
(2006) 04 JH CK 0010
In the Jharkhand High Court

Lokman Mian and Another

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 323, 34

Citation : (2006) CriLJ 4516 : (2006) 3 EastCriC 121 : (2006) 3 AIRJharR 428

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellants, Lokmari Mian and Md. Siddique, were arrayed as A-1, and A-2, along with Hafizan Bibi, who was arrayed as A-3. The trial Judge acquitted Hafizan Bibi while the appellants alone were found guilty.
2. The appellants were charged under Sections 302/34, 307 and 323 of the Indian Penal Code, on the allegation that at 7.30 a.m. On 10-8-1980 the appellants caused injuries to Md. Chirauddin, leading to his death and that when Gulam Rasool, PW-6 and Abdul Mian, PW-12, intervened, with a view to cause the death of PW-6, they attempted to murder PW-6 and caused injury to PW-12, Abdul Mian.
3. The trial Judge finding the appellants guilty, as charged, sentenced each one of them to imprisonment for life u/s 302/34 of the Indian Penal Code, while they were sentenced to seven years rigorous imprisonment u/s 307 of the Indian Penal Code. On being found guilty u/s 323 IPC, each one of them was sentenced to three months rigorous imprisonment. The present appeal by the convicted accused is against the said conviction and sentence.
4. The deceased, Md. Chirauddin, PW-6, Gulam Rasool, and PW-12, Abdul Mian, are brothers. PW-9, Idrish Mian, is the son of PW-12. They were residing in the same village where the accused were also residing. The case of the prosecution

is that there was long standing dispute between the parties as regard a piece of land and that civil litigations were pending during the relevant period. According to the prosecution, the above dispute is said to be the motive for the unfortunate occurrence, which took place in this case. At 7.30 a.m. on 10-8-1980, the deceased was pulling out paddy seedling from his field. At that time, PW-6, Gulam Rasool, PW-9, Idrish Mian, and PW-12, Abdul Mian, were present. The appellants went there, accompanied by Hafizan Mian (who was acquitted by the trial Court). They were also accompanied by Amir Mian (who died pending trial). The 1st appellant, Lokman Mian, and the 2nd appellant, Md. Siddique, each were armed with iron rod and Hafizan Bibi was having a lathi in her hand. They questioned the deceased as to how he could take away the seedlings from the land. Thereafter they attacked PW-6, Gulam Rasool, with the weapon which they had in their hands. Gulam Rasool suffered serious injuries. Chirauddin intervened and both the appellants assaulted him with iron rod, whereupon PW-12 also suffered Injuries when he tried to intervene in the attack. Thereafter, the appellants and the other two persons left the place of occurrence. The injured, Chirauddin (the deceased), PW-6, Gulam Rasool, and PW-12, Abdul Mian, were taken to Government hospital, Jamtara, where they were produced before the Casualty Medical Officer. PW-13, Dr. S.S. Sen, examined PW-6 at about 2.00 p.m. and found the following injuries on his person:

- (i) Lacerated wound 6" x 1" x bone deep on right side top of head;
- (ii) Swelling with ecchymosis 2" x 2" on the centre of forehead;
- (iii) Lacerated wound 2" x 1 1/2 " x 1/2 " in between index and thumb finger of left hand;
- (iv) Lacerated wound 3" x 1/2" x 1 1/2" on the back of left fore arm;
- (v) Bruise and ecchymosis 3" x 2" on the back of the left shoulder;
- (vi) Bruise with ecchymosis 2" x 1/2" on the back of the right shoulder;
- (vii) Swelling with ecchymosis 2" x 2" on the right fore arm;
- (viii) Swelling with ecchymosis 1 1/2" x 1 1/2" on right little finger;
- (ix) Bruise 3" x 1/2" on the front of left side of chest.

The doctor issued Ext. 5/1, the injury report, with his opinion that injury Nos. 1 and 2 are grievous in nature and the said injuries are likely to cause death.

