necessary that each member of the unlawful assembly must have done some act. However, the prosecution must establish that the offending act was committed in furtherance of the common object of the unlawful assembly or it was within the knowledge of every member of the unlawful assembly that such act may be committed in furtherance of the common object of all. From the manner of occurrence as portrayed by the prosecution witnesses, particularly PW-5 and PW-6, we do not find any evidence on common object of all to commit murder of Laxmi Sao. The appellants, namely, Jalmalo Devi @ Rajkali Devi, Sarro Sao, Keshwar Sao @ Keshav Sao, Girza Sao, Prabhu Sao, Rajdeo Sao and Kushar Sao have not shared common object with the appellant, namely, Arbind Sao to cause death of Laxmi Sao. Their mere presence at the place of occurrence would not make them liable for the death of Laxmi Sao.

17. Accordingly, conviction of the appellants, namely, Jalmalo Devi @ Rajkali Devi, Sarro Sao, Keshwar Sao @ Keshav Sao, Girza Sao, Prabhu Sao, Rajdeo Sao and Kushar Sao under section 302/149 IPC is set-aside.

18. According to the prosecution witnesses, Anarkali Devi- PW-6 has suffered injuries at the hands of Rajkali Devi.

19. Dr. Vijay Kumar Singh PW-9 has examined her on 11.11.1996 and found the following injuries:

"i.Lacerated wound over left side of skull with bleeding margin 4 c.m.x 3 c.m. x bone deep.

ii. complain of pain over back with bruise 3 c.m. x 2 c.m. over mid of back."

20. The remaining appellants are said to be holding Lathi in their hands at the place of occurrence. No injury corresponding to an injury which may be caused by Lathi blow has been found on any other prosecution witnesses. There was a quarrel between both the sides which had ensued on a trivial issue, that is, on constructing water channel for irrigating the field.

21. In the above state of affairs, we hold that the appellants, namely, Sarro Sao, Keshwar Sao @ Keshav Sao, Girza Sao, Prabhu Sao, Rajdeo Sao and Kushar Sao are guilty for the offence punishable under section 147 IPC and they are sentenced to undergo R.I. for six months. The appellant, namely, Jalmalo Devi @ Rajkali Devi, who was holding a Tangi, is convicted under section 324 IPC and she is sentenced to undergo R.I. for nine months.

22. Insofar as the offence committed by the appellant, namely, Arbind Sao is concerned, the prosecution witnesses have spoken about his role in assaulting Laxmi Sao in unison. He is the one who has given knife blow to Laxmi Sao. The doctor has found one penetrating wound in the frontal region and one incised wound on the right side of the neck of Laxmi Sao. But then, there is allegation of assault by Modi Sao and other appellants who were also holding sharp-cutting weapons. The doctor has rendered an opinion that both the injuries found on Laxmi Sao could have been caused through two different weapons.

23. In view of the above medical evidence and somewhat confused prosecution evidence, in our opinion it would not be safe to convict the appellant, namely, Arbind Sao under section 302 IPC simplicitor. The prosecution has failed to establish that it was Arbind Sao who has inflicted fatal blow on Laxmi Sao. Therefore, we hold that conviction of Arbind Sao under section 302 IPC is not sustainable and, accordingly, it is set-aside. However, both the injuries found on Laxmi Sao were grievous in nature and at least one injury can be attributed to Arbind Sao. Accordingly, he is convicted under section 326 IPC and sentenced to undergo R.I. for ten years. His conviction under section 148 IPC is confirmed.

24. Ms. Amrita Kumari, the learned APP says that the appellant Arbind Sao has undergone more than 13 years in custody.

25. The appellants, namely, Kushar Sao @ Rajendra Sao, Girza Sao, Prabhu Sao, Keshwar Sao @ Keshav Sao and Rajdeo Sao in Cr.Appeal (DB) No. 100 of 2002 and appellants, namely, Modi Sao, Arbind Sao, Jalmalo Devi @ Raj Kali Devi and Sarro Sao in Cr.Appeal (DB) No. 104 of 2002 are discharged of the liability of bail-bonds furnished by them.

26. Accordingly, Cr.Appeal (DB) No. 100 of 2002 and 104 of 2002 are partly allowed.

27. We appreciate the able assistance rendered by Mr. H.K.Shikarwar, the learned Amicus in Cr.Appeal (DB) No. 100 of 2002 and Mr. Ajit Kumar, the learned Amicus in Cr.Appeal (DB) No. 104 of 2002.

28. The Secretary, Jharkhand High Court Legal Services Committee shall reimburse the learned Amicus, in both cases, on submission of bill(s). They shall be paid Rs.5,500/- for each effective date, but subject to the cap as per the Notification dated 23.11.2017.

29. Let lower court record be transmitted to the court concerned, forthwith.