
(2008) 08 JH CK 0090
In the Jharkhand High Court

Lakhan Oraon and Others

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302

Citation : (2008) 3 JCR 717

Hon'ble Judges : Dhananjay Prasad Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. All the aforesaid four appellants have been convicted for the offence u/s 302 read with Section 149 of the Indian Penal Code and have been sentenced to undergo R.I. for life for the said offence by the 7th Additional Judicial Commissioner, Ranchi, by his judgment dated 29.7.1998, which has been challenged by the appellants in the present appeal.

2. The prosecution case, in short, is that on 11.7.1986 at about 8.30 a.m. Budhua Oraon (the deceased) gave his fardbeyan before the Officer-in-charge of Ratu Police Station alleging therein that in the morning he had gone to plough his land and his son Bhunu Oraon was also with him. While he was ploughing, at about 8.00 a.m. the accused/appellants Chokha Oraon, Samundar Oraon (dead), Udai Oraon, Chulua Oraon came there and asked as to why he was ploughing the land. Thereupon, Budhua Oraon told him that the lands are in his continuous possession for the last thirty years and he made the same cultivable. In the meantime. Lakhna Oraon, having armed with lathi, came there and assaulted Budhua Oraon on his head causing injury due to which he fell down on the ground and, thereafter, it is said that Samundar Oraon, now dead, assaulted him with lathi on his left hand causing fracture. Thereafter, accused Chokha Oraon and Chulua Oraon assaulted him with lathi on his hands and legs. On seeing this, his son Bhunu Oraon fled away towards the village raising alarm. On hearing alarm, Sanichar-wa Oraon and Etwā Oraon came there and saw the occurrence.

After arrival of Sanicharwa Oraon and Etwa Oraon the accused persons fled away towards their village. Sanicharwa Oraon and Etwa Oraon brought him to his house by a cycle and thereafter, he was taken to police station on Rikshaw wherefrom he was referred to R.M.C.H. for treatment but on the way to RMCH Budhua Oraon died. The cause of the said occurrence was said to be the dispute between the parties with regard to the possession of the land in question, which was being ploughed by Budhua Oraon.

3. After investigation, charge sheet was submitted; cognizance taken and then charges were framed against the accused persons for the aforesaid offences to which the appellants denied.

4. In order to establish the charges, altogether eight prosecution witnesses were examined on behalf of the prosecution.

5. The learned trial Court after considering the evidence and materials on record both oral and documentary, held the appellants guilty for the aforesaid offences and sentenced them to undergo R.I. for life as already been stated herein above.

6. Mr. A.S. Dayal, learned Counsel appearing for the appellants submitted that lodging of the fardbeyan by Budhua Oraon is itself very much doubtful, in view of the contradictory statements made by the prosecution witnesses in that regard. He has submitted that as per the FIR and the Jardebeyan, Budhua Oraon was alive when he was brought to the police station. Jatru Oraon (PW 5) Rikshaw Puller, who, according to the prosecution, brought Budhua Oraon to the police station and Guna Oraon (PW 2), were present with Budhua Oraon at the police station and they are the signatories in the fardbeyan.

Mr. Dayal, invited our attention to the statement of PW 1 Etwa Oraon, who is said to be an eye-witness to the occurrence, particularly paras 3 and 4 of his cross-examination, wherein he has stated that after assault Budhua Oraon fell down unconscious and while he was being brought to the Police Station he died on the way itself. Mr. Dayal further pointed out that according to PW 5 Batra Oraon, the Rikshapuller. Budhua Oraon was alive when he was brought to the police station and he disclosed the names of his assailants but this witness has stated in his cross-examination in para 3 thereof that he did not know as to whether Budhua Oraon gave any statement to the police or not? He further stated that the police did not make any enquiry or interrogation from him.

7. In his deposition this witness has named himself as Gajju Oraon and he has put his signature as Gajju Oraon. In para 6 of his deposition he has stated that his real name is Jatru Oraon. If this was a fact that his real name was Jatru Oraon then we fail to understand as to why he disclosed his name as Gajju Oraon in Court and why did he sign as Gajju Oraon. From the entire deposition he appears to be a man of dubious character and it is difficult to rely on his evidence.

8. PW 2 Guna Oraon, the other signatory of the Jardebeyan has been tendered by

the prosecution. PW 3 Bhuna Oraon, son of the deceased, is another important witness on behalf of the prosecution. In para 5 of his cross-examination he has stated that when the "maarpit" was going on, he was going to the field and in para 6 therein he says that at the time of occurrence he did not raise any hulla and at the time of occurrence no other person was present in the field. In para 9, this witness has stated that after the assault, Budhua Oraon did not regain senses.

If this statement of PW 2 is believed then the story put forward in the fardbeyan that on hulla raised by Bhuna Oraon (PW 3) the witnesses arrived at the place of occurrence becomes wrong. This is also one of major contradiction in the prosecution case.

9. Further vital lacuna in the prosecution case is that the police officer, who recorded the Jardbeyan of Budhua Oraon has not been examined during trial. In fact he would have been the best witness to say that the injured Budhua Oraon was in his senses and was in a position to give his fardbeyan. We are of the view that due to non-examination of the said police officials, who recorded the so called fardbeyan of Budhua Oraon for the reasons best known to the prosecution, the defence has been greatly prejudiced and an important witness has been withheld by the prosecution and, as such, an adverse inference has to be drawn against the prosecution.

10. In our view the evidence of the prosecution witnesses are full of vital and major contradictions on all the material points and, therefore, we find that their evidences to be not reliable and trustworthy. On such unreliable and untrustworthy evidences of the prosecution, the trial Court has committed error in convicting the appellant for the alleged offence. In our view, the conviction and sentence of the appellants, passed by the trial Court, cannot be sustained. Accordingly, this appeal is allowed. The judgment of conviction and sentence passed by the trial Court is hereby set aside. The appellant No. 1 Lakhan Oraon, who is in custody, is directed to be set at liberty forthwith if not wanted in any other case and the rest of the appellants, who are on bail, are discharged from the liabilities of their bail bonds.