5. Thereafter, the doctor examined PW-12, Abdul Mian, and found on his person the following injuries:

- (i) Lacerated wound 3" x 1/2" x 1 1/2 on the top of head;
- (ii) Lacerated wound circular 1" in diameter on top of head;
- (iii) Lacerated wound 1 1/2" x 1/2" x 1/2" on the right side of the head;

(iv) Lacerated wound 1" x 1 1/2" x 1 1/2" on the side of the head.

The doctor issued Ext. 5/2, the injury report, with his opinion that the injuries are simple in nature and could have been caused by hard and blunt substance.

6. Chirauddin was examined and the doctor found the following two injuries:

(i) Lacerated wound 1" x 1/2" x skin deep above the right ear;

(ii) Lacerated wound 2" x 1/2" x scalp deep on the back of right side of head; there was swelling all over the right side of head.

The doctor issued Ext.5, the injury report, containing his opinion that the doctor found Chirauddin to be completely unconscious. He issued Ext. 5, the injury report, and Chirauddin was admitted as in patient.

7. In the meantime, on receipt of information about the admission of the injured, the police officer of Jamtara Police Station went to the hospital and recorded Ext.7, the Fardbeyan, given by PW-12, which was registered as an FIR under Ext. 1 at the police station, after he returned to Jamtara. While the investigation was proceeding, the injured Chirauddin died on 12.8.1980 and after receipt of the death information, the crime was altered to one u/s 302, IPC.

8. After the inquest was conducted by the police officer on the dead body of Chirauddin, a requisition was given to the doctor, requesting him to conduct autopsy.

9. On receipt of requisition, PW-13, Dr. S.S. Sen conducted autopsy on the dead body of Chirauddin and he found the following injuries:

(i) One lacerated wound 2 x 1/4" x 1/4" cm on the right temporal region directed forward at the level of the upper mole of right penna;

(ii) One lacerated wound 3 x 1/4" x 1/4" cm on the right occipital region situated sagittally with crack fracture of the bone 20 cm lower running sagittally at the right supra orbital margin passing over the right parietal tuberosity with epidural blood clot covering an area of 10 x 6 cm underneath the fracture line;

(iii) Abrasion 2 x 1 cm summit of right shoulder joint.

The doctor issued Ext. 6, the post mortem certificate, with his opinion that the death is on account of shock and haemorrhage and said injuries would have been caused by hard and blunt substance.

10. After the completion of investigation, final report was filed against the accused. When the appellants were examined u/s 313, Cr.P.C., they denied all the incriminating circumstances, but only claimed that the land in dispute was in their possession and not in possession of the prosecution witnesses and the deceased. No witness was examined on their side though, Ext.-A, certified copy of the order dated 7-9-1981 passed in T.A. No. 4 of 1980, was marked by them.

11. The learned Counsel appearing for the appellants strenuously contends that since the witnesses did not specifically say as to which accused caused injury on which part of the body of the deceased, their evidence cannot be accepted. It is his further submission that the property in question was in possession of the accused and, therefore, the deceased party had no right to raise crops and hence the appellants are entitled for acquittal.

12. On the above contention, we have heard Mr. I.N. Gupta, learned A.P.P., appearing for the State.

13. The prosecution by examining PW-13, Dr. S.S. Sen and marking Ext. 6, the post mortem certified, issued by him, conclusively proved before the trial Court that Chirauddin died on account of homicidal violence. We have no hesitation, on the evidence adduced, to come to the conclusion that Chirauddin died on account of homicidal violence.

14. The prosecution, in order to establish that Chirauddin suffered injuries on the vital parts of his body at the hands of the accused and that PWs-6 and 12 also suffered injuries during the course of same transaction, examined three witnesses and they are PW-6, Gulam Rasool, PW-9, Idrish Mian, and PW-12, Abdul Mian. We have already noticed that PWs-6 and 12 are brothers and PW-9 is the son of PW-12. The evidence of the witness shows that there was a long standing dispute between the parties as regards the enjoyment of a piece of land and civil disputes were also pending. In fact, they marked Ext. A before the trial Court to show that civil litigations were pending regarding the said land at the time of occurrence. We, therefore, conclude that the prosecution has succeeded in establishing the motive part of the case.

15. The evidence of the witness shows that on the date of incident, at about 7.30 a.m. when deceased was taking out paddy seedlings, the accused appellants went there and questioned him. Thereafter, he was abused and PW-6 asked them as to why they are abusing, as a result of which he suffered grievous injury, as could be seen from Ext. 5/1, the injury report issued by Dr. S.S. Sen, PW 13. Chirauddin was also assaulted with iron rods by the two appellants and that when PW-12 intervened, he was also beaten. Immediately thereafter, all the injured, including Chirauddin, were taken to the Government Hospital, Jamtara and the deceased Chirauddin was first to be examined at 1.45 p.m. by PW-13, who found injuries on the person of Chirauddin.

16. We have already referred to the injuries, noted by the doctor on the deceased Chirauddin, which the doctor noted in Ext.5, the injury report. The doctor also found Chirauddin to be unconscious. Immediately thereafter, he examined PW-6 and then PW-12. Later, a complaint was given at the hospital by PW-12. On going through the evidence of PWs.-6, 9 and 12, which is fully supported by medical evidence, we find corroboration in the prosecution version. PWs-6 and 12 suffered injuries during the course of the same transaction and the said fact is not disputed either before the trial Court or

before this Court. Once we come to the conclusion that two of the eye witnesses suffered injuries at the same time and place, where the deceased suffered injuries, then the Court cannot but come to the conclusion that they were present at the scene of occurrence. Once we hold that two persons were present, then there can be no difficulty in arriving at a further conclusion that they are natural witness and that they must have witnessed the occurrence. In fact, as we have noticed earlier, the two witnesses suffered injuries at the hands of the accused and that Chirauddin also suffered the injuries at the same time. It is not the case of the defence that these two witnesses suffered injuries at different point of time and at different date. It is, no doubt, true that these two witnesses were shown as accused in a private complaint, filed by the accused, wherein, an allegation was made against these witnesses that on 9-8-1980 there was a quarrel between the parties and that they were beaten. We are unable to understand as to how the said private complaint will come to the rescue of the accused. But on the contrary, the case of the defence that there was a private complaint filed by the accused against the witnesses regarding an occurrence, which took place on 9-8-1980, is yet another fact which will only prove the animosity between the two parties. We, therefore, accept the evidence of PWs-6, 12 and 9, as their evidence not only support each other but their evidence is also supported by the medical evidence.

17. The contention of the counsel is that the witnesses did not specifically say as to which accused caused injury on which part of the body of the deceased. In the above circumstances, we consider it insignificant as it is to be remembered that they were tried and convicted u/s 302/34, IPC as they have shared the common intention of each other. Similarly, we do not attach any importance to the argument of the learned Counsel that the property in question was in possession of the appellants for setting aside the conviction. We have already noted that there was a civil litigation, pending between the parties and it is for the civil Court to give a finding as regards the title and possession of the property and this Court need not go into such question of facts, which are to be decided only by the civil Court. The fact remains that on account of a civil dispute, pending between the parties, the deceased and two others were assaulted, leading to the death of one and Resulting in grievous injury to the other, while the third suffered a simple injury.

18. On the evidence adduced, we are thoroughly satisfied that the prosecution fully established its case against the appellants and we find no reason to interfere with the view taken by the trial Court. The appeal deserves to be dismissed and it is, accordingly, dismissed. The appellants are on bail. Their bail bonds are cancelled and they are directed to surrender before the Court below for serving the sentence. The trial Court Is also directed to take all coercive steps for their arrest.