
(2016) 09 JH CK 0019

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 192 of 1992 (R)(Against the judgment of conviction and order of sentence dated 10th November, 1992 passed by Sessions Judge, Gumla, in S.T No. 473/87)

Leo Amrit Lakra

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

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

Citation : (2016) 168 AIC 471 : (2017) 1 JCR 318

Hon'ble Judges : Mr. Virender Singh, CJ. Mr. Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Mr. Pankaj Kumar, APP, for the Respondent/State; M/s. S.K. Ughal, T. Kabiraj, Advocates, for the Petitioners

Final Decision : Allowed

Judgement

Virender Singh, C.J. - The instant appeal is directed against the judgment of conviction and sentence dated 10th November, 1992 convicting both the accused for charge under Section 302/34 I.P.C. They have been sentenced to undergo R.I for life.

2. During the pendency of the appeal, Birsu Oraon @ Birshu Oraon died his natural death, as informed by the learned counsel for the appellants and confirmed also by learned State Counsel. The instant appeal, thus, stands abated qua Birsu Oraon @ Birshu Oraon and survives qua Leo Amrit Lakra only. Another fact needs to be mentioned here is that the third accused namely, Balasius Lakra who, according to the prosecution, was also present at the scene of crime could not be nabbed by the police, therefore not put to trial. Learned State Counsel submitted that till the conclusion of the trial, Balasius Lakra was not arrested and thereafter, whether he has been apprehended by the police or not is not known to him, as he has no information in this regard.

3. The prosecution case hinges upon circumstantial evidence. The deceased in

this case is one Patti Oraon, father of P.W4 Robin Bara, and husband of PW2 Durtima Orain. The occurrence is of 30th March, 1983, which was the day after Holi. The first informant (PW4 Robin Bara) lodged the report of occurrence on the next day at 9.00 am with the concerned police station that is, on 31st March, 1983. He alleged that when his father (deceased) was at home, accused Leo Amrit Lakra came there and took his father along on the pretext of taking liquor. This was seen by his mother, PW2 Durtima Orain. It is further alleged that after 2/3 hours, when the deceased did not come back home, his mother sent him along with PW3 John Bara to bring him from the house of Leo Amrit Lakra. When they went to the house of accused Leo Amrit Lakra, it was found closed from inside. It is alleged that both of them went to the backside of the house and saw that accused Leo Amrit Lakra and Birsu Oraon @ Birshu Oraon (since deceased) were scaling over the wall and accused Balasius Lakra (since absconder) also fled away from the house from the front side. They went inside the house and saw blood stains on the wall and some blood on the Dhheki. The dead body was lying under the heap of certain leaves. Kudal (blunt instrument) was also noticed near the dead body, stained with blood. These all happened at about 6.00 pm. However, the first information report was lodged with the police on the following day i.e. 31st March, 1983 at 9.00 am. Thereafter, inquest proceedings were completed by the concerned I.O and the dead body was sent for autopsy on the following day, i.e 1st April, 1983. One Dr. Yashwant Anant Lal son of Dr. Basant Lal, who had conducted autopsy over the dead body proved the postmortem report which indicated that the deceased had received two lacerated injuries on the vital part of the body (head). The motive as projected by the prosecution is that Birsu Oraon @ Birshu Oraon (since deceased) wanted to marry the daughter of the deceased, to which the deceased was not agreeing. This is how Birsu Oraon @ Birshu Oraon in connivance with accused Leo Amrit Lakra and his father Balasius Lakra (since absconder) made a plan in which the deceased was called at the house of the accused Leo Amrit Lakra on the pretext of taking liquor on the Holi occasion and then he was killed.

4. The most disturbing feature in this case is that the I.O, who started investigation in the present case after lodging of F.I.R on 31st March" 83, has not stepped into the witness box to prove the inquest report and the seizure memo prepared at the spot. Not only that, blood stained articles including, weapon of the alleged offence which according to the prosecution was blunt substance, has also not been sent to F.S.L (Service Division). That apart, another flaw which is noticeable in this case is that even the last seen evidence on which the prosecution is banking heavily in order to connect the accused Leo Amrit Lakra is also stumbling badly. The case as originally set up by the prosecution i.e by the son of the deceased Robin Bara PW4 was that, it is his mother PW2 Durtima Orain who had seen the accused Leo Amrit Lakra taking the deceased to his house on the pretext of taking liquor whereas, when he stepped into the witness box he changed the story of last seen altogether and stated that he along with his mother were present in the house when Leo Amrit Lakra came there and took

his father along. What appears to the Court is that the first informant being the son of the deceased made an attempt to make the evidence of last seen trust worthy, but failed miserably.

5. The matter does not rest here. PW1 Francis Bara and PW4 Robin Bara when stepped into the witness box categorically stated that they had gone to the police station on the date of occurrence itself during the evening/night hours but the report was not lodged by the police. What appears to the Court is that the complainant side has consumed reasonably good time in coining story of its choice. As stated above, the I.O of the present case has not stepped into the witness box, otherwise many aspects with regard to the investigation of the present case could have been made clear from him. In a case of this nature resting on circumstantial evidence, non-examination of the I.O turns out to be fatal and that weakness crept in this case is staring at the prosecution. Besides this, the weaknesses referred to herein above by itself can be said to be the good ground for dislodging the prosecution case in its entirety. The case of the prosecution that PW3 John Bara had accompanied PW4 Robin Bara, son of the deceased does not find support from him and he was declared hostile. The weaknesses in the investigation as discussed herein above, when evaluated with other flaws appearing in the prosecution case, take the Court to draw the irresistible conclusion that the prosecution has not been able to prove its case beyond shadow of reasonable doubt against Leo Amrit Lakra, the only surviving appellant.

6. The appeal on hand, thus, deserves to be allowed. The appellant, Leo Amrit Lakra, is acquitted of the charge for which he was convicted and sentenced, vide impugned judgment. He is discharged of the liability of bail bonds furnished by him during the pendency of the appeal.