
(2009) 04 JH CK 0145

In the Jharkhand High Court

Case No : Criminal Appeal (D.B) No. 226 of 2001

Lajrus Oraon and Pitrus Oraon

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 34

Citation : (2009) 04 JH CK 0145

Hon'ble Judges : Prashant Kumar, J; Narendra Nath Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the Appellants against the judgment of conviction dated 30.4.2001 and the order of sentence dated 1.5.01 passed by Shri Hari Bhushand Prasad Sinha, learned 1st Additional District & Sessions Judge, Simdega in S.T. No. 229/1984 whereby the Appellants have been convicted under Sections 302/ 34 IPC and sentenced to life imprisonment.

2. The prosecution was launched on the basis of the fard beyan of PW-6-Sudheshwari Bhagat (husband of the deceased) dated 11.3.1983.

3. Briefly stated prosecution case is that on 11.3.1983 at about 6 A.M the deceased Paulina Oraon @ Champa Devi had gone to collect Mahua flowers from the tree standing over Plot No. 236 under Khata No. 2 of Village-Mararoma Damaktanr. PW-5-Puna Singh, who was a "Dhangar" (servant) of the informant, had also accompanied Paulina Oraon. The said Puna Singh informed the informant that while Paulina Oraon was picking up Mahua flowers, the accused-Appellants assaulted her with an axe as a result of which she sustained injuries. On getting that information, the informant rushed to the place of occurrence and saw his wife seriously injured and dead. He also saw the accused-Appellant Lajrus Oraon going towards the village with a blood stained axe.

4. On the said fard beyan, the police registered a case under Sections 302/ 34

IPC against the Appellants and after investigation the police submitted charge sheet.

5. Charges were framed and the case was committed to the Court of Session.

6. The accused-Appellants denied the charges and pleaded not guilty. They were put on trial.

7. In order to prove the charges against the accused-Appellants the prosecution altogether examined twelve witnesses. PW-1 -Falindra Naik is the advocate clerk and is a formal witness. He has proved the FIR (Ext. 1). PW-2-Ambrus Oraon @ Ambrus Minz and PW-3-Patrus Kujur are the witnesses to the inquest report. They have proved their signatures on the inquest report (Exts. 2 & 2/1 respectively). PW-4-Narayan Singh is also a formal witness. They have proved their signatures on the seizure list. PW-5-Puna Singh is said to be the solitary eye-witness in this case. PW-6-Sudheshwari Bhagat is the husband of the deceased and is the informant of the case. PW-7-Puni Ram Naik is a formal witness. He has proved the inquest report (Ext. 3). PW-9-Kalindar Baraik and PW-10-Joakim Kerketta are also the formal witnesses. They have proved their signatures on the seizure list PW-11-Paul Kaitwar and PW-12-Fasinu Naik are the formal witnesses. PW-12 has proved the post mortem report (Ext. 5).

8. On the basis of the said evidences, particularly the evidence of PW-5 read with the evidence of PW-6, learned Trial Court held the Appellants guilty of the charges u/s 302/ 34 IPC and convicted and sentenced them as aforesaid.

9. The said judgment of learned Trial Court has been assailed in this appeal on several grounds.

10. Learned Counsel for the Appellants urged that the evidence of PW-5 is said to be the solitary material evidence on record. PW-5 is a child witness. At the time of the alleged occurrence he was aged about 8 years. He has stated in his deposition that he had no clear understanding at that time. In view thereof, PW-5 is not a credible and reliable witness due to his poor understanding at the time of the occurrence. The evidence of PW-5 was recorded after about 12 years of the date of occurrence and it is very doubtful that the said, witness would remember and explain the occurrence correctly and truthfully. It is not possible even for an adult man of clear understanding to remember the incident so precisely after about 12 years. His testimony is, thus, doubtful and it is unsafe to base the Appellants' conviction on the solitary testimony of the PW-5. The said evidence cannot be said to be wholly reliable and credible. He further urged that neither the I.O nor the Doctor, who held the post mortem examination on the dead body of the deceased, have been examined in this case. Non-examination of the said important witnesses on the one hand has caused serious prejudice to the defence and on the other withholding of the said important witnesses has to be adversely inferred against the prosecution. He has further submitted that the incriminating weapon "axe" has not been recovered and produced before the Court. The place of occurrence has not been proved by any positive evidence. There is, thus, no

cogent and clinching evidence on record to establish the charge of murder of Paulina Oraon against the Appellants. Learned Counsel alternatively argued that it is an admitted case that there was dispute regarding the ownership of a tree between the parties i.e. between the informant and the accused-Appellants. It has come in the evidence that the accused-Appellant Lajrus Oraon was picking up Mahua flowers on half portion of the tree and the informant's deceased wife Paulina Oraon was also picking up Mahua flower on the half portion. Each of them were claiming exclusive right over the Mahua tree. When Pitrus Oraon (Appellant No. 2) arrived there, he objected to picking up the Mahua flowers by the informant's wife. The said objection by the Appellant No. 2 led to hot exchange of words and quarrel between them and suddenly the accused-Appellants became angry and assaulted the deceased. Learned Counsel submitted that even at that point of time there was no intention of the Appellants to kill the informant's wife as they did not inflict any injury on the vital part of the body. Pitrus Oraon, admittedly, had given Tangi blow on the back of the deceased while Lajrus Oraon had hit on her shoulder. There is no allegation of repetition of blows by the Appellants which clearly goes to show that they had never any intention to take the life of Paulina Oraon. Learned Counsel submitted that in that circumstance, even if the entire allegation is taken at its face value and accepted as true, it attracts the Exception-1 to Section 300 IPC and the case does not come within the ambit of Section 302 IPC. Learned Counsel submitted that Lajrus Oraon (Appellant No. 1) after his conviction has remained in jail custody for more than three years. Earlier also he was in custody during trial period. He is an old and ailing person aged about more than 70 years. Pitrus Oraon (Appellant No. 2) after his conviction has remained in custody for about eight years and during the period of trial also, he was in custody for some period. The Appellants' case, thus, falls within the fold of Section 304 (Part-II) IPC. The Appellants have already been sufficiently punished for the alleged offences.

11. Learned A.P.P, on the other hand, submitted that PW-5, though is solitary witness, he has given a detailed des(sic) about the alleged occurrence and the assault on the deceased. The defence could not elicit anything in his cross-examination. His evidence is, thus, fully reliable and credible. The quality of evidence matters and the quantity of evidence does not matter. The quality of evidence of PW-5 is as such that it cannot be discarded. He further submitted that though the I.O and the Doctor have not been examined in this case, no prejudice has been caused to the defence as in this case the place of occurrence is (sic)ted and the mode and manner of the occurrence have been fully established by PW-5. PW-12 has proved the post mortem report in absence of the Doctor and the same is on record and is a part of the evidence. On perusal of the post mortem report, it is evident that several injuries were found on the person of the deceased which caused her death. The provocation was not sudden and of such magnitude which can bring out the case from the ambit of Section 302 IPC. Learned Trial Court has committed no error in relying on the sole testimony of PW-5 coupled with the other evidences on record and on that basis

in convicting and sentencing the Appellants.

12. Having heard learned Counsel for the Appellants and learned A.P.P. we meticulously scrutinized the evidences on record. We find that PW-5 is the only material evidence produced on behalf of the prosecution. He is said to be an eyewitness. According to this witness, he was aged about eight years at the time of the alleged occurrence. His evidence in the Court was recorded after about 12 years from the date of occurrence. The said witness has stated that he saw giving an axe blow by Pitrus Oraon on the back of Paulina Oraon and thereafter saw Lajrus Oraon giving an axe blow on the shoulder and neck of Paulina Oraon. Admittedly, there was dispute regarding right and title over the land and the tree. This witness has admitted that he had been adopted by the family of the informant as "Dhangar" and has been living as a member of the family of the informant since childhood. Though he is an eyewitness, he being close associate of the family of the deceased, the Appellants' submissions that he is an interested witness cannot be completely ruled out. He also, however, has stated that the occurrence took place after arrival of Pitrus Oraon on the spot after some quarrel between the parties. According to him, Lajrus Oraon was also picking up Mahua flowers on one side since morning. On going through the deposition of PW-5, we find that learned Court below has noted the demeanour of the witness. He, however, found him a simple villager and a truthful witness. In view thereof, the part of the evidence of giving Tangi blow by the Appellants cannot be disbelieved; Though according to him, it preceded a quarrel which was a sudden provocation on arrival of Pitrus Oraon at the scene. From the evidence we do not find any element of premeditation or preplanned meeting of mind between the accused persons and any intention to take the life of the deceased Pauline Oraon. In that view, though the homicidal death of Paulina Oraon is found to be proved by the evidence of PW-5, PW-6 and the post mortem report (Ext. 5), the same being the result of the sudden quarrel and provocation, does not attract the Charge of murder punishable u/s 302 IPC. Learned Trial Court brushed aside the said aspect holding that it was a clear case of murder in furtherance of common intention of both the accused. But we find no sound basis for the same. The Court below on appraisal of the evidences, found that there was quarrel between both the parties preceding the occurrence. However, the Court below ignoring the same has held the accused-Appellants guilty of the charge under Sections 302/ 34 IPC. We find no convincing ground for upholding the said view and the impugned judgment of learned Trial Court.

13. On overall assessment of the facts, circumstances and evidences on record, we are of the considered view that though the appellants are guilty of causing culpable homicide of Paulina Oraon, the incident attracts Exception-1 to Section 300 IPC.

14. We, accordingly, hold that though the prosecution failed to establish the charge under Sections 302/ 34 IPC against the Appellants, the Appellants are found and held guilty for the offence under Sections 304 (Part-II)/ 34 IPC.

15. Accordingly, we convert the conviction of the Appellants u/s 304 (Part-II)/ 34 IPC and sentence them to the extent of the period of custody already undergone by them.

16. Since the Appellant No. 2 is in custody, he is ordered to be set at liberty forthwith, if not wanted in any other case. The Appellant No. 1, who is said to be on bail, is discharged from the liability of his bail bond.

17. With the said modification in the conviction and sentence of the Appellants, this appeal is dismissed